PROVISIONAL CRIMINAL PROCEDURE CODE OF KOSOVO*

* Re-issued for technical reasons.

List of corrections to the Provisional Criminal Procedure Code of Kosovo: April 2004

In Article 12, paragraph 3, the word “offence” has been replaced by the words “criminal offence”.

In Article 12, paragraph 4, the word “offence” has been replaced by the words “criminal offence”.

In Article 61, paragraph 1, the words “the offence” have been replaced by the words “the criminal offence”.

In Article 75, paragraph 4, in the second sentence, the word “offence” has been replaced by the words “criminal offence”.

In Article 80, paragraph 2, the words “the offence” have been replaced by the words “the criminal offence”.

In Article 116, paragraph 3, the word “suspend” has been replaced by the word “stay”.

In Article 179, paragraph 3, in the third sentence, the word “site-inspection” has been replaced by the words “site inspection”.

In Article 200, paragraph 2, the words “As soon as the police obtain knowledge of a suspected criminal offence prosecuted *ex officio* either through the filing of a criminal report or in some other way,” have been replaced by the words “As soon as the police obtain knowledge, either through the filing of a criminal report or in some other way, of a suspected criminal offence prosecuted *ex officio*,”.

In Article 208, paragraph 1, in the chapeau, the words “a police criminal report or a criminal report from other persons” have been replaced by the words “a criminal report (a police criminal report or a criminal report from other persons)”.

In Article 208, paragraph 1, sub-paragraph 2, the words “The offence” have been replaced by the words “The act”.

In Article 227, paragraph 2, the word “offence” has been replaced by the words “criminal offence”.

In Article 228, paragraph 5, in the first sentence, the words “paragraph 2 and 4” have been replaced by the words “paragraphs 2 and 4”.

In Article 237 paragraph 1, in the second sentence, the words “Witnesses and Expert Witnesses” have been replaced by the words “witnesses and expert witnesses”.

In the title of section 6 of Chapter XXVIII, the words “Inspection and Reconstruction” have been replaced by the words “Site Inspection and Reconstruction”.

In Article 254, paragraph 2, in the first sentence, the words “the pre-trial judge or the presiding judge” have been replaced by the words “the court”.

In Article 257, paragraph 3, sub-paragraph 1, point ii, sub-point 4, the words “An offence” have been replaced by the words “A criminal offence”.

In Article 305, paragraph 1, sub-paragraph 1, the number “245” has been replaced by the number “233”.

In Article 338, paragraph 3, first sentence, the words “such offence” have been replaced by the words “such criminal offence”.

In Article 366, paragraph 2, the words “an inspection” have been replaced by the words “a site inspection”.

In Article 366, paragraph 3, in the first sentence, the words “an inspection” have been replaced by the words “a site inspection”.

In Article 377, paragraph 1, in the first sentence, the words “new offence” have been replaced by the word “act”.

In Article 377, paragraph 2, the word “offence” has been replaced by the word “act”.

In Article 388, paragraph 2, the words “which offence” have been replaced by the words “which act”.

In Article 396, paragraph 5, the words “separate offence” have been replaced by the words “separate criminal offence”.

In Article 417, the words “the offence” have been replaced by the words “the act”.

In Article 442, paragraph 1, sub-paragraph 4, the word “offence” has been replaced by the word “act” in both places where it occurs.

In Article 510, paragraph 1, the word “offence” has been replaced by the words “criminal offence”.

In Article 512, the words “to serve the punishment as a convicted person” have been replaced by the words “for the convicted person to serve the punishment”.

In Article 518, paragraph 3, sub-paragraph 4, the word “offence” has been replaced by the word “act” in both places where it occurs.

In Article 525, paragraph 2, in the first sentence, the words “paragraphs 1-6 and 8-13 of” have been added before the words “Article 517”.

In Article 528, paragraph 1, in the third sentence, the word “offence” has been replaced by the word “act”.

In Article 534, paragraph 3, the words “concurrent offences” have been replaced by the words “concurrent criminal offences”.

In Article 544, paragraph 1, the words “an offence” have been replaced by the words “a criminal offence”.

In Article 547, paragraph 3, the word “also” has been added after the word “may”.

PROVISIONAL CRIMINAL PROCEDURE CODE OF KOSOVO

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PART ONE: GENERAL PROVISIONS

CHAPTER I: FUNDAMENTAL PRINCIPLES

Article 1

(1) The present Code determines the rules of criminal procedure mandatory for the proceedings of the regular courts, the prosecutor and other participants in criminal proceedings as provided for in the present Code.

(2) The present Code sets forth the rules which are to guarantee that no innocent person shall be convicted, and that a punishment or any other criminal sanction shall only be imposed on a person who commits a criminal offence under the conditions provided for by the Provisional Criminal Code and other laws of Kosovo which provide for criminal offences and on the basis of a procedure conducted lawfully and fairly.

(3) The freedoms and rights of the defendant may be restricted before a final judgment has been rendered only under the conditions defined by the present Code.

Article 2

A criminal sanction may be imposed on a person who has committed a criminal offence only by a competent, independent and impartial court in proceedings initiated and conducted in accordance with the present Code.

Article 3

(1) Any person suspected or charged with a criminal offence shall be deemed innocent until his or her guilt has been established by a final judgment of the court.

(2) Doubts regarding the existence of facts relevant to the case or doubts regarding the implementation of a certain criminal law provision shall be interpreted in favour of the defendant and his or her rights under the present Code.

Article 4

(1) No one can be prosecuted and punished for a criminal offence, if he or she has been acquitted or convicted of it by a final decision of a court, if criminal proceedings against him or her were terminated by a final decision of a court or if the indictment against him or her was dismissed by a final decision of a court.

(2) A final decision of a court may be reversed through extraordinary legal remedies only in favour of the convicted person, except when otherwise provided by the present Code (Article 442 paragraph 2 of the present Code).

Article 5

(1) Any person suspected or charged with a criminal offence shall be entitled to fair criminal proceedings conducted within a reasonable time.

(2) The court shall be bound to carry out proceedings without delay and to prevent any abuse of the rights of the participants in proceedings.

(3) Any deprivation of liberty and in particular detention on remand in criminal proceedings shall be reduced to the shortest time possible.

Article 6

(1) Criminal proceedings shall only be initiated upon the request of the authorized prosecutor. For certain criminal offences, when provided for by criminal law, the public prosecutor shall initiate criminal proceedings only upon the motion of the injured party. After such motion has been filed, the criminal offence shall be considered as prosecuted *ex officio*. In a case in which the injured party withdraws the motion before the judgment is rendered, the proceedings shall be terminated.

(2) With respect to criminal offences prosecuted *ex officio*, the authorized prosecutor shall be the public prosecutor, and with respect to criminal offences prosecuted on the basis of a private charge, the authorized prosecutor shall be the private prosecutor.

(3) Unless otherwise provided for by the present Code, the public prosecutor has a duty to initiate criminal proceedings if there is a reasonable suspicion that a criminal offence prosecuted *ex officio* has been committed.

(4) If the public prosecutor decides that there are no grounds to initiate or continue criminal proceedings, his or her role as a prosecutor may be assumed by the injured party under the conditions defined by the present Code.

Article 7

(1) The court, the public prosecutor and the police participating in criminal proceedings must truthfully and completely establish the facts which are important to rendering a lawful decision.

(2) Subject to the provisions contained in the present Code, the court, the public prosecutor and the police participating in the criminal proceedings have a duty to examine carefully and with maximum professional devotion and to establish with equal attention the facts against the defendant as well as those in his or her favour, and to make available to the defence all the facts and pieces of evidence, which are in favour of the defendant, before the beginning of and during the proceedings.

Article 8

(1) The court shall be independent in its work and shall render decisions in conformity with the law.

(2) The court renders its decision on the basis of the evidence examined and verified in the main trial.

Article 9

(1) In criminal proceedings, courts shall adjudicate in trial panels or in panels in accordance with the present Code.

(2) Less serious criminal offences shall be tried in municipal courts by an individual judge.

(3) In accordance with the provisions of the present Code, a pre-trial judge shall make decisions on actions and measures in pre-trial proceedings which limit the human rights and basic freedoms of a person.

Article 10

(1) The defendant and the prosecutor shall have the status of equal parties in criminal proceedings, unless otherwise provided for by the present Code.

(2) The defendant has the right and shall be allowed to make a statement on all the facts and evidence, which incriminate him or her, and to state all facts and evidence favourable to him or her. He or she has the right to examine or to have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.

(3) The prosecutor shall present the facts on which he or she bases the indictment and shall provide evidence of these facts.

Article 11

(1) At the first examination the defendant shall be promptly informed, in a language that he or she understands and in detail, of the nature of and reasons for the charge against him or her.

(2) The defendant shall not be obliged to plead his or her case or to answer any questions and, if he or she pleads his or her case, he or she shall not be obliged to incriminate himself or herself or his or her next of kin nor to confess guilt.

(3) Forcing a confession or any other statement by the use of torture, force, threat or under the influence of drugs, or in any other similar way from the defendant or from any other participant in the proceedings shall be prohibited and punishable.

Article 12

(1) The defendant shall have the right to have adequate time and facilities for the preparation of his or her defence.

(2) The defendant shall have the right to defend himself or herself in person or through legal assistance by a member of the bar of his or her own choice.

(3) Subject to the provisions of the present Code, if the defendant does not engage a defence counsel in order to provide for his or her defence and if defence is mandatory, an independent defence counsel having the experience and competence commensurate with the nature of the criminal offence shall be appointed for the defendant.

(4) Under the conditions provided by the present Code, if the interests of justice so require and if the defendant has insufficient means to pay for legal assistance and for this reason cannot engage a defence counsel, an independent defence counsel having the experience and competence commensurate with the nature of the criminal offence shall be appointed for the defendant on his or her request and paid from budgetary resources.

(5) At the first examination the court or other competent authority conducting criminal proceedings shall inform the defendant of his or her right to a defence counsel, as provided for by the present Code.

(6) In accordance with the provisions of the present Code, any person deprived of liberty shall have the right to the services of a defence counsel from the moment of arrest onwards.

Article 13

(1) No one shall be deprived of his or her liberty save in such cases and in accordance with such proceedings as are prescribed by the law.

(2) Any person deprived of his or her liberty by arrest or detention shall be entitled under the procedures provided by the present Code to take proceedings by which the lawfulness of his or her detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.

Article 14

(1) Any person deprived of liberty shall be informed promptly, in a language which he or she understands, of:

1) The reasons for his or her arrest;

2) The right to legal assistance of his or her own choice; and

3) The right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest.

(2) A person deprived of liberty under the suspicion of having committed a criminal offence shall be brought before a judge promptly and at the latest within 72 hours of the arrest and shall be entitled to a trial within a reasonable time or to release pending trial.

(3) A person deprived of liberty enjoys the rights provided for in the present article throughout the time of the deprivation of liberty. These rights can only be waived if such waiver is made in writing in an informed and voluntary manner. The exercise of these rights depends neither on the possible previous decision of the person to waive certain rights, nor on the time when he or she was notified about these rights.

Article 15

(1) The languages and scripts which may be used in criminal proceedings shall be Albanian, Serbian and English. Another language or script may also be used if it is prescribed by law for use within the individual territorial jurisdiction of a court.

(2) Any person participating in criminal proceedings who does not speak the language of the proceedings shall have the right to speak his or her own language and the right to be informed through interpretation, free of charge, of the evidence, the facts and the proceedings. Interpretation shall be provided by an independent interpreter.

(3) A person referred to in paragraph 2 of the present article shall be informed of his or her right to interpretation. He or she may waive this right if he or she knows the language in which the proceedings are conducted. The notification of the right and the statement of the participant shall be entered in the record.

(4) Pleadings, appeals and other submissions may be served on the court in English, Albanian or Serbian or another language, taking into account the provisions of the Constitutional Framework and any law prescribing additional languages for use within the individual territorial jurisdiction of a court. After the beginning of the main trial, a person who makes a submission may not revoke his or her decision about the language which shall be used in the proceedings without the permission of the court.

(5) An arrested person, a defendant who is in detention on remand and a person serving a sentence shall be provided a translation of the summonses, decisions and submissions in the language which he or she uses in the proceedings.

(6) A foreign national in detention on remand may serve on the court submissions in his or her language before, during and after the main trial only under the conditions of reciprocity.

Article 16

Any person who is unlawfully convicted, arrested, detained or held in detention on remand shall be entitled to full rehabilitation, just compensation from budgetary resources and other rights provided for by law.

Article 17

The court shall have a duty to inform the defendant or any other participant in the proceedings of the rights to which that person is entitled according to the present Code as well as of the consequences of a failure to act, if that person might omit an action in the proceedings owing to ignorance or does not exercise his or her rights for the same reason.

Article 18

When it is provided that the initiation of criminal proceedings has the consequence of limiting certain rights, such consequence shall take effect, if it is not determined otherwise by law, upon the entry into force of the indictment and for a criminal offence punishable by a fine or imprisonment of up to three years from the day when the judgment of conviction is rendered, irrespective of whether it is final or not.

Article 19

(1) If the application of criminal law depends on a prior ruling concerning a question of law which falls within the jurisdiction of a court in another type of proceeding or within the jurisdiction of another public entity, the court which is adjudicating on the criminal case may render a ruling on such question by itself in accordance with the provisions applicable to evidence in criminal proceedings. Such ruling shall only apply to the criminal case which is being tried by this court.

(2) If a court in some other type of proceeding or another public entity has already rendered a decision on a prior question of this nature, such decision shall not be binding on the court adjudicating on the criminal case in deciding whether a criminal offence has been committed.

CHAPTER II: JURISDICTION OF COURTS

1. SUBJECT MATTER JURISDICTION AND THE COMPOSITION OF THE COURT

Article 20

(1) Criminal cases shall be adjudicated in municipal courts, district courts and the Supreme Court of Kosovo.

(2) These courts shall, within the limits of their subject matter and territorial jurisdiction, consider all criminal offences and try all persons, unless otherwise provided for by law.

Article 21

(1) A municipal court shall have jurisdiction:

1) To adjudicate at first instance a criminal offence punishable by a fine or by imprisonment of up to five years, unless the district court has jurisdiction to adjudicate such criminal offence;

2) In the case of a criminal offence for which it has competence to adjudicate at first instance under subparagraph 1 of this paragraph, to decide on actions and measures in pre-trial proceedings which limit the human rights and basic freedoms of a person, as provided for by the present Code; to collect evidence under extraordinary investigative opportunities as provided for by the present Code and to conduct proceedings on the confirmation of the indictment; and

3) To administer other matters as provided for by law.

(2) The law may prescribe that certain kinds of cases subject to the jurisdiction of two or more municipal courts within the jurisdictional territory of the same district court shall be considered by one of these municipal courts depending on the conditions of work and the work load of these courts.

Article 22

(1) A municipal court shall adjudicate in a trial panel of one judge and two lay judges.

(2) Criminal offences punishable by a fine or by imprisonment of up to three years shall be considered by an individual judge of the municipal court.

(3) A municipal court shall adjudicate in a panel of three judges when rendering a decision outside the main trial.

(4) A single judge of the municipal court shall decide in pre-trial proceedings as a pre-trial judge or as a judge conducting the proceedings to confirm the indictment.

(5) The president of the municipal court and the presiding judge shall decide on matters provided for by the present Code.

Article 23

A district court shall have jurisdiction:

1) To adjudicate at first instance:

   i) A criminal offence punishable by imprisonment of at least five years or by long-term imprisonment; and

   ii) A criminal offence for which the law has prescribed the jurisdiction of the district court;

2) To decide on an appeal against a decision of a municipal court rendered at first instance;

3) In the case of a criminal offence for which it has competence to adjudicate at first instance under subparagraph 1 of the present article, to decide on actions and measures in pre-trial proceedings which limit the human rights and basic freedoms of a person, as provided for by the present Code, to collect evidence under extraordinary investigative opportunities as provided for by the present Code and to conduct proceedings on the confirmation of the indictment;

4) To conduct proceedings for the transfer of a defendant or a convicted person to or from a foreign jurisdiction if the law does not prescribe the jurisdiction of the Supreme Court of Kosovo;

5) To administer international legal assistance in criminal matters including the recognition and execution of a foreign criminal judgment;

6) To decide on a dispute over the territorial jurisdiction of municipal courts in its jurisdictional territory; and

7) To administer other matters, as provided for by law.

Article 24

(1) A district court shall adjudicate in the first instance in a trial panel of one judge and two lay judges or, when considering graver criminal offences punishable by imprisonment of at least fifteen years, in a trial panel of two judges and three lay judges.

(2) A district court shall adjudicate in a panel of three judges when rendering a decision outside the main trial.

(3) A district court shall adjudicate in a panel of two judges and three lay judges when rendering a decision at a hearing at second instance (Article 412 of the present Code)

(4) A single judge of the district court shall decide in pre-trial proceedings as a pre-trial judge or as a judge conducting the proceedings to confirm the indictment.

(5) The president of the district court and the presiding judge shall decide on matters provided for by the present Code.

Article 25

The Supreme Court of Kosovo shall have jurisdiction:

1) To decide on an appeal against a decision of a district court rendered at first instance;

2) To decide on an appeal against a judgment rendered at second instance, as provided for in the present Code (Article 430 of the present Code);

3) To decide on an extraordinary legal remedy, as provided for in the present Code; and

4) To administer other matters, as provided for by law.

Article 26

(1) The Supreme Court of Kosovo shall adjudicate in a panel of three judges or, when adjudicating graver criminal offences punishable by imprisonment of at least fifteen years, in a panel of five judges.

(2) The Supreme Court of Kosovo shall adjudicate in a panel of five judges when deciding at third instance on an appeal against a judgment rendered at second instance.

(3) The Supreme Court of Kosovo shall adjudicate in a panel of three judges when rendering a decision on an extraordinary legal remedy with respect to a criminal offence punishable by imprisonment of up to fifteen years or in a panel of five judges when rendering a decision on an extraordinary legal remedy with respect to a criminal offence punishable by imprisonment of at least fifteen years. The Supreme Court of Kosovo shall adjudicate in a panel of five judges when rendering a decision on an extraordinary legal remedy against a decision rendered by one of its own panels.

2. TERRITORIAL JURISDICTION

Article 27

(1) Territorial jurisdiction shall as a rule be vested in the court within whose territory a criminal offence has been committed or attempted or where its consequence occurred.

(2) A private charge may also be filed with the court within whose territory the defendant has a permanent or current residence.

(3) If a criminal offence was committed or attempted or its consequence occurred in the territory of more than one court or on the border of those territories, the court which first announced proceedings in response to the petition of an authorized prosecutor shall be competent, but if proceedings have not been initiated, the court at which the petition for initiation of proceedings is first filed shall have jurisdiction.

Article 28

If a criminal offence has been committed on an aircraft, the court within whose territory the aircraft is registered shall have jurisdiction.

Article 29

(1) If a criminal offence has been committed through a newspaper, the court within whose territory the newspaper is printed shall have jurisdiction. If this location is unknown or if the newspaper has been printed abroad, the court within whose territory the printed newspaper is distributed shall have jurisdiction.

(2) If according to the law the author of the published material is responsible, the court within whose territory the author has a permanent residence or the court within whose territory the event to which the published material refers took place shall have jurisdiction.

(3) Paragraphs 1 and 2 of the present article shall apply *mutatis mutandis* to cases where the material was published by radio, television or any other type of publication.

Article 30

(1) If the territory described in Article 27 paragraph 1 of the present Code is unknown or if this place is not within the territory of Kosovo, the court within whose territory the defendant has a permanent or current residence shall have jurisdiction.

(2) If the court within whose territory the defendant has a permanent or current residence has initiated proceedings, the court shall retain jurisdiction even after the place of the commission of the criminal offence has become known.

(3) If neither the place of commission of a criminal offence nor the place of permanent or current residence of the defendant is known or if both are outside the territory of Kosovo, the court within whose territory the defendant was apprehended or has surrendered himself or herself to the authorities shall have jurisdiction.

Article 31

If a person commits criminal offences both in Kosovo and outside Kosovo, the court which has jurisdiction over the act committed in Kosovo shall have jurisdiction.

Article 32

If, according to the provisions of the present Code, it cannot be established which court has territorial jurisdiction, the Supreme Court of Kosovo shall designate one of the courts with subject matter jurisdiction to conduct proceedings.

3. JOINDER AND SEVERANCE OF PROCEEDINGS

Article 33

(1) If the same person has been charged with the commission of several criminal offences of which some are subject to the jurisdiction of a lower court and some to the jurisdiction of a

higher court, the higher court shall have jurisdiction, and, if the courts having jurisdiction are at the same level, the court at which the indictment has first been filed shall have jurisdiction, and, if no indictment has been filed, the court to which a stamped copy of the ruling on the investigation has been sent (Article 221 paragraph 1 of the present Code) shall have jurisdiction.

(2) Paragraph 1 of the present article shall also apply to determine which court has jurisdiction in a case in which the injured party has at the same time committed a criminal offence against the defendant.

(3) As a rule, co-defendants shall be subject to the jurisdiction of the court which has jurisdiction for one of them and at which an indictment has first been filed.

(4) The court which has competence over the perpetrator of the criminal offence shall, as a rule, also have competence over the accomplices, accessories after the fact and persons who failed to report the preparation of the act, the commission of the act or the perpetrator.

(5) All cases referred to in paragraphs 1 through 4 of the present article shall as a rule be considered in joint proceedings and a single judgment shall be rendered.

(6) The court may decide to conduct joint proceedings and to render a single judgment when several individuals have been charged with several criminal offences, provided that the acts are interconnected and the evidence is common. If some of these acts are subject to the jurisdiction of a lower court and some to the jurisdiction of a higher court, only the higher court shall have jurisdiction over the joint proceedings.

(7) The court may decide to conduct joint proceedings and to render a single judgment if separate proceedings are conducted before the same court against the same person for several acts or against several persons for the same act.

(8) A joinder of proceedings shall be decided by the court which is competent to conduct the joint proceedings upon the motion of the public prosecutor or *ex officio*. No appeal shall be permitted against a ruling joining the proceedings or rejecting a motion for a joinder.

Article 34

(1) Until the conclusion of the main trial, the court which has jurisdiction under Article 33 of the present Code may, for important reasons or for reasons of efficiency, order the severance of proceedings conducted for several criminal offences or conducted against several defendants and thereupon proceed separately or refer separate cases to another competent court.

(2) A ruling on the severance of proceedings shall be rendered by the competent court after hearing the parties and the defence counsel.

(3) No appeal shall be permitted against a ruling severing proceedings or rejecting a motion for severance.

4. TRANSFER OF TERRITORIAL JURISDICTION

Article 35

(1) If a competent court is prevented from conducting proceedings for legal or factual reasons after hearing the parties and the defence counsel, it must notify the immediately superior court thereof, which shall designate another court with subject matter jurisdiction on its territory to conduct the proceedings.

(2) No appeal shall be permitted against a ruling under paragraph 1 of the present article.

Article 36

(1) The immediately superior court may designate another court on its territory having subject matter jurisdiction to conduct the proceedings if it is evident that the proceedings will be conducted more easily or if there are other important reasons.

(2) The court shall render a ruling under paragraph 1 of the present article upon the motion of the pre-trial judge, presiding judge or upon the motion of one of the parties, the defence counsel or the injured party.

(3) No appeal shall be permitted against a ruling under paragraph 2 of the present article.

5. CONSEQUENCES OF LACK OF JURISDICTION AND DISPUTES OVER JURISDICTION

Article 37

(1) A court is bound to examine its subject matter and territorial jurisdiction and, as soon as it determines a lack thereof, it shall declare itself without jurisdiction and, after the ruling becomes final, it shall refer the case to the court which has jurisdiction.

(2) During the course of a main trial, if the court determines that a lower court has jurisdiction to conduct the proceedings, it shall not refer the case to the lower court but shall conduct the proceedings and render a decision.

(3) After the indictment becomes final, the court may not declare that it does not have territorial jurisdiction, nor may the parties raise the objection of lack of territorial jurisdiction.

(4) A court which lacks jurisdiction shall conduct such procedural actions with respect to which there is danger in delay.

Article 38

(1) If the court to which a case has been referred as the competent court considers that the court that referred the case or some other court is competent, it shall initiate proceedings for resolving the dispute over jurisdiction.

(2) When a court of second instance takes a decision on an appeal against a decision by which a court of first instance has declared itself without jurisdiction, the court to which the case is referred shall be bound by the decision with regard to the question of jurisdiction, if the court of second instance has jurisdiction to render a ruling on the conflict of jurisdiction between the courts concerned.

Article 39

(1) Disputes over jurisdiction between courts shall be resolved by the common court that is immediately superior to the courts involved in the dispute.

(2) Before rendering a ruling in a jurisdictional dispute, the court shall ask the opinion of the public prosecutor who is competent to act before that court, and of either the defendant or the defence counsel. No appeal shall be permitted against such ruling.

(3) In deciding on a dispute over jurisdiction, the court may at the same time render a decision *ex officio* on the transfer of territorial jurisdiction, provided that the conditions under Article 36 of the present Code are fulfilled.

(4) Until the dispute over jurisdiction between the courts is resolved, each court shall be bound to conduct such procedural actions with respect to which there is danger in delay.

CHAPTER III: DISQUALIFICATION

Article 40

(1) A judge or a lay judge shall be excluded from the exercise of the judicial functions in a particular case:

1) If he or she has been injured by the criminal offence;

2) If he or she is the spouse, the extramarital partner, a relation by blood in a direct line to any degree or in a collateral line to the fourth degree or a relation by marriage to the second degree to the defendant, the defence counsel, the prosecutor, the injured party, or his or her legal representative or authorized representative;

3) If he or she is a legal guardian, ward, adopted child, adoptive parent, foster parent or foster child of the defendant, the defence counsel, the prosecutor or the injured party;

4) If, in the same criminal case, he or she has taken part in the proceedings as a prosecutor, a defence counsel, a legal representative or authorized representative of the injured party or prosecutor or if he or she has been examined as a witness or as an expert witness; or

5) If in the same case he or she has taken part in rendering a decision of a lower court or if in the same court he or she has taken part in rendering a decision which is being challenged by an appeal.

(2) A judge shall be excluded:

1) From the trial panel if in the same criminal case or in a case against the same defendant, he or she has participated in pre-trial proceedings, including in proceedings to confirm the indictment; or

2) From proceedings to confirm the indictment, if he or she has ordered detention on remand.

(3) A judge or lay judge may also be excluded from the exercise of judicial functions in a particular case if, apart from the cases referred to in paragraphs 1 and 2 of the present article, circumstances that render his or her impartiality doubtful are presented and established.

Article 41

(1) As soon as he or she discovers a ground for disqualification under Article 40 paragraph 1 or 2 of the present Code, a judge or lay judge shall discontinue all the activity on the case and report such ground to the president of the court who, in accordance with the procedures governing the internal court rules, shall appoint a substitute. In the case of disqualification of a president of a court, he or she shall ask the president of the immediately superior court to appoint a substitute.

(2) If a judge or a lay judge considers that there are other circumstances which would justify his or her disqualification (Article 40 paragraph 3 of the present Code), he or she shall inform the president of the court about such circumstances. Until a decision on disqualification is rendered, the judge or the lay judge may only conduct actions that are absolutely necessary to prevent postponement or impermissible delay of the case.

Article 42

(1) The disqualification of a judge may also be requested by the parties.

(2) A party shall be bound to request disqualification of a judge or a lay judge as soon as he or she learns of the existence of grounds for disqualification and no later than before the conclusion of the main trial and, in the case of disqualification on the grounds set forth in Article 40 paragraph 3 of the present Code, before the commencement of the main trial.

(3) A party may address a petition for the disqualification of a judge of a superior court in an appeal or in response to an appeal.

(4) A party may seek disqualification only of a judge or lay judge who acts in a case or of a judge of a superior court, if he or she is identified by name.

(5) The party shall be bound to state in the petition the circumstances supporting his or her allegation that there are legal grounds for disqualification. Reasons presented in a previous petition for disqualification which have been rejected may not be cited again in a petition.

Article 43

(1) The president of the court shall decide on a petition for disqualification under Article 42 of the present Code.

(2) The president of the immediately superior court shall decide on a petition for disqualification of the president of a court alone or a petition for disqualification of the president of a court and a judge or a lay judge. The general session of the Supreme Court of Kosovo shall decide on a petition for the disqualification of the president of the Supreme Court of Kosovo.

(3) Before rendering a ruling on disqualification, the judge, the lay judge or the president of the court shall be heard and further inquiries shall be carried out if necessary.

(4) No appeal shall be permitted against a ruling which accepts a petition for disqualification. A ruling rejecting a petition for disqualification may be contested by a separate appeal, but if this ruling was rendered after the indictment was brought, then only by an appeal against the judgment.

(5) If a petition for disqualification is in breach of the provisions of Article 42 paragraphs 4 and 5 of the present Code, or if the petition for disqualification under Article 40 paragraph 3 of the present Code is filed after the commencement of the main trial, the petition shall be dismissed entirely or partially. No appeal shall be permitted against a ruling, by which the petition is dismissed. The ruling to dismiss the petition shall be rendered by the president of the court or by the trial panel in the main trial. The judge whose disqualification is being sought may participate in rendering such ruling by a trial panel.

Article 44

When a judge or lay judge learns that a petition has been filed for his or her disqualification, he or she must immediately cease all work on the case, but if it concerns disqualification under Article 40 paragraph 3 of the present Code, he or she may, until the ruling is rendered on the petition, conduct only those actions with respect to which there is danger in delay.

Article 45

(1) The provisions on the disqualification of judges and lay judges shall apply *mutatis mutandis* to public prosecutors and persons who are authorized to represent the public prosecutor in proceedings according to the Law on the Office of The Public Prosecutor, authorized persons in the police, recording clerks, interpreters, specialists, and expert witnesses, unless otherwise provided (Article 178 of the present Code).

(2) A public prosecutor shall decide on the disqualification of persons who are authorized to represent him or her in criminal proceedings in accordance with the Law on the Office of The Public Prosecutor. An immediately superior public prosecutor shall decide on the disqualification of a public prosecutor, while the assembly of the deputies at the office of the Public Prosecutor for Kosovo shall decide on the disqualification of the Public Prosecutor for Kosovo.

(3) A panel of judges, a presiding judge or a pre-trial judge shall decide on the disqualification of a recording clerk, interpreter, specialist and expert witness.

(4) When an authorized police officer conducts investigative actions on the basis of the present Code, a competent public prosecutor shall decide on his or her disqualification. If a recording clerk participates in conducting such actions, the official who conducts the action shall decide on his or her disqualification.

CHAPTER IV: THE PUBLIC PROSECUTOR

Article 46

(1) The office of the public prosecutor is an independent body, responsible for investigating criminal offences, prosecuting persons charged with committing criminal offences which are prosecuted *ex officio* or on the motion of an injured party, supervising the work of the judicial police in investigating persons suspected of committing criminal offences and collecting evidence and information for initiating criminal proceedings. The office of the public prosecutor shall also administer other matters as provided for by law.

(2) Public entities may not formally or informally influence or direct the actions of the public prosecutor when dealing with individual criminal cases or investigations.

(3) The public prosecutor has a duty to consider the inculpatory as well as exculpatory evidence and facts during the investigation of criminal offences and to ensure that the investigation is carried out with full respect for the rights of the defendant and that evidence is not collected in breach of Article 153 of the present Code.

Article 47

(1) The basic power and the main function of the public prosecutor shall be the investigation of criminal offences and the prosecution of their perpetrators.

(2) With respect to criminal offences which are prosecuted *ex officio* or on the motion of an injured party, the public prosecutor shall have the power:

1) To undertake the necessary measures connected with the detection of criminal offences and the discovery of perpetrators and to undertake investigative actions while directing or supervising the investigation in preliminary criminal proceedings;

2) To file and present the indictment or summary indictment before the competent court; and

3) To file appeals against decisions of the court that have not become final and to file extraordinary legal remedies against final decisions of a court.

(3) The public prosecutor shall administer other matters and undertake other actions as provided for by law.

Article 48

The public prosecutor shall have jurisdiction to act before the appropriate court in accordance with the Law on the Public Prosecutor's Office.

Article 49

(1) The territorial jurisdiction of the public prosecutor shall be determined according to the provisions applicable to the jurisdiction of the court in the territory to which the prosecutor has been appointed.

(2) Jurisdictional disputes between the offices of the public prosecutor shall be resolved by the immediately superior public prosecutor.

Article 50

Where there is danger in delay, procedural actions may also be undertaken by a public prosecutor who does not have jurisdiction, subject to his or her immediate notification of the competent public prosecutor.

Article 51

(1) The public prosecutor shall undertake all actions in criminal proceedings which he or she is authorized by law to undertake either by himself or herself or through persons authorized by the Law on the Public Prosecutor's Office to represent him or her in criminal proceedings.

(2) The public prosecutor shall undertake investigative actions under paragraph 1 of the present article him or herself or through the judicial police.

Article 52

The public prosecutor may withdraw from prosecution up until the conclusion of the main trial before a court of first instance, and, in proceedings before a court of higher instance, he or she may withdraw from prosecution only in cases provided for by the present Code.

CHAPTER V: FILING A MOTION FOR PROSECUTION, PRIVATE PROSECUTION AND SUBSIDIARY PROSECUTION

Article 53

Under the conditions provided for by the present Code, the injured party can file a motion for a prosecution or undertake a private prosecution or subsidiary prosecution.

Article 54

(1) Regarding criminal offences which are prosecuted on the basis of a motion or a private charge, a motion for prosecution or a private charge must be filed within three months of the date when the authorized person has learned of the criminal offence and of the perpetrator.

(2) In a private prosecution for the criminal offence of insult, the defendant may file a private charge against a prosecutor who has returned the insult (counter prosecution) up to the end of the main trial and after the expiry of the prescribed period of time under paragraph 1 of the present article. In such case the court shall render a single judgment.

(3) If, within the prescribed period of time under paragraph 1 of the present article, the injured party applies for mediation to a mediator authorized to seek reconciliation, the prescribed period of time for filing the motion or the private charge shall begin to run on the day when proceedings before the mediator are completed unsuccessfully, and, if proceedings have not been completed within a period of three months, upon the expiry of that period of time. If reconciliation is achieved in proceedings before the mediator, the injured party loses the right to file the motion or the private charge.

Article 55

(1) The motion for prosecution shall be filed with the public prosecutor’s office and the private charge shall be filed with the competent court.

(2) If the injured party has presented a criminal report or has presented a property claim in criminal proceedings, this is considered also as filing a motion for prosecution.

(3) When the injured party has filed a criminal report or a motion for prosecution, and in the course of proceedings it is ascertained that a criminal offence is involved which is prosecuted on the basis of a private charge, the criminal report or the motion for prosecution shall be considered as a private charge filed in good time if it was filed within the period of time prescribed for a private charge. If, during the proceedings, it appears that the criminal offence in question should be prosecuted on the basis of a motion for prosecution, the private charge presented by the injured party within the required time shall be considered as such motion.

Article 56

(1) A legal representative shall file a motion or a private charge or initiate a subsidiary prosecution on behalf of a child or a person who is incapable of performing legal acts.

(2) A minor who has reached the age of sixteen years may file a motion or a private charge or initiate a subsidiary prosecution on his or her own behalf.

Article 57

If the injured party, the private prosecutor or the subsidiary prosecutor dies during the prescribed period of time for filing a motion for prosecution or a private charge or for initiating a subsidiary prosecution or during proceedings, his or her spouse, extramarital partner, children, parents, adoptive parents, adopted children, brothers and sisters may file the motion for prosecution or the private charge or shall initiate a subsidiary prosecution or furnish a statement that proceedings are to continue, within a period of three months after his or her death.

Article 58

If a criminal offence has injured more than one individual, prosecution shall be undertaken or continued on the motion or on the private charge of any injured party.

Article 59

The private prosecutor or the injured party may withdraw a motion for prosecution or the private charge before the end of the main trial by a statement to the court before which proceedings are being conducted. In such case, he or she forfeits the right to file a motion for prosecution or a private charge again.

Article 60

(1) If the private prosecutor does not appear at the main trial though duly summoned or if the summons could not have been served on him or her due to his or her failure to report a change in address or current residence to the court, it shall be assumed that he or she has withdrawn his or her charge unless it is otherwise provided for by the present Code.

(2) The presiding judge shall allow a return to the *status quo ante* in the case of a private prosecutor who for a justifiable reason was unable to appear at the main trial or could not inform the court in due time of the change in address or current residence, if, within eight days of the cessation of the impediment, he or she files a petition for a return to the *status quo ante*.

(3) No petition may be filed for a return to the *status quo ante* after a lapse of three months from the date of the failure to appear.

(4) No appeal shall be permitted against a ruling allowing a return to the *status quo ante*.

Article 61

(1) During all stages of criminal proceedings, the subsidiary prosecutor and the private prosecutor have the right to call attention to all facts and propose evidence which have a bearing on establishing the criminal offence, on finding the perpetrator of the criminal offence or on establishing their property claims.

(2) In the main trial, the subsidiary prosecutor and the private prosecutor have the right to propose evidence, to put questions to the accused, witnesses and expert witnesses, to make remarks and present clarifications concerning their testimony, to give other statements and to file motions.

(3) In accordance with the provisions of the present Code, the subsidiary prosecutor and the private prosecutor have the right to inspect the record, the documents and objects that serve as evidence.

(4) The presiding judge and the pre-trial judge shall inform the subsidiary prosecutor and private prosecutor of their rights under paragraphs 1 to 3 of the present article.

Article 62

(1) Except in the cases provided for under Articles 226 and 227 of the present Code, when the public prosecutor finds that there are no grounds to undertake an investigation or prosecution of a criminal offence which is prosecuted *ex officio* or by means of a motion or when he or she finds that there are no grounds to prosecute any of the reported accomplices, or when he or she is deemed by the present Code to have withdrawn from prosecution, the public prosecutor must notify the injured party of this within a period of eight days and instruct him or her that he or she may undertake prosecution as a subsidiary prosecutor. The same procedure shall also be followed by a court if the public prosecutor has withdrawn from prosecution, before the beginning of the main trial.

(2) The injured party has the right to undertake or to continue prosecution within eight days of the date of receipt of the notification under paragraph 1 of the present article.

(3) If the public prosecutor has withdrawn the indictment, the injured party may, in undertaking prosecution, abide by the indictment already filed or file a new one.

(4) An injured party who has not been notified that the public prosecutor did not undertake prosecution or withdrew from prosecution may make his or her statement that proceedings are being continued before the competent court within three months of the date on which the public prosecutor rejected the report or the date on which the ruling to terminate proceedings was rendered.

(5) When the public prosecutor or court notifies the injured party that he or she may undertake prosecution, he or she shall also be provided with instructions as to which actions he or she may undertake in order to exercise that right.

(6) If the injured party dies before the public prosecutor decides not to undertake the criminal investigation or prosecution or to withdraw from a prosecution which has already started or during the period of time prescribed for undertaking prosecution or if the subsidiary prosecutor dies in the course of the proceedings, his or her spouse, extramarital partner, children, parents, adopted children, adoptive parents, brothers and sisters may, within three months of the day of his or her death, undertake prosecution or make a statement that they shall continue the proceedings.

Article 63

(1) When the public prosecutor withdraws the indictment at the main trial, the injured party must immediately declare whether he or she wants to continue prosecution. If the injured party is not present at the main trial but has been duly summoned or the summons could not have been served on him or her due to his or her failure to notify the court of a change in his or her address or current residence, it shall be assumed that he or she does not wish to continue prosecution.

(2) The presiding judge shall allow a return to the *status quo ante* in the case of an injured party who was not duly summoned to, or was summoned to, but could not attend for a justified reason, the main trial in which a judgment was rendered to reject the charge because the public prosecutor withdrew the indictment, if within eight days of the date of receiving the judgment, the injured party files a petition for a return to the *status quo ante* and if in that petition he or she states his or her intent to continue prosecution. In this case, the main trial shall again be scheduled and the previous judgment shall be cancelled by the judgment rendered on the basis of the new trial. If an injured party who has been duly summoned does not appear at the new main trial, the previous judgment shall remain in effect. Article 60 paragraphs 3 and 4 of the present Code shall also apply in this case.

Article 64

(1) If within the period of time prescribed by law the injured party does not initiate or continue prosecution or if the subsidiary prosecutor does not appear at the main trial though duly summoned or if the summons could not have been served on him or her due to his or her failure to notify the court of a change in address or current residence, it shall be assumed that he or she has withdrawn from prosecution, unless it is otherwise provided for by the present Code.

(2) If the subsidiary prosecutor does not appear at the main trial to which he or she has been duly summoned, Article 60 paragraphs 2 through 4 of the present Code shall apply.

Article 65

(1) The subsidiary prosecutor shall have the same rights as the public prosecutor except those belonging to the public prosecutor as a public official.

(2) In proceedings conducted on the petition of a subsidiary prosecutor, up until the end of the main trial, the public prosecutor has the right to undertake prosecution and to support the charge.

Article 66

(1) If the subsidiary prosecutor or a private prosecutor is a child or a person incapable of performing legal acts, their legal representative is authorized to make all statements and take all steps which the subsidiary prosecutor or private prosecutor is authorized to take under the present Code.

(2) A subsidiary prosecutor or private prosecutor who has reached the age of sixteen years is authorized to make statements and take steps in proceedings on his or her own.

Article 67

(1) A private prosecutor and a subsidiary prosecutor, as well as their legal representatives, may also exercise their rights in proceedings through an authorized representative.

(2) When proceedings are conducted on the petition of a subsidiary prosecutor for a criminal offence punishable under the law by imprisonment of at least five years, an authorized representative shall be appointed for the subsidiary prosecutor at his or her request, if the subsidiary prosecutor is financially unable to meet the expenses of representation. The pre-trial judge or the presiding judge shall decide on the request and the representative shall be appointed by the president of court from among the members of the Bar. The court shall decide on who will pay the costs of representation subsequently and in accordance with the present Code.

Article 68

The private prosecutor and the subsidiary prosecutor, as well as their legal representatives and authorized representatives, have a duty to inform the court of any change in address or current residence during the criminal proceedings.

CHAPTER VI: DEFENCE COUNSEL

Article 69

(1) The suspect and the defendant have the right to be assisted by a defence counsel during all stages of the criminal proceedings.

(2) Before every examination of the suspect or the defendant, the police, the public prosecutor, the pre-trial judge or the presiding judge shall instruct the suspect or the defendant that he or she has the right to engage a defence counsel and that a defence counsel can be present during the examination.

(3) The right to the assistance of a defence counsel may be waived, except in cases of mandatory defence (Article 73 of the present Code), if such waiver is made explicitly and in an informed and voluntary manner. A waiver must be in writing and signed by the suspect or the defendant and the witnessing competent authority conducting the proceedings, or made orally on video- or audio-tape, which is determined to be authentic by the court.

(4) Persons under the age of 18 may waive the right to the assistance of defence counsel with the consent of a parent, guardian or a representative of the Center for Social Work, except that in cases of domestic violence involving the parent or guardian, such parent or guardian may not consent to the waiver of such right. Persons who display signs of mental disorder or disability may not waive their right to the assistance of defence counsel.

(5) If a suspect or defendant who has made a waiver subsequently reasserts the right to the assistance of defence counsel, he or she may immediately exercise the right.

(6) If the suspect or the defendant does not engage a defence counsel on his or her own, his or her legal representative, spouse, extramarital partner, blood relation in a direct line, adoptive parent, adopted child, brother, sister or foster parent may engage defence counsel for him or her, but not against his or her will.

Article 70

(1) Only a member of the bar may be engaged as defence counsel, but an attorney in training may replace the member of the bar. If proceedings are being conducted for a criminal offence punishable by imprisonment of at least five years, an attorney in training may replace a member of the bar only if he or she has passed the judicial examination. Only a member of the bar can represent a defendant before the Supreme Court of Kosovo.

(2) The defence counsel shall submit his or her power of attorney to the police, public prosecutor or the court before which proceedings are being conducted. The suspect and the defendant may give the defence counsel a verbal power of attorney, which shall be entered in the record of the police, public prosecutor or the court before which proceedings are being conducted.

Article 71

(1) In criminal proceedings a defence counsel is not allowed to represent two or more defendants in the same case.

(2) A defendant may have up to three defence counsel, and it shall be considered that the right to defence shall be considered satisfied if one of the defence counsel is participating in the proceedings.

Article 72

(1) The defence counsel may not be the injured party, the spouse or extramarital partner of the injured party or of the prosecutor or their relation by blood in a direct line to any degree or in a lateral line to the fourth degree or by marriage to the second degree.

(2) Any person who has been summoned to the main trial as a witness may not be a defence counsel unless under the present Code he or she has been relieved of the duty to testify as a witness and has declared that he or she will not testify as a witness or unless defence counsel has been examined as a witness in a case under Article 159 paragraph 2 of the present Code.

(3) Any person who has acted as a judge or as a public prosecutor in the same case may not be a defence counsel.

Article 73

(1) The defendant must have a defence counsel in the following cases of mandatory defence:

1) From the first examination, when the defendant is mute, deaf, or displays signs of mental disorder or disability and is therefore incapable of effectively defending himself or herself;

2) At hearings on detention on remand and throughout the time when he or she is in detention on remand;

3) From the filing of an indictment, if the indictment has been brought against him or her for a criminal offence punishable by imprisonment of at least eight years; and

4) For proceedings under extraordinary legal remedies when the defendant is mute, deaf, or displays signs of mental disorder or disability or a punishment of long-term imprisonment has been imposed.

(2) In a case of mandatory defence, if the defendant does not engage a defence counsel and no one engages a defence counsel in accordance with Article 69 paragraph 6 of the present Code, the president of the court or the competent authority conducting the proceedings in the pre-trial phase shall appoint *ex officio* a defence counsel at public expense.

If a defence counsel is appointed *ex officio* after the indictment has been brought, the defendant shall be informed of this at the same time as the indictment is served.

(3) In a case of mandatory defence, if the defendant remains without a defence counsel in the course of the proceedings and if he or she fails to obtain another defence counsel, the presiding judge or the competent authority conducting the proceedings in the pre-trial phase shall appoint *ex officio* a new defence counsel at public expense.

Article 74

(1) If the conditions are not met for mandatory defence (Article 73 of the present Code), a defence counsel shall be appointed at public expense for the defendant at his or her request or at the request of the persons referred to in Article 69 paragraph 6 of the present Code but not against the will of the defendant, if:

1) The proceedings are being conducted for a criminal offence punishable by imprisonment of at least eight years; or

2) The defendant is financially unable to pay the cost of his or her defence and the court or the competent authority conducting the proceedings in the pre-trial phase determines that appointment of defence counsel at public expense is required by the interests of justice.

(2) The defendant shall be instructed on the right to defence counsel at public expense under the previous paragraph before the first examination.

(3) The request for the appointment of a defence counsel at public expense under paragraph 1 of the present article may be filed throughout the course of the criminal proceedings. The president of the court or the competent authority conducting the proceedings in the pre-trial phase shall decide on the request and appoint a defence counsel. If the police or the public prosecutor refuses the request of the defendant for the appointment of a defence counsel at public expense, the defendant may appeal to the pre-trial judge.

Article 75

(1) The defendant may engage another defence counsel on his or her own instead of the appointed defence counsel (Articles 73 and 74 of the present Code). In this case, the appointed defence counsel shall be dismissed.

(2) An appointed defence counsel may seek to be dismissed only for good cause.

(3) A ruling on the dismissal of a defence counsel in a case under paragraphs 1 and 2 of the present article shall be rendered before the main trial by the pre-trial judge, during the main trial by the trial panel, and in the appellate proceedings by the presiding judge at the first instance or the panel competent to rule in the appellate proceedings. No appeal shall be permitted against such ruling.

(4) The president of the court may dismiss an appointed defence counsel who is not performing his or her duties properly at the request of the defendant or with his or her consent. The president of the court shall appoint an independent defence counsel of experience and competence commensurate with the nature of the criminal offence in place of the dismissed defence counsel. The bar association of Kosovo shall be informed of the dismissal of any defence counsel who is a member of the Bar.

Article 76

(1) A defence counsel who does not accept the task that has been entrusted to him or her or withdraws from it shall immediately notify the authority conducting the proceedings and whoever has appointed him or her of such refusal to accept or withdrawal.

(2) Refusal to accept is effective from the moment when it is communicated to the authority conducting the proceedings.

(3) Withdrawal is not effective until the defendant is provided with a new defence counsel of his or her own choice or under an *ex officio* appointment and until the expiry of the period which may be given to the substitute defence counsel to become familiar with the documents and the evidence.

(4) Paragraph 3 of the present article shall also apply to the cases under Article 75 paragraph 2 of the present Code.

Article 77

(1) The defence counsel has the same rights that the defendant has under the law, except those explicitly reserved to the defendant personally.

(2) The defence counsel has the right to freely communicate with the defendant orally and in writing under conditions which guarantee confidentiality.

(3) The defence counsel has the right to be notified in advance of the venue and time for undertaking any investigative actions and to participate in them and to inspect the records and evidence of the case in accordance with the provisions of the present Code.

CHAPTER VII: THE INJURED PARTY

Article 78

The competent authority conducting the criminal proceedings shall at all stages of the proceedings consider the reasonable needs of the injured parties, especially of children, elderly persons, persons with a mental disorder or disability, physically ill persons and victims of sexual or gender related violence.

Article 79

(1) If the injured party is a child or a person incapable of performing legal acts, his or her legal representative is authorized to make all statements and take all steps which the injured party is authorized to take under the present Code.

(2) An injured party who has reached the age of sixteen years is authorized to make statements and take steps in proceedings on his or her own.

Article 80

(1) The injured party has the right to file a property claim in criminal proceedings in accordance with Article 108 paragraph 1 of the present Code.

(2) During all stages of criminal proceedings, the injured party has the right to call attention to all facts and to propose evidence which has a bearing on establishing the criminal offence, on finding the perpetrator of the criminal offence or on establishing his or her property claims.

(3) In the main trial, the injured party has the right to propose evidence, to put questions to the defendant, witnesses and expert witnesses, to make remarks and present clarifications concerning their testimony and to give other statements and to file motions.

(4) In accordance with the provisions of the present Code, the injured party has the right to inspect the record and documents and objects that serve as evidence.

(5) The public prosecutor, the pre-trial judge and the presiding judge shall inform the injured party about the rights provided for in paragraphs 1 through 4 of the present article.

Article 81

(1) The injured party and his or her legal representative may also exercise their rights in proceedings through an authorized representative.

(2) The injured party, his or her legal representative and authorized representative are obliged to inform the court of every change in address or current residence.

(3) An authorized representative shall have a duty to safeguard the rights of the injured party, especially to protect his or her integrity during examination before the authority conducting the proceedings and to file and pursue property claims.

(4) Victim Advocates of the Victim Advocacy Unit shall assist injured parties in safeguarding their rights, including, where appropriate, as authorized representatives of the injured parties in accordance with the present article.

Article 82

(1) The injured party shall have an authorized representative from the initiation of the criminal proceedings:

1) If the injured party is a child;

2) If the injured party has a domestic relationship with the defendant;

3) If the proceedings are conducted for the criminal offences in Article 139 of the Provisional Criminal Code or the criminal offences against sexual integrity in Chapter XIX of the Provisional Criminal Code, except the criminal offences in Article 203 of the Provisional Criminal Code;

4) If the injured party has a mental disorder or disability; or

5) If the court finds that the injured party is particularly vulnerable and in substantial need of the assistance of an authorized representative.

(2) In the cases provided for in paragraph 1 of the present article, if the injured party or his or her legal representative does not engage an authorized representative, the president of the court or the competent authority conducting the proceedings in the pre-trial phase shall appoint *ex officio* an authorized representative at public expense.

CHAPTER VIII: SUBMISSIONS

Article 83

(1) Private charges, indictments, summary indictments, motions for prosecution, legal remedies and other statements and communications shall be filed in writing or given orally on the record.

(2) A submission filed under paragraph 1 of the present article must be comprehensible and must contain everything necessary for it to be acted upon.

(3) Unless otherwise provided for in the present Code, when a submission has been filed which is incomprehensible or does not contain everything necessary for it to be acted upon, the court shall summon the person making the submission to correct or supplement the submission; and if he or she does not do so within a specified period of time, the court shall reject the submission.

(4) The summons to correct or supplement the submission shall warn the person making the submission of the consequences of his or her failure to do so.

Article 84

(1) A submission which under the present Code is given to the opposing party in the proceedings shall be served on the court in a sufficient number of copies for the court and the other party.

(2) If a submission has not been given to the court in a sufficient number of copies, the court shall order the person making the submissions to furnish a sufficient number of copies within a specified period of time. If the person making the submission does not carry out the order of the court, the court shall make the necessary number of copies at the expense of the person making the submission

Article 85

(1) The court shall impose a fine of up to 250 EUR on a defence counsel, an injured party, a private prosecutor or a subsidiary prosecutor or his or her authorized or legal representative, who in a submission or in a verbal statement offends or insults the court or an individual participating in proceedings. The judge or the panel before which such statement has been made shall render a ruling on the punishment, and if it was made in a submission, the court which should rule on the submission shall decide. An appeal is permitted against this ruling. If the public prosecutor or the person representing him or her insults someone else, the competent public prosecutor shall be so informed. The bar association shall be informed of the punishment imposed on a member of the bar or an attorney in training.

(2) The sanction provided for in paragraph 1 of the present article shall not have a bearing on the prosecution and the imposition of a punishment for a criminal offence committed by insult.

CHAPTER IX: RECORDS

Article 86

(1) A record shall be kept of each action undertaken in the course of criminal proceedings at the same time as the action is undertaken, and if this is not possible, immediately thereafter.

(2) The record shall be written by the recording clerk of the court or, when the actions are undertaken in front of the public prosecutor, by the recording clerk of the public prosecutor's office. The record may be written by the person undertaking the action, only when a search is made of premises or a person or when an action is undertaken outside the offices of the relevant official body or competent authority and the recording clerk is not available.

(3) When the record is written by the recording clerk, the person undertaking the action shall tell the recording clerk orally what shall be entered in the record.

(4) A person being examined shall be allowed to state his or her answers for the record in his or her own words. This right may be denied if it is abused.

Article 87

(1) The entry in the record shall include the name of the official body or competent authority before which the action is being undertaken, the place where the action is being undertaken, the date and the hour when the action began and ended, the names and surnames

of the persons present and the status in which they are present, and the identification number of the criminal case in which the action is being undertaken.

(2) In the event of the exercise of an action in accordance with the law, the party to the action shall be informed of the rights that belong to him or her by law. The fact that such information has been given as well as whether the party has made use of such rights must be noted in the record.

(3) The party to the action shall verify by means of a signature that he or she has been allowed to exercise the rights that belong to him or her by law.

(4) The record should contain the essential information about the implementation and content of the action undertaken. If physical objects or papers are confiscated in the course of the implementation of the action, this shall be indicated in the record and the articles taken shall be attached to the record or the place where they are being kept shall be indicated.

(5) In the conduct of an action, such as a site inspection, a search of premises, vehicles or persons, or the identification of persons or objects, information which is important with regard to the nature of such action or for establishing the identity of certain articles (the description, dimensions and size of the articles or of traces that have been left, placing identifying labels on articles, and so on) shall also be entered in the record; and if sketches, drawings, layouts, photographs, films, or other technical recordings are made, these shall be entered in and attached to the record.

Article 88

(1) The record must be kept up to date; nothing in it may be deleted, added or amended. The sections which have been crossed out must remain legible.

(2) All changes, corrections, and additions shall be noted at the end of the record and must be certified by the persons signing the record.

Article 89

(1) The person against whom an investigative action is undertaken, the persons who must be present during the investigative action, as well as the parties, the defence counsel and the injured party, if they are present, have the right to read the record or to request that it be read to them. The person undertaking the investigative action must make them aware of this right, and it shall be noted in the record whether they have been so informed and whether the record has been read. The record shall always be read if the recording clerk is not present and this shall be noted in the record.

(2) The record of an examination shall be signed by the person who is being examined. If the record consists of more than one page, the person examined shall sign each page.

(3) The record shall be signed at the end by the interpreter, if there was one, by the witnesses whose presence was compulsory during the conduct of the investigative action and in the case of a search it shall also be signed by the person searched or the person whose

premises have been searched. If the record is not signed by the recording clerk (Article 86 paragraph 2 of the present Code), the record shall be signed by those persons who attended the proceedings. If there are no such persons, or if they are unable to understand the content of the record, the record shall be signed by two witnesses, unless it has not been possible to ensure their presence.

(4) Any person who does not know how to write shall place the print of the index finger of his or her right hand in place of a signature and the recording clerk shall enter his or her first and last name underneath the fingerprint. When it is not possible to make a fingerprint of the right index finger, the print of some other finger or the print of a finger of the left hand shall be made and the record shall indicate the finger and hand from which the print has been taken.

(5) If the person examined has neither hand, he or she shall read the record of the examination, and, if he or she does not know how to read, the record of the examination shall be read to him and this shall be noted in the record.

(6) If the investigative action could not be undertaken without interruption, the record shall indicate the day and hour when the interruption occurred and the day and hour when the investigative action resumed.

(7) If there have been objections pertaining to the content of the record, those objections shall also be indicated in the record.

(8) The record shall be signed at the end by the person who undertook the investigative action and by the recording clerk.

(9) If the person who in accordance with the present Code must sign the record refuses to sign it or to place his or her fingerprint on it, this shall be noted in the record along with the reason for the refusal.

Article 90

(1) The public prosecutor, the pre-trial judge or the presiding judge may order that an examination be video-recorded or audio-recorded in accordance with the following procedure:

1) The person examined shall be informed, in a language he or she fully understands and speaks that the examination is to be audio- or video-recorded and that he or she may object if he or she so wishes. The fact that this information has been provided and the response given by the person concerned shall be noted in the recording and in the written record. The person may, before making an objection, consult with his or her defence counsel or legal or authorized representative, if he or she is present, and then the competent authority may decide to conduct a video- or audio-recording of the examination in spite of the objection of the person concerned.

2) The recording must include the data under Article 87 paragraph 1 of the present Code and the notification under Article 164 paragraph 2, Article 179, paragraph 1

or Article 231 paragraph 2 of the present Code, as well as the information needed to identify the persons whose statements are being recorded. When the statements of several persons are being recorded, it is necessary to ensure that it is possible to identify clearly from the recording who made which statement.

3) In the event of an interruption in the course of the examination, the fact and the time of the interruption shall be recorded before the audio- or video- recording ends as well as the time of resumption of the examination.

4) At the conclusion of the examination, the person being examined shall be offered the opportunity to clarify anything he or she has said and add anything he or she may wish. At the request of the examined person, the recording shall be immediately played back and corrections and explanations of that person shall be recorded. The time of conclusion of the examination shall always be noted.

(2) The content of the tape shall be transcribed as soon as practicable after the conclusion of the examination and, upon the request of the person examined, a copy of the transcript shall be supplied to him or her together with a copy of the recorded tape or, if multiple recording apparatus has been used, one of the original recorded tapes shall be sent to him or her.

(3) The written record of the examination shall indicate:

1) The fact that the examination was recorded by an audio-recording or video-recording device;

2) The name of the person who performed the recording;

3) The fact that the examined person was informed in advance of the intent to record the examination;

4) Whether the recording was played back;

5) The name of the person who received a copy of the recording; and

6) The place where the recording is kept, if it is not attached to the file.

(4) The original tape or one of the original tapes shall be sealed in the presence of the person who has been examined and his or her defence counsel or legal or authorized representative, if he or she is present, and signed by the public prosecutor, the pre-trial judge or the presiding judge, and by the person examined and his or her defence counsel or legal or authorized representative, if he or she is present. The tape shall also be sealed in the presence of the defendant and his or her defence counsel and signed by them, if they are present during the examination of a witness or an expert witness, The tapes shall be kept by the court as long as the file of the criminal case is kept.

(5) The public prosecutor, the pre-trial judge or the presiding judge may choose to follow the procedure in the present article when examining persons other than the defendant, in particular where the use of such procedures could assist in reducing any subsequent

traumatisation during the giving of evidence of a victim of sexual or gender related violence, a child or a person with disabilities.

Article 91

The public prosecutor, the pre-trial judge or the presiding judge may order that investigatory actions other than examinations be video-recorded or audio-recorded. Article 90 of the present Code shall apply *mutatis mutandis*.

Article 92

The public prosecutor, the pre-trial judge or the presiding judge may order that an investigative action in the proceedings or parts of it be taken down in shorthand or on a stenographic machine. The stenographic record shall within forty-eight hours be transcribed, checked and attached to the record.

Article 93

(1) The pre-trial judge may permit other persons who have a legitimate interest to audio- or video-record specific investigative actions, if this would have an insignificant influence on the rights, especially the right to privacy, of the defendant, the injured party, witnesses, and other participants in the proceedings. Personal details about the defendant, injured party or witness are confidential and may be used only in the course of criminal proceedings.

(2) Photography, film, television and other recordings by technical devices of the confirmation hearing or the main trial shall not be permitted in the courtroom.

(3) On the motion of a party or the president of a court, the president of the Supreme Court of Kosovo may exceptionally authorize such recordings provided for in paragraph 2 of the present article in the case of a main trial. The president of the Supreme Court shall inform as soon as possible the parties of the motion of the president of the court or, in the case of the motion of a party, the opposing party. A party may submit an objection in writing to the president of the Supreme Court within seven days of receiving the motion.

(4) The parties and the defence counsel may make an audio-recording of the confirmation hearing or a main trial which is held in open court. Personal data about the defendant, injured party or witness which are recorded are confidential and may be used only in the course of criminal proceedings. An audio-recording made under this paragraph shall not be played to a witness.

(5) Where the recording of the main trial or the confirmation hearing is permitted, the trial panel or the presiding judge may for justifiable reasons prohibit the recording of specific parts of the session.

CHAPTER X: PRESCRIBED PERIODS OF TIME

Article 94

(1) The prescribed periods of time envisaged by the present Code may not be extended unless the law explicitly so permits. If a prescribed period of time has been defined by law for the realization of the right to defence and other procedural rights of the defendant, the prescribed period of time may be shortened at the request of the defendant in writing or orally in the record before the court.

(2) When a statement must be given within a prescribed period of time, it shall be deemed to have been made in due time if it has been served on the authorized recipient before the lapse of the prescribed period of time.

(3) When a statement is sent by post, registered mail or telegram, or by other means (telex, telefax or similar means), the date of mailing or sending it shall be considered as the date of the service on the person to whom it has been sent. It is considered that the sender of the statement has not exceeded the prescribed period of time when the person who is intended to receive the statement has not received it on time because of mistakes in the means of service, of which the sender was unaware.

(4) A defendant who is in detention on remand may also make a statement which must be filed within a prescribed period of time, by entering it into the record of the court conducting the proceedings or by serving it on the administration of the prison, and a person who is serving a prison sentence or who is an inmate in some other facility because of an order for mandatory rehabilitation treatment may serve such statement on the administration of the facility in which he or she is an inmate. The day when such record was compiled or when the statement was served on the administration of the facility shall be taken as the date of service on the authorized recipient.

(5) If a submission which must be filed within a prescribed period of time has been served or sent because of ignorance or an obvious mistake of the sender before the expiry of the prescribed period of time to a court which is not competent, it shall be taken that it was filed on time though it reaches the competent court after the expiry of the prescribed period of time.

Article 95

(1) A prescribed period of time shall be calculated in hours, days, months and years.

(2) The hour or day when a service or communication was made or when an event occurred, which serves as the commencement of a prescribed period of time, shall not be included in the prescribed period of time, but the next hour or next day shall be taken as commencement of the prescribed period of time. Twenty-four hours shall be taken as a day, but a month shall be computed according to the calendar.

(3) A prescribed period of time set in months or years shall expire on the last month or year at the end of the same day of the month on which the prescribed period of time began. If

there is no such day in the last month, the prescribed period of time shall expire on the last day of that month.

(4) If the last day of the prescribed period of time falls on an official holiday, on Saturday or Sunday or on any other day when the competent body does not work, the prescribed period of time shall expire at the end of the next working day.

Article 96

(1) If the defendant for justified reasons does not within the prescribed period of time announce an appeal or file an appeal against a judgment or against a ruling to confiscate material benefit, the court shall allow a return to the *status quo ante* for filing the announcement or the appeal if, within eight days following the termination of the reasons for not acting within the prescribed period of time, the defendant files a petition for a return to the *status quo ante* and files the announcement of the appeal or the appeal itself simultaneously with the petition.

(2) A petition for a return to the *status quo ante* may not be filed if three months have passed from the date when the prescribed period of time expired.

Article 97

(1) The ruling on a return to the *status quo ante* shall be rendered by the presiding judge, who has rendered the judgment against which the appeal is announced or the judgment or ruling against which an appeal has been filed.

(2) No appeal shall be permitted against a ruling allowing a return to the *status quo ante.*

(3) If a defendant appeals a ruling refusing a return to the *status quo ante,* the court must serve that appeal, together with the announcement of the appeal or the appeal of the judgment or ruling to confiscate material benefit, the response to the appeal and all other parts of the record to the higher court for a decision.

Article 98

As a rule, a petition for a return to the *status quo ante* shall not stay the execution of a judgment or the execution of a ruling to confiscate material benefit, but the court competent to rule on the petition may decide to halt execution until a decision is made on the petition.

CHAPTER XI: COSTS OF CRIMINAL PROCEEDINGS

Article 99

(1) The costs of criminal proceedings are the costs incurred during the criminal proceedings and because of those proceedings.

(2) The costs of criminal proceedings include the following:

1) Costs of witnesses, expert witnesses, interpreters, specialists, stenography and technical recordings as well as the cost of a site inspection;

2) Costs of transporting the defendant;

3) Costs of escorting the defendant or person in detention on remand;

4) Transportation and travelling expenses of official persons;

5) Costs of medical treatment of the defendant while in detention on remand or a medical institution in accordance with a court decision and the expenses of childbirth;

6) A scheduled amount;

7) Remuneration and necessary expenses of defence counsel, necessary expenses of a private prosecutor and subsidiary prosecutor and their legal representatives, and remuneration and necessary expenses of their authorized representatives; and

8) Necessary expenses of the injured party and his or her legal representative and remuneration and necessary expenses of his or her authorized representative.

(3) The scheduled amount shall be within a range provided for in an Administrative Direction taking into consideration the duration and complexity of proceedings and the financial condition of the person required to pay the amount.

(4) The expenses under subparagraphs 1 through 5 of paragraph 2 of the present article and remuneration and the necessary expenses of an appointed defence counsel and an appointed authorized representative of an injured party and subsidiary prosecutor in proceedings regarding criminal offences prosecuted *ex officio* shall be paid in advance from the funds of the police, the public prosecutor or the court conducting criminal proceedings and they shall later be collected from the individuals who are required to pay for them under the provisions of the present Code. The body conducting the criminal proceedings must enter all expenses which it has paid in advance in a list that shall be appended to the record.

(5) The costs of interpretation into the languages of the defendant, witness and other persons participating in the criminal proceedings which are incurred during the application of the provisions of the present Code shall not be collected from individuals who under the provisions of the present article are required to pay the costs of criminal proceedings.

(6) The costs of interpretation shall not be paid by the defendant who does not know or speak the language in which the criminal proceedings are conducted.

(7) The remuneration and necessary expenses of a defence counsel appointed under Article 73 paragraph 2 or 3 or Article 74 of the present Code shall be paid from budgetary resources and shall not be paid by the defendant.

(8) The remuneration and necessary expenses of the authorized representative of an injured party appointed under Article 82 of the present Code shall be paid from budgetary resources and shall not be paid by the injured party.

Article 100

(1) Every judgment and ruling which discontinues criminal proceedings shall contain a decision on who will cover the costs of the proceedings and the amount of the costs.

(2) If the data on the amount of the costs is lacking, a separate ruling on the amount of the costs shall be rendered by the recording clerk of the court and approved by the presiding judge when such data is obtained. The request with the data on the amount of costs may be filed within three months of the day of the service of a legally effective judgment or ruling on the person who is entitled to make such request.

(3) When the decision on costs of criminal proceedings is contained in a separate ruling, the appeal against that ruling shall be decided by a panel.

Article 101

(1) The defendant, the injured party, the subsidiary prosecutor, the private prosecutor, the defence counsel, the legal representative, the authorized representative, the witness, the expert witness, the interpreter, and the specialist (Article 236 of the present Code), regardless of the outcome of the criminal proceedings, shall meet the costs of their compulsory appearance, the postponement of an investigative action, and other costs of proceedings incurred through their own fault, as well as the corresponding share of the scheduled amount.

(2) A separate ruling shall be rendered concerning the costs under paragraph 1 of the present article, unless the matter of costs to be paid by the private prosecutor and defendant is decided in a decision on the main issue.

Article 102

(1) When the court finds the defendant guilty, it shall decide in the judgment that he or she must reimburse the costs of criminal proceedings.

(2) A person who has been charged with several criminal offences shall not be ordered to reimburse costs related to a criminal offence of which he or she has been acquitted if those costs can be determined separately from the total costs.

(3) In a judgment finding several defendants guilty, the court shall specify what portion of the costs shall be paid by each of them; but if this is not possible, it shall order that all the defendants be jointly and severally liable for the costs. Payment of the scheduled amount shall be specified for each defendant separately.

(4) In a decision which settles the issue on costs, the court may relieve the defendant of the duty to reimburse entirely or partially the costs of criminal proceedings as provided for in

Article 99 paragraph 2 subparagraphs 1 through 6 of the present Code, if their payment would jeopardize the support of the defendant or of the persons whom he or she is required to support. If these circumstances are ascertained after the decision on costs has been rendered, the presiding judge may render a separate ruling relieving the defendant of the duty to reimburse the costs of criminal proceedings or permitting payment of the costs by installment.

Article 103

(1) When criminal proceedings are terminated or when a judgment is rendered which acquits the defendant or rejects the charge, the court shall state in the ruling or judgment that the costs of criminal proceedings under Article 99 paragraph 2 subparagraphs 1 through 5 of the present Code, the necessary expenses of the defendant and the remuneration and necessary expenditures of defence counsel shall be paid from budgetary resources, except in the cases specified in the following paragraphs of the present article.

(2) A person who has deliberately filed a false charge shall pay the costs of criminal proceedings.

(3) A private prosecutor and subsidiary prosecutor shall pay the costs of criminal proceedings as provided for in Article 99 paragraph 2 subparagraphs 1 through 7 of the present Code and the necessary expenses of the defendant if proceedings terminate with a judgment which acquits the defendant of the charge or rejects the charge or with a ruling which terminates the proceedings, except in cases when proceedings were terminated or a judgment was rendered rejecting the charge because of the defendant's death or because the defendant is suffering from some permanent mental disorder or disability or because the period of statutory limitation expired due to a delay in the proceedings which cannot be attributed to the fault of the private prosecutor or subsidiary prosecutor. If proceedings were terminated because the charge or the motion for prosecution was withdrawn, the defendant, private prosecutor, subsidiary prosecutor or the injured party may negotiate their own share of the costs between themselves. If there is more than one private prosecutor or subsidiary prosecutor, all shall bear joint and several liability for the costs.

(4) An injured party who has withdrawn a motion for prosecution so that the proceedings are terminated shall bear the costs of the criminal proceedings if the defendant has not announced that he will pay for them.

(5) When a court rejects the charge because it is not competent, the decision on costs shall be made by the competent court.

Article 104

(1) The remuneration and necessary expenses of defence counsel and the authorized representative of the private prosecutor, subsidiary prosecutor or injured party must be paid by the person represented regardless of who is ordered to pay the costs of criminal proceedings in the decision of the court, unless either the defence counsel is appointed under Article 73 paragraph 2 or 3 or under Article 74 of the present Code or an authorized representative of the injured party is appointed under Article 82 of the present Code. If an

authorized representative was appointed for the subsidiary prosecutor under Article 67 paragraph 2 of the present Code and payment of remuneration and necessary expenses would jeopardize the support of the subsidiary prosecutor or the maintenance of persons whom he or she is required to support, the remuneration and necessary expenses of the authorized representative shall be paid from budgetary resources.

(2) A defence counsel or authorized representative shall not be entitled to remuneration if they are not members of the Bar. They are entitled to necessary expenses, and defence counsel are also entitled to income lost.

Article 105

(1) The final decision concerning the duty to pay costs which arise in the higher instance court shall be made by that court in accordance with Articles 99 through 104 of the present Code.

(2) Articles 99 through 104 of the present Code shall apply *mutatis mutandis* to the costs incurred during the proceedings related to extraordinary legal remedies.

Article 106

More detailed regulations on reimbursement of the costs of criminal proceedings incurred before the courts shall be issued in an Administrative Direction.

CHAPTER XII: PROPERTY CLAIMS

Article 107

(1) A property claim arising from the commission of a criminal offence shall be settled on the motion of the authorized persons in criminal proceedings if this would not considerably prolong those proceedings.

(2) A property claim may pertain to compensation for damage, recovery of an object or annulment of a particular legal transaction.

Article 108

(1) The motion to realize a property claim in criminal proceedings may be filed by the person authorized to pursue that claim in civil litigation.

(2) If a criminal offence has caused damage to publicly-owned, state-owned or socially-owned property, the body or competent authority empowered by law to ensure the protection of that property may participate in criminal proceedings in accordance with the powers which it has on the basis of that law.

Article 109

(1) A motion to realize a property claim in criminal proceedings shall be filed with the competent body with which the criminal report is filed or the court before which proceedings are being conducted.

(2) The motion may be filed no later than the end of the main trial before the court of first instance.

(3) The person authorized to file the motion must state his or her claim specifically and submit evidence.

(4) If the authorized person has not filed the motion to realize his or her property claim in criminal proceedings before the indictment is brought, he or she shall be informed that he or she may file that motion up to the end of the main trial. If a criminal offence has caused damage to publicly-owned, state-owned or socially-owned property and no motion has been filed, the court shall so inform the body or competent authority under Article 108 paragraph 2 of the present Code.

Article 110

(1) Authorized persons (Article 108 of the present Code) may withdraw a motion to realize a property claim in criminal proceedings up to the end of the main trial and pursue it in civil litigation. Once a motion has been withdrawn, that same motion may not be filed again unless otherwise provided for by the present Code.

(2) If after the motion was filed and before the end of the main trial the property claim has passed under the rules of property law to another person, that person shall be summoned to declare whether or not he or she stands by the motion. If he or she does not appear when duly summoned, it shall be taken that he or she has abandoned the motion.

Article 111

(1) The court conducting the criminal proceedings shall examine the defendant concerning the facts alleged in the motion and shall investigate the circumstances relevant to establishing the property claim. But even before such motion is filed, the court has a duty to collect evidence and conduct the investigation necessary to making a decision on the claim.

(2) If the investigation of the property claim would considerably prolong criminal proceedings, the court shall restrict itself to collecting data which would be impossible or considerably more difficult to establish at a later stage.

Article 112

(1) The court shall decide on property claims.

(2) In a judgment pronouncing the accused guilty the court may award the injured party the entire property claim or may award him or her part of the property claim and refer him or her to civil litigation for the remainder. If the data collected in the criminal proceedings do not provide a reliable basis for either a complete or a partial award, the court shall instruct the injured party that he or she may pursue the entire property claim in civil litigation.

(3) If the court renders a judgment acquitting the accused of the charge or rejecting the charge or if it renders a ruling to dismiss criminal proceedings, it shall instruct the injured party that he or she may pursue the property claim in civil litigation. When a court is declared not competent for the criminal proceedings, it shall instruct the injured party that he or she may present his or her property claim in the criminal proceedings commenced or continued by the competent court.

Article 113

If a property claim pertains to the recovery of an object, and the court finds that the object belongs to the injured party and is in the possession of the defendant or one of the participants in the criminal offence or in the possession of a person to whom they gave it for safekeeping, it shall order in the judgment that the object be handed over to the injured party.

Article 114

If a property claim pertains to the annulment of a specific legal transaction and the court finds that the petition is well founded, it shall order in the judgment the complete or partial annulment of that legal transaction with the consequences that derive from it, without prejudice to the rights of third parties.

Article 115

(1) The court conducting criminal proceedings may amend a final judgment which contains a decision on a property claim only in connection with the reopening of criminal proceedings or a request for protection of legality.

(2) In all other cases the convicted person or his or her heirs may seek amendment of a final judgment of a criminal court which contains a decision on a property claim only in civil litigation and provided that there are grounds for a revision under the provisions applicable to civil litigation procedure.

Article 116

(1) Temporary measures securing a property claim arising out of the commission of a criminal offence may be ordered in criminal proceedings according to the provisions that apply to enforcement proceedings upon a motion from authorized persons (Article 108 of the present Code).

(2) The ruling under paragraph 1 of the present article shall be rendered during the pre-trial proceedings by the pre-trial judge. After the indictment has been filed, the ruling shall be rendered by the presiding judge in cases outside the main trial, and it shall be rendered in the main trial by the entire trial panel.

(3) No appeal shall be permitted against the ruling of the trial panel concerning temporary measures securing the claim. In other cases an appeal shall be ruled on by the three judge panel. An appeal shall not stay execution of the ruling.

Article 117

(1) If a claim pertains to items that unquestionably belong to the injured party and they do not constitute evidence in criminal proceedings, such items shall be handed over to the injured party even before proceedings are completed.

(2) If the ownership of items is disputed by several injured parties, they shall be referred to civil litigation and the court in criminal proceedings shall order only the safekeeping of the items as a temporary measure securing the claim.

(3) Items that serve as evidence shall be confiscated temporarily and at the end of proceedings shall be returned to the owner. If such item is urgently needed by the owner, it may be returned to him or her even before the end of the proceedings, if he or she undertakes to bring it in upon request.

Article 118

(1) If an injured party has a claim against a third person because he or she is in possession of items obtained through the commission of a criminal offence or because he or she realized a material benefit because of a criminal offence, the court in criminal proceedings, upon the motion of authorized persons (Article 108 of the present Code) and according to the provisions which apply to enforcement proceedings, may order temporary measures securing the claim against that third party. The provisions of Article 116 paragraphs 2 and 3 of the present Code apply also in this case.

(2) In a judgment pronouncing the accused guilty, the court shall either revoke the measures under paragraph 1 of the present article if they have not already been revoked or shall refer the injured party to civil litigation, in which case those measures shall be revoked unless civil litigation is initiated within the period of time determined by the court.

CHAPTER XIII: RENDERING AND PRONOUNCING DECISIONS

Article 119

(1) Decisions are rendered in criminal proceedings in the form of judgments, rulings and orders.

(2) A judgment may be rendered only by a court, while a ruling and an order may also be rendered by other agencies participating in criminal proceedings.

Article 120

(1) A decision of a panel of judges shall be rendered after oral deliberation and voting. A decision is rendered when a majority of the members of the panel have voted for it.

(2) The presiding judge shall direct the deliberation and the voting and shall vote last. It is his or her duty to see that all issues are fully examined from every point of view.

(3) If, in regard to individual questions on which a vote is taken, the votes are divided in several different opinions so that no one of them is in a majority, the issues shall be separated and the voting shall be repeated until a majority is reached. If a majority is not reached in this manner, a decision shall be taken whereby the votes which are most unfavourable to the defendant shall be added to the votes which are less unfavourable than these until the necessary majority is reached.

(4) The members of the panel may not refuse to vote on questions put by the presiding judge, but a member of the panel who has voted to acquit the accused or to revoke the verdict and who has remained in the minority shall not be obliged to vote on the penalty. If he or she does not vote, it shall be taken that he or she consented to the vote which was most favourable to the accused.

Article 121

(1) When rendering a decision, a vote shall first be taken on whether the court is competent, on whether it is necessary to complete the proceedings, and on other preliminary issues.

(2) When rendering a decision on the main issue, a vote shall first be taken on whether the accused has committed the criminal offence and whether he or she is criminally liable, and thereafter a vote shall be taken on the punishment, other criminal sanctions or measures of mandatory treatment, the costs of criminal proceedings, property claims and other issues which are to be decided.

(3) If an individual has been charged with several criminal offences, a vote shall be taken on criminal liability and punishments for each criminal offence, and thereafter a vote shall be taken on a single punishment for all the criminal offences.

Article 122

(1) Deliberation and voting shall be conducted in a secret session.

(2) Only members of the panel and the recording clerk may be present in the room where the court conducts its deliberation and voting.

Article 123

(1) Unless otherwise provided for by the present Code, decisions shall be communicated to the interested parties orally if they are present and by service of a certified copy if they are absent.

(2) If a decision has been orally communicated, this shall be indicated in the record or on the document and the person receiving the communication shall confirm this by his or her signature. If the person concerned declares that he or she will not appeal, the certified copy of an orally communicated decision shall not be served on him or her unless otherwise provided for by the present Code.

(3) Copies of decisions against which an appeal is permitted shall be served along with instructions on the right of appeal.

CHAPTER XIV: SERVICE OF DOCUMENTS

Article 124

(1) Documents shall as a rule be served by mail. Service may also be effected through the authorized municipal body, through an official of the body which rendered the decision or directly with that body.

(2) A court may also serve orally a summons to a main trial or other summonses on a person who is before the court, accompanied by instructions as to the consequences of failure to appear. A summons issued in this manner shall be noted in the record which shall be signed by the person summoned, unless such summons has been recorded in the record of the main trial. It shall be taken that valid service has thereby been effected.

Article 125

A document that under the present Code must be personally served shall be directly presented to the person to whom it is addressed. If the person on whom the document must be personally served is not found where the service is to be effected, the person effecting the service shall find out when and where that person may be found and shall leave with one of the persons referred to in Article 126 of the present Code a written notice directing the addressee of the document to be in his or her dwelling or workplace on a particular day and hour in order to receive the document. If even then the person effecting the service does not find the person on whom the service is to be effected, he or she shall proceed according to the provisions of Article 126 paragraph 1 of the present Code and it shall be assumed that the service has thereby been effected.

Article 126

(1) A document for which the present Code does not specify obligatory personal service shall also be served in person but if the addressee is not found at home or at work, such document may be given to any adult member of his or her household, who must accept the document. If they are not found at home, the document shall be left with a guardian or a neighbour, if he or she consents to accept it. If service is effected at the workplace of a person on whom a document is to be served and that person is not found there, it may be served on a person authorized to receive the mail, who must accept the document, or a person employed at that same workplace, if he or she consents to accept the document.

(2) If a document cannot be served on persons under paragraph 1 of the present article, a note shall be left for the addressee with an indication of the post office at which the document can be collected and the time limit within which it may be collected. A document not collected within the time limit specified shall be returned.

(3) If it is ascertained that the person on whom a document is to be served is absent and that the persons referred to in paragraph 1 of the present article may not therefore present the document to him or her on time, the document shall be returned with an indication of where the absent person is located.

Article 127

(1) The summons to the first examination in pre-trial proceedings, to the confirmation hearing and to the main trial shall be personally served on the defendant.

(2) The indictment, summary indictment, private charge, the judgment and other decisions in which the prescribed period of time for appeal commences on the date of service, including the appeal of an opposing party that is being served for an answer, shall be personally served on a defendant who does not have defence counsel. At the request of the defendant, the judgment and other decisions shall be served on a person designated by him or her.

(3) If a defendant who does not have a defence counsel is to be served a judgment in which a prison sentence has been imposed on him or her and the judgment may not be served at his or her previous address, the court shall automatically appoint defence counsel for the defendant, who shall perform that duty until the new address of the defendant is ascertained. The appointed defence counsel shall be given the necessary period of time to acquaint himself or herself with the files, whereupon the judgment shall be served on the appointed defence counsel and proceedings shall resume. In the case of another decision for which the date of service constitutes the commencement of the prescribed period of time for filing an appeal or in the case of an appeal of the opposing party which is being served for a reply, if the person effecting the service has been unable to ascertain the new address of the defendant, the decision or appeal shall be displayed on the bulletin board of the court and, at the expiry of eight days from the date of display, it shall be assumed that valid service has been effected.

(4) If the defendant has a defence counsel, a document under paragraph 2 of the present article shall be served on the defence counsel and the defendant in accordance with the provisions of Article 126 of the present Code. In such case, the prescribed period of time for

pursuing a legal remedy or answering an appeal shall commence on the date when the document is served on the defendant. If the decision or appeal cannot be served on the defendant because he or she has failed to report his or her address, it shall be displayed on the bulletin board of the court and, at the end of eight days from the date of display, it shall be assumed that valid service has been effected.

(5) If a document is to be served on defence counsel of the defendant, and the defendant has more than one defence counsel, it shall be sufficient to effect service on one of them.

Article 128

(1) A summons to file a private charge or an indictment and a summons to a main trial shall be served on a private prosecutor and subsidiary prosecutor or their legal representatives in person (Article 125 of the present Code) and service shall be made on their authorized representatives under Article 126 of the present Code. A decision for which the date of service constitutes the commencement of the prescribed period of time for filing an appeal and an appeal of the opposing party that is being served for a reply shall be served on them in the same manner.

(2) If the summons, the decision or the appeal cannot be served on the persons referred to in paragraph 1 of the present article or the injured party at what had hitherto been their address, the court shall display it on the bulletin board of the court and, at the expiry of fifteen days from the date of display, it shall be assumed that valid service has been effected.

(3) If an injured party, subsidiary prosecutor or private prosecutor has a legal representative or an authorized representative, the summons shall be served on the legal representative or authorized representative; if he or she has more than one, it shall be served on only one of them.

Article 129

(1) The recipient and the person effecting the service shall sign the receipt confirming that service has been effected. The recipient shall himself or herself indicate the date of acceptance of the service on the receipt.

(2) If the recipient does not know how to write or is unable to sign his or her name, the person effecting the service shall sign for him or her, shall indicate the date of the service, and shall make a note as to why he or she signed for the recipient.

(3) If the recipient refuses to sign the receipt, the person effecting the service shall make a note to that effect on the receipt and shall indicate the date of service and service is thereby effected.

Article 130

If the addressee or an adult member of his or her family refuses to accept the document, the person effecting the service shall note on the receipt the date, hour and reason for refusal, and

shall leave the document in the dwelling of the addressee or in his or her workplace and service is thereby effected.

Article 131

(1) Police officers, guards in institutions where persons deprived of their liberty are held, and land and air transport employees (in land, maritime and air transportation) shall be served summonses through their command or immediate superior, and, if necessary, other documents may also be served on them in the same manner.

(2) A summons shall be served on a prisoner through the court or through the institution where he or she is an inmate.

(3) Persons who enjoy the right of immunity in Kosovo, unless otherwise specified by international agreement, shall be served summonses in accordance with the provisions of the present Chapter. No personal service of a summons may be made at the premises of the UNMIK Interim Administration or at the premises of KFOR.

Article 132

(1) Decisions and other documents shall be served on the public prosecutor by being presented to the registry of the office of the public prosecutor.

(2) In the case of service of decisions or other documents for which a prescribed period of time commences on the date of service, the date of presentation of the document to the registry of the office of the public prosecutor shall be taken as the date of service.

(3) When the public prosecutor so requests, the court shall serve on him or her the file on a criminal case for examination. If a prescribed period of time for pursuing an ordinary legal remedy is running or if other procedural considerations so require, the court may determine a date by which the public prosecutor must return the file.

Article 133

In the cases which have not been specifically provided for in the present Code service shall be effected according to the provisions that apply to civil litigation procedure.

Article 134

(1) Summonses and decisions issued before the end of the main trial and addressed to a person other than the defendant who is participating in the proceedings may be served on a participant in the proceedings who consents to serve them on the addressee, if the body concerned considers that their receipt is ensured in this manner.

(2) The persons referred to in paragraph 1 of the present article may be informed of a summons to a main trial or other summonses and of a decision postponing a main trial or

other scheduled actions by means of telecommunication if one can assume from the circumstances that notice given in that manner will be received by the addressee.

(3) An official note shall be made in the record that a summons or decision has been served in the manner provided for in paragraphs 1 and 2 of the present article.

(4) A person who has been informed of or sent a decision pursuant to paragraph 1 or 2 of the present article may suffer the harmful consequences of a failure to take action, only if it is ascertained that he or she received the summons or decision in good time and was made aware of the consequences of a failure to take action.

CHAPTER XV: EXECUTION OF DECISIONS

Article 135

(1) A judgment shall become final when it may no longer be contested by an appeal or when no appeal is permitted.

(2) A final judgment shall be executed if its service has been effected and if there are no legal obstacles to its execution. If an appeal has not been filed, or if the parties have waived the right to appeal or abandoned the appeal filed, the judgment shall be considered executable upon the expiry of the period of time prescribed for appeal or upon the day of the waiver or abandonment of the appeal.

(3) If the court which rendered the judgment at first instance is not competent to execute it, it shall serve a certified copy of the judgment on the body competent to execute it along with a certificate that execution is to be carried out.

(4) The provisions applicable to the execution of criminal sanctions shall be set forth in separate legislation.

Article 136

If a fine provided for in the present Code cannot be collected even by compulsion, the court shall execute it by applying Article 39 of the Provisional Criminal Code.

Article 137

(1) With respect to the costs of criminal proceedings, confiscation of material benefit and property claims the judgment shall be executed by the competent court under the provisions that apply to enforcement proceedings.

(2) Collection by compulsion of the costs of criminal proceedings which are to be paid into the budget shall be carried out *ex officio*. The costs of collection by compulsion shall be paid first from the budgetary resources of the court.

(3) If a judgment imposes the accessory punishment of confiscation of objects, the court that rendered the judgment at first instance shall decide whether the objects concerned shall be sold under the provisions that apply to enforcement proceedings or whether they shall be turned over to a criminology museum or some other institution or whether they shall be destroyed. The monetary proceeds from sale of such objects shall be credited to the budget.

(4) Paragraph 3 of the present article shall also apply *mutatis mutandis* when a decision is made on the confiscation of objects on the basis of Article 489 of the present Code.

(5) Aside from the reopening of criminal proceedings or a petition for the protection of legality, a final order to confiscate an object may be amended in civil litigation if a dispute arises as to the ownership of the object confiscated.

Article 138

(1) Unless otherwise provided for in the present Code, a ruling shall be executed when it becomes final. An order shall be executed immediately unless the body issuing the order orders otherwise.

(2) A ruling becomes final when it may no longer be contested by an appeal or when no appeal is permitted.

(3) Unless otherwise provided for, rulings and orders shall be executed by the bodies that have rendered them. If in a ruling a court has decided on the costs of criminal proceedings, those costs will be collected in accordance with the provisions of Article 137 paragraphs 1 and 2 of the present Code.

Article 139

(1) If a doubt arises as to whether the execution of a court decision is permissible or as to the calculation of a punishment, or if a final judgment fails to make a decision to credit pre-trial detention or earlier served punishment, or the calculation has not been done correctly, a decision shall be made on those points in a separate ruling which shall be rendered by the presiding judge of the panel of the court which tried the case in the first instance. An appeal shall not stay execution of the ruling unless the court specifies otherwise.

(2) If doubt arises as to the interpretation of a court decision, the court that rendered the final decision shall decide on it.

Article 140

When a decision in which a property claim is decided becomes final, the injured party may request the court which rendered the decision in the first instance to issue him or her a certified transcript of the decision, indicating that the decision can be executed.

Article 141

Criminal records and records of convicted persons shall be kept by the competent public entity in the field of judicial affairs. The manner of keeping the records shall be set forth in an Administrative Direction.

CHAPTER XVI: INSPECTION OF FILES

Article 142

(1) At no stage in the proceedings may the defence be refused inspection of records of the examination of the defendant, material obtained from or belonging to the defendant, material concerning such investigative actions to which defence counsel has been or should have been admitted or expert analyses.

(2) Upon completion of the investigation, the defence shall be entitled to inspect, copy or photograph all records and physical evidence available to the court.

(3) In addition to the rights enjoyed by the defence under paragraphs 1 and 2 of the present article, the defence shall be permitted by the public prosecutor to inspect, copy or photograph any records, books, documents, photographs and other tangible objects in the possession, custody or control of the public prosecutor which are material to the preparation of the defence or are intended for use by the public prosecutor as evidence for the purposes of the confirmation hearing or at main trial, as the case may be, or were obtained from or belonged to the defendant. The public prosecutor may refuse to allow the defence to inspect, copy or photograph specific records, books, documents, photographs and other tangible objects in his or her possession, custody or control if there is a sound probability that the inspection, copying or photographing may endanger the purpose of the investigation or the lives or health of people. In such case, the defence can apply to a pre-trial judge to grant the inspection, copying or photocopying. The decision of the pre-trial judge is final.

(4) Provisions of the present article are subject to the measures protecting injured parties and witnesses and their privacy and the protection of confidential information as provided for by law.

Article 143

(1) The injured party and his or her legal representative or authorized representative shall be entitled to inspect, copy or photograph records and physical evidence available to the court or to the public prosecutor if he or she has a legitimate interest.

(2) The court or public prosecutor may refuse to permit the inspection, copying or photocopying of records or physical evidence if the legitimate interests of the defendant or other persons override the interest of the injured party or if there is a sound probability that the inspection, copying or photocopying may endanger the purpose of the investigation or the lives or health of people or would considerably delay the proceedings or if the injured party has not yet been examined as a witness.

(3) If the public prosecutor refuses the inspection of the files, the injured party can file an appeal with the pre-trial judge. The decision of the pre-trial judge is final.

(4) If the pre-trial judge refuses the inspection of the files available to the court, an appeal can be filed with the three-judge panel.

(5) The provisions of the present article are subject to the measures protecting injured parties and witnesses and their privacy and the protection of confidential information as provided for by law.

CHAPTER XVII: OTHER PROVISIONS

Article 144

When prosecution for a certain criminal offence depends on a motion for prosecution by the injured party or on the prior approval of the competent authority, the public prosecutor may not conduct an investigation or file an indictment or a summary indictment without submitting proof that the motion or the approval has been granted. In cases of urgency, the public prosecutor can proceed with an oral motion for prosecution which has to be confirmed in forty-eight hours in writing.

Article 145

If in the course of criminal proceedings before the court it is ascertained that the defendant has died, the court shall render a ruling to dismiss criminal proceedings.

Article 146

(1) In the course of proceedings the court may impose a fine of up to 250 EUR upon a defence counsel, an authorized representative or legal representative, an injured party, a subsidiary prosecutor or a private prosecutor if his or her actions are obviously aimed at prolonging criminal proceedings.

(2) The bar association shall be informed of the fining of a member of the bar or an attorney in training.

(3) If the public prosecutor does not file a motion with the court on time or undertakes other actions in proceedings with major delays and thereby causes proceedings to be prolonged, the superior public prosecutor shall be informed about it.

Article 147

(1) The rules of international law and the right to immunity according to the UNMIK Regulation No. 2000/47 of 18 October 2000 on the Status, Privileges and Immunities of KFOR, UNMIK and their Personnel in Kosovo shall apply with respect to exemption from criminal prosecution of persons who enjoy the right of immunity in Kosovo.

(2) If there is any doubt as to the identity of such persons, the court shall seek clarification from the competent authority through the competent public entity in the field of judicial affairs.

Article 148

All public entities shall be bound to provide the necessary assistance to the court and other competent authorities participating in criminal proceedings, especially in matters concerning the investigation of criminal offences or the location of perpetrators.

Article 149

(1) At the request of the court, institutions and persons responsible for maintaining data-bases shall, even without the consent of the person concerned, provide the court with data from the data-base they are keeping, if such data are indispensable for conducting criminal proceedings.

(2) The court shall have a duty to protect the confidentiality of data so obtained.

Article 150

Procedures for personal protection during and after the criminal proceedings of injured parties, witnesses, defendants and members of their families shall be set forth in an Administrative Direction.

CHAPTER XVIII: THE MEANING OF LEGAL EXPRESSIONS USED IN THIS CODE

Article 151

For the purposes of the present Code:

1) The term “suspect” means a person whom the police or the authorities of the criminal prosecution have a reasonable suspicion of having committed a criminal offence, but against whom criminal proceedings have not been initiated.

2) The term “defendant” means a person against whom criminal proceedings are conducted. The term “defendant” is also used in the present Code as a general term for a “defendant”, “accused” and “convicted person”.

3) The term “accused” means a person against whom

i) An indictment has become final;

ii) A private charge has been submitted; or

iii) A summary indictment has been submitted and the main trial scheduled.

4) The term "convicted person" means a person who is found guilty of the commission of a criminal offence by a final judgment of a court.

5) The term "injured party" means a person whose personal or property rights are violated or endangered by a criminal offence.

6) The term "legal representative" means a parent or person who has parental rights and duties or a legal guardian.

7) The term "authorized representative" means a person who in cases provided for by the present Code acts in the name and interest of the injured party.

8) The term "authorized prosecutor" means a public prosecutor, a private prosecutor, or a subsidiary prosecutor.

9) The term "subsidiary prosecutor" means an injured party who, in the circumstances provided for by the present Code, undertakes prosecution of those criminal offences which are prosecuted *ex officio*.

10) The term "private prosecutor" means an injured party who conducts the prosecution of criminal offences for which the criminal law requires a private charge.

11) The term "three-judge panel" means a panel of three judges rendering decisions outside the main trial (Article 22 paragraph 3 and Article 24 paragraph 2 of the present Code).

12) The term "confirmation hearing" means a hearing at which a judge renders a ruling on the indictment and the defendant is afforded an opportunity to plead guilty or not guilty (Articles 309 through 318 of the present Code);

13) The term "detention on remand" means the deprivation of freedom of a defendant by a court decision during the pre-trial proceedings and/or during the course of criminal proceedings before there is a final court judgment.

14) The term "presiding judge" means the presiding judge of a trial panel, an individual judge when proceedings are conducted under Article 22 paragraph 2 of the present Code, a single judge who conducts proceedings on the confirmation of the indictment or the presiding judge of an appellate panel or a panel which decides on an extraordinary legal remedy.

15) The term "mediator" means an authorized person who conducts mediation procedures in accordance with Article 228 of the present Code.

16) The term "party" means the prosecutor and the defendant. When a property claim or an appeal of the injured party is filed, the injured party is considered a party as well.

17) The term "police" means the Civilian Police of the United Nations Interim Administration Mission in Kosovo, also known as United Nations International Police or as UNMIK Police, and the Kosovo Police Service. It shall include the judicial police.

18) The term “judicial police” means police officers authorized to carry out investigative and related functions under the supervision of the public prosecutor, in addition to their other police functions.

19) The term “resident of Kosovo” means a person who is registered, or is eligible to be registered, as a habitual resident of Kosovo with the Central Civil Registry, in accordance with UNMIK Regulation No. 2000/13 of 17 March 2000 on the Central Civil Registry.

20) The term “child” means a person who has not reached the age of eighteen years.

21) The term “minor” means a person who is between the ages of fourteen and eighteen years.

22) The term “UNMIK” means the international civil presence established pursuant to Security Council resolution 1244 (1999) in the territory of Kosovo, integrating the Civil Administration (United Nations); Police and Justice; Institution-Building (OSCE) and Reconstruction (EU) components.

23) The term “public entity” means an entity of the United Nations Interim Administration Mission in Kosovo or of the Provisional Institutions of Self-Government.

24) The term “intimate search” means a search which consists of the physical examination of a person’s bodily orifices other than the mouth.

25) The term “diplomatic channels” means channels of communication between UNMIK and foreign governments through the appropriate authorities.

26) The term “Constitutional Framework” means the Constitutional Framework for Provisional Self-Government in Kosovo established pursuant to UNMIK Regulation No. 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo.

PART TWO: EVIDENCE

CHAPTER XIX: GENERAL PROVISIONS RELATING TO EVIDENCE

Article 152

(1) The rules of evidence set forth in the present Chapter shall apply in all criminal proceedings before the court and, in cases provided for by the present Code, to proceedings before a prosecutor and the police.

(2) The court according to its own assessment may admit and consider any admissible evidence that it deems is relevant and has probative value with regard to the specific criminal proceedings and shall have the authority to assess freely all evidence submitted in order to determine its relevance or admissibility.

(3) The court may reject an application to take evidence:

1) If the taking of such evidence to supplement other evidence is unnecessary or is superfluous because the matter is common knowledge;

2) If the fact to be proven is irrelevant to the decision or has already been proven;

3) If the evidence is wholly inappropriate or unobtainable; or

4) If the application is made to prolong the proceedings.

Article 153

(1) Evidence obtained in violation of the provisions of criminal procedure shall be inadmissible when the present Code or other provisions of the law expressly so prescribe.

(2) The court cannot base a decision on inadmissible evidence.

Article 154

(1) The court shall rule on the admissibility of evidence upon an application by a party or *ex officio*.

(2) A party shall raise an issue relating to admissibility of evidence at the time when the evidence is submitted to the court and in particular in the proceedings on the confirmation of the indictment. Exceptionally it may be raised later, if the party did not know such issue at the time when the evidence was submitted or if there are other justifiable circumstances. The court may request that the issue be raised in writing. In the absence of an application by a party, the court must rule on the admissibility of evidence *ex officio* if at any time during the proceedings a suspicion arises about the legality of evidence.

(3) The court shall give reasons for any ruling it makes on the admissibility of evidence. If a ruling on the admissibility of evidence is rendered in the pre-trial stage of the proceedings

it can be challenged by a separate appeal to a three-judge panel within forty-eight hours of the receipt of the ruling.

(4) Inadmissible evidence shall be excluded from the file and sealed. Such evidence shall be kept by the court, separated from other records and evidence. The excluded evidence may not be examined or used in the criminal proceedings, except in an appeal against the ruling on admissibility.

(5) At all stages of the proceedings, the court has a duty to ensure that no inadmissible evidence, or reference to or testimony of, such evidence is included in the file or presented at the main trial or at hearings before the main trial.

(6) Evidence which has been found by a ruling to be inadmissible may be found by a ruling at a later stage in the proceedings to be admissible.

Article 155

(1) In any questioning or examination it is prohibited to:

1) Impair the defendant's freedom to form his or her own opinion and to express what he or she wants by ill-treatment, induced fatigue, physical interference, administration of drugs, torture, coercion or hypnosis;

2) Threaten the defendant with measures not permitted under the law;

3) Hold out the prospect of an advantage not envisaged by law; and

4) Impair the defendant's memory or his or her ability to understand.

(2) The prohibition under paragraph 1 of the present article shall apply irrespective of the consent of the subject of the questioning or examination.

(3) If questioning or examination has been conducted in violation of paragraph 1 of the present article, no record of such questioning or examination shall be admissible.

Article 156

(1) A statement by the defendant given to the police or the public prosecutor may be admissible evidence in court only when taken in accordance with the provisions of Articles 229 through 236 of the present Code. Such statements can be used to challenge the testimony of the defendant in court (Article 372 paragraph 2 of the present Code).

(2) A statement of a witness given to the police or the public prosecutor may be admissible evidence in court only when the defendant or defence counsel has been given the opportunity to challenge it by questioning that witness during some stage of the criminal proceedings.

Article 157

(1) The court shall not find the accused guilty based solely, or to a decisive extent, on testimony or other evidence which could not be challenged by the defendant or defence counsel through questioning during some stage of the criminal proceedings.

(2) The court shall not find the accused guilty based solely, or to a decisive extent, upon statements given by the defendant to the police or the public prosecutor (Article 156 paragraph 1 of the present Code).

(3) The court shall not find the accused guilty based solely, or to a decisive extent, on testimony given by a single witness whose identity is anonymous to the defence counsel and the accused.

(4) The court shall not find any person guilty based solely on the evidence of testimony given by the cooperative witness. (Articles 298 through 303 of the present Code).

CHAPTER XX: WITNESSES

Article 158

(1) A person shall be summoned as a witness if there is a likelihood that he or she may give information about the criminal offence, the perpetrator and important circumstances relevant for the criminal proceedings.

(2) The injured party, the subsidiary prosecutor and the private prosecutor may be examined as witnesses.

(3) Any person summoned as a witness has a duty to respond to the summons and, unless otherwise provided for by the present Code, to testify.

1. PRIVILEGED WITNESSES

Article 159

The following persons may not be examined as witnesses:

1) A person who by giving testimony would violate the obligation to keep an official or military secret, until the competent body releases him or her from that obligation;

2) A defence counsel, on matters confided to him or her by the defendant, unless the defendant himself or herself so requests; and

3) A co-defendant, while joint proceedings are being conducted.

Article 160

(1) The following persons are exempted from the duty to testify:

1) The spouse or extra-marital partner of the defendant, unless proceedings are conducted for a criminal offence punishable by imprisonment of at least five years and he or she is an injured party of that criminal offence;

2) A person who is related to the defendant by blood in a direct line or in a collateral line to the third degree or by marriage to the second degree, unless proceedings are conducted for a criminal offence punishable by imprisonment of at least ten years or he or she is a witness of a criminal offence against a child who is cohabiting with or is related to him or her or to the defendant;

3) The adoptive parent or adopted child of the defendant, unless proceedings are conducted for a criminal offence punishable by at least ten years or he or she is a witness of a criminal offence committed against a child who is cohabiting with or is related to him or her or the defendant;

4) A religious confessor on matters confessed to him or her by the defendant or by another person;

5) A lawyer, a Victim Advocate, medical doctor, social worker, psychologist or another person, on what he or she came to know in the exercise of his or her profession, if bound by duty to keep secret what he or she learns of in the exercise of his or her profession; and

6) A journalist or an editor who works in the media or one of his or her assistants in accordance with Article 29 of the Provisional Criminal Code.

(2) A person referred to in paragraph 1 subparagraph 4, 5 or 6 of the present article cannot refuse to testify when there is a legal basis for releasing him or her from the duty of maintaining confidentiality.

(3) The competent authority conducting the proceedings shall be bound to instruct the persons referred to in paragraph 1 of the present article, before each examination or upon establishing their relation to the defendant, of their right not to testify. The instruction and the reply thereto shall be entered in the record.

(4) A child who, in view of his or her age and stage of intellectual development, cannot understand the meaning of the right to refuse to testify may not be examined as a witness, unless the court finds that he or she is capable of understanding that he or she is undergoing the examination in order to tell the truth.

(5) A witness entitled to refuse to testify against one of the defendants shall be exempt from the duty to testify against other defendants if his or her testimony cannot, in view of the nature of the matter, be confined solely to the other defendants.

Article 161

A statement of a person who has been examined as a witness shall be inadmissible if:

1) The person may not be examined as a witness (Article 159 of the present Code);

2) The person is exempted from the duty to testify (Article 160 of the present Code), but he or she has not been instructed about that right or has not explicitly waived that right, or the instruction and the waiver were not entered in the record;

3) The person is a child who could not understand the meaning of his or her right to refuse to testify: or

4) The testimony was extorted by force, threat or a similar prohibited means (Article 155 of the present Code).

Article 162

A witness is not obliged to answer individual questions by which he or she would be likely to expose him or herself or a close relative (Article 160 paragraph 1 subparagraphs 1 through 3 of the present Code) to serious disgrace, considerable material damage or criminal prosecution. The court shall notify the witness of this right.

2. CONDUCT OF AN EXAMINATION OF WITNESSES

Article 163

(1) A witness shall be summoned by serving a written summons which shall indicate: the name and surname and occupation of the witness, when and where he or she is to appear, the criminal case in connection with which he or she is summoned, an indication that he or she is summoned as a witness and the consequences of unjustifiable non-compliance with the summons.

(2) A person under the age of sixteen years shall be summoned as a witness through his or her parents or legal representative, except where that is not possible for reasons of urgency or other circumstances.

(3) A witness who by reason of old age, illness or serious disability is unable to comply with the summons may be examined out of court.

Article 164

(1) A witness shall be examined separately and without the presence of other witnesses. A witness shall answer questions orally.

(2) A witness shall first be told that it is his or her duty to speak the truth and that he or she may not withhold anything, whereupon he or she shall be warned that false testimony

constitutes a criminal offence. A witness shall also be instructed that he or she need not answer any of the questions referred to in Article 162 of the present Code and the instruction shall be entered in the record.

(3) Subsequently, the witness shall be asked to state his or her first name and surname, the name of his or her father and mother, personal identity number, occupation, place of current residence, place of birth, age and relation to the defendant and the injured party. The witness shall be warned of the obligation to report to the court any change in address or place of current residence.

(4) The provision in paragraph 3 of the present article shall not apply when it conflicts with measures for the protection of injured parties and witnesses as provided for by the present Code.

(5) Police officers shall be informed by the judge of their right to give the address of their police station rather than the address of their current residence.

(6) A person who has not reached the age of eighteen years, especially if that person has suffered damage from the criminal offence, shall be examined considerately to avoid producing a harmful effect on his or her state of mind. If necessary, a child psychologist or child counsellor or some other expert should be called to assist in the examination of such person.

Article 165

(1) The public prosecutor shall first examine witnesses named by the public prosecutor; the defence shall first examine those named by the defence. Each party shall be given an opportunity to examine the witness who has been examined by the other party.

(2) After this examination the presiding judge and members of the panel can ask the witnesses such questions, as they deem necessary for further clarification of the case. If a witness was called on a motion of the court, the presiding judge shall put questions to such witness first.

(3) Questions to the witness can be posed directly by the injured party, his or her legal representative or authorized representative, a co-defendant, or an expert witness only with the permission of the court.

(4) Only the presiding judge shall conduct the examination of witnesses under sixteen years of age. The public prosecutor or the defence may request the presiding judge to ask such witnesses further questions. The presiding judge may permit these persons to put questions to a witness directly if this is not expected to prejudice the well-being of such witness.

(5) Article 234 of the present Code shall apply *mutatis mutandis* to the examination of witnesses.

(6) Witnesses may be confronted if they give testimonies which substantially conflict with one another. Such witnesses shall be examined separately about each circumstance on

which their testimonies conflict and their answers shall be entered in the record. Only two witnesses may be confronted at a time.

(7) The injured party examined as a witness shall be asked whether he or she intends to pursue a property claim in criminal proceedings.

Article 166

If a witness is examined through an interpreter, or if a witness is deaf or mute, he or she shall be examined as provided for in Article 232 of the present Code.

Article 167

(1) If a witness who has been duly summoned fails to appear and does not justify his or her failure to appear or if he or she leaves the place where he or she should be examined without permission or a valid reason, such witness may be compelled to appear and may be fined up to 250 EUR.

(2) If a witness appears when summoned but after being warned of the consequences refuses to give testimony without legal justification, he or she may be fined up to 250 EUR. If even then the witness refuses to testify, he or she may be imprisoned. This imprisonment shall last for as long as the witness refuses to testify or until his or her testimony becomes unnecessary, or until criminal proceedings terminate, but shall not exceed one month.

(3) An appeal against a ruling imposing a punishment of a fine or imprisonment shall always be decided by the three-judge panel. An appeal against the ruling on imprisonment shall not stay the execution of the ruling. The punishment under paragraphs 1 and 2 of the present article shall be imposed by a judge.

(4) Members of armed forces and the police may not be imprisoned but their refusal to testify shall be reported to their respective commands.

CHAPTER XXI: PROTECTION OF INJURED PARTIES AND WITNESSES

Article 168

For purposes of the present Chapter, the following definitions shall apply:

1) The term “serious risk” means a warranted fear of danger to the life, physical or mental health or property of the injured party, witness or a family member of an injured party or witness as an anticipated consequence of the injured party or witness giving evidence during an examination or testimony in court;

2) The term “family member” means the spouse, extra-marital partner, a blood relation in a direct line, an adoptive parent, an adopted child, a brother, a sister or a foster parent;

3) The term "judge" means the pre-trial judge or the presiding judge;

4) The term "anonymity" means the absence of revealed information regarding the identity or whereabouts of an injured party or witness or the identity or whereabouts of a family member of an injured party or witness or the identity of any person who is associated with an injured party or a witness.

Article 169

(1) At any stage of the proceedings, the public prosecutor, private prosecutor, subsidiary prosecutor, defendant, defence counsel, injured party or witness may file a written petition with a judge for a protective measure or an order for anonymity if there is a serious risk to an injured party, witness or his or her family member.

(2) The petition shall contain a declaration of factual allegations. The judge shall file the petition and declaration in a sealed envelope and only judges and the public prosecutor may have access to the sealed contents.

(3) After receipt of the petition, the judge may order appropriate protective measures for an injured party or a witness, or if he or she deems it necessary prior to making a decision on the petition, convene a closed hearing to hear further information from the prosecutor, the defendant, the defence counsel, the injured parties or the witnesses. In the case of a petition requesting an order made pursuant to Articles 171 and 172 of the present Code, the judge shall convene a hearing in closed session.

(4) The judge may make an order for a protective measure for an injured party or witness where he or she determines that:

1) There exists a serious risk to the injured party, witness or his or her family member; and

2) The protective measure is necessary to prevent serious risk to the injured party, witness or his or her family member.

(5) The public prosecutor shall be immediately notified by the judge of any petition made by the defendant, defence counsel, injured party, witness, private prosecutor or subsidiary prosecutor and is entitled to make recommendations and statements regarding the facts to the judge at a hearing and in writing if there is no hearing ordered by the judge.

Article 170

(1) The judge may order such protective measures as he or she considers necessary, including but not limited to:

1) Omitting or expunging names, addresses, place of work, profession or any other data or information that could be used to identify the injured party or witness;

2) Non-disclosure of any records identifying the injured party or witness;

3) Efforts to conceal the features or physical description of the injured party or witness giving testimony, including testifying behind an opaque shield or through image or voice-altering devices, contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, or video-taped examination prior to the court hearing with the defence counsel present;

4) Assignment of a pseudonym;

5) Closed sessions to the public, in accordance with Article 336 of the present Code:

6) Orders to the defence counsel not to disclose the identity of the injured party or witness or not to disclose any materials or information that may lead to disclosure of identity;

7) Temporary removal of the defendant from the courtroom if a witness refuses to give testimony in the presence of the defendant or if circumstances indicate to the court that the witness will not speak the truth in the presence of the defendant; or

8) Any combination of the above methods to prevent disclosure of the identity of the injured party or witness.

(2) Other provisions of the present Code shall not apply where they conflict with protective measures under paragraph 1 of the present article.

(3) An order for a protective measure shall be in writing and shall not contain any information which could lead to the discovery of the identity of the injured party, witness or his or her family member, or which could reveal the existence of, or expose to serious risk, the operational security of ongoing and confidential police investigations.

(4) Once a protective measure has been ordered in respect of an injured party or witness, the petitioning party may subsequently request an amendment of a protective measure. Only the judge granting such protective measure may amend or rescind the order, or authorize the release of protected material to another judge for use in other proceedings. If, at the time of a request for amendment or release, the original court no longer has jurisdiction over the case, the competent judge at the court which has jurisdiction may authorize such amendment or release, after giving written notice to, and hearing any argument of, the public prosecutor.

Article 171

(1) Where protective measures under Article 170 paragraph 1 of the present Code are insufficient to guarantee the protection of a witness proposed by the defence, the judge may in exceptional circumstances make an order for anonymity whereby a witness proposed by the defence shall remain anonymous to the public, the injured party, the subsidiary prosecutor, or the private prosecutor and their legal representatives or authorized representatives.

(2) Before making an order for anonymity, the judge shall conduct a hearing, in a closed session, at which the witness at issue and other persons deemed necessary, such as police and military personnel providing security, shall be examined. Apart from these persons, only the

public prosecutor, essential court and prosecution personnel and the defence counsel may be present.

(3) The judge can only issue an order for anonymity if he or she first finds that:

1) There exists a serious risk to the witness or his or her family member and the complete anonymity of the witness is necessary to prevent such serious risk;

2) The testimony of the witness is relevant to a material issue in the case so as to make it unfair to compel the defence to proceed without it;

3) The credibility of the witness has been fully investigated and disclosed to the judge in a closed session; and

4) The need for anonymity of the witness to provide justice outweighs the effect of the interest of the public, the injured party, the subsidiary prosecutor or the private prosecutor and their legal representatives or authorized representatives in knowing the identity of the witness in the conduct of the proceedings.

Article 172

(1) Where protective measures provided under Article 170 paragraph 1 of the present Code are insufficient to guarantee the protection of an injured party or witness not proposed by the defence, the judge may in exceptional circumstances make an order for anonymity whereby the injured party or witness shall remain anonymous to the defendant and the defence counsel.

(2) Before making an order for anonymity, the judge shall conduct a hearing, in a closed session, at which the injured party or witness at issue and other persons deemed necessary, such as police or military personnel providing security, shall be examined. Apart from these persons, only the public prosecutor, essential court and prosecution personnel and defence counsel may be present.

(3) The judge can only issue such order for anonymity if he or she finds that:

1) There exists a serious risk to the injured party or witness or to his or her family member and the complete anonymity of the injured party or witness is necessary to prevent such serious risk;

2) The testimony of the injured party or witness is relevant to a material issue in the case so as to make it unfair to compel the prosecution to proceed without it;

3) The credibility of the injured party or witness has been fully investigated and disclosed to the judge in a closed session; and

4) The need for anonymity of the injured party or witness to provide justice outweighs the interest of the defendant in knowing the identity of the injured party or witness in the conduct of the defence.

Article 173

(1) An order for anonymity shall be in writing and shall not contain any information which could lead to the discovery of the identity of the injured party, witness or his or her family member or which could reveal the existence of or expose to serious risk the operational security of ongoing and confidential police investigations.

(2) Information in the record of the closed session shall be removed from the record and sealed and stored as an official secret immediately after the identification and prior to examination of the injured party or witness.

(3) The restricted data may be inspected and used by the prosecution and the judge only in an appeal against an order issued under Article 171 or 172 of the present Code. An appeal against an order for anonymity and the use of methods to prevent disclosure of identity to the public, injured parties, witnesses, defence counsel and the defendant may be made to a three-judge panel, if the order has been issued by a pre-trial judge. Otherwise it may only be appealed in an appeal of the judgment.

Article 174

The court shall prohibit all questions to which the answers could reveal the identity of an injured party or witness protected by a protective measure or restricted information.

CHAPTER XXII: EXPERT WITNESSES

1. GENERAL PROVISIONS RELATING TO EXPERT WITNESSES

Article 175

Expert witnesses shall be engaged when the determination or assessment of an important fact calls for the finding and opinion of a specialist possessing the necessary professional knowledge.

Article 176

(1) An expert analysis shall be ordered in writing by the court on the motion of the public prosecutor, the defence or *ex officio*. The order shall specify the facts to be established or assessed by an expert analysis, as well as the persons to whom the expert analysis shall be entrusted. The order shall be served on the parties.

(2) If a particular kind of expert analysis falls within the domain of a professional institution or the expert analysis can be performed in the framework of a particular public entity, the task, especially if it is a complex one, shall as a rule be entrusted to such professional institution or public entity. The professional institution or public entity shall designate one or several experts to provide the expert analysis.

(3) If the court designates an expert witness, it shall as a rule designate one expert witness, but if the expert analysis is complicated, it shall designate two or more expert witnesses.

(4) If there are at the court certain expert witnesses who have been permanently designated for some kind of expert analysis, other expert witnesses may only be designated if there is danger in delay or if the permanent expert witnesses are prevented from attendance or if other circumstances demand it.

Article 177

(1) A person summoned as an expert witness has a duty to comply with the summons and give his or her findings and opinion.

(2) If an expert witness who has been duly summoned fails to appear and does not justify his or her absence or if he or she refuses to perform an expert analysis, he or she may be fined up to 250 EUR; if his or her failure to appear is unjustifiable, he or she may be compelled to appear.

(3) The three-judge panel shall decide on an appeal against the ruling by which a fine has been imposed.

(4) Regardless of the provision under paragraph 2 of the present article, the authority conducting the proceedings may request the expert witness to state a period of time within which he or she shall submit his or her findings and opinion and to assume the obligation to pay the amount under paragraph 2 of the present article into the budget, if he or she fails to submit his or her findings and opinion within the period of time. The record containing the statement of the expert witness on this obligation is an enforceable document.

Article 178

(1) A person who may not be examined as a witness (Article 159 of the present Code) or who is exempted from the duty to testify (Article 160 of the present Code) or against whom the criminal offence has been committed may not be appointed as an expert witness. If such person is appointed as an expert witness, his or her findings, opinion and statement are inadmissible.

(2) There is also a reason for the disqualification of an expert witness (Article 45 of the present Code) in the case of a person who has the same employer as the defendant or the injured party and of a person who is employed by the injured party or the defendant.

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

(4) Where a separate appeal has been allowed against the ruling rejecting the request for the disqualification of an expert witness (Article 43 paragraph 4 of the present Code), the appeal shall stay the execution of the expert analysis, except where there is danger in delay.

Article 179

(1) Before the beginning of the expert analysis, the expert witness shall be instructed that he or she has a duty to study the object of the expert analysis carefully, indicate precisely whatever he or she observes and finds, and give an unbiased opinion thereon in accordance with the rules of science and professional expert analysis. He or she shall be warned in particular that false testimony is a criminal offence.

(2) The authority in charge of the proceedings shall direct the expert analysis, indicate to the expert witness the objects he or she is to inspect, ask him or her questions and, if necessary, request explanations regarding his or her findings and opinion.

(3) The expert witness may be given explanations and may be allowed to inspect the case file. He or she may propose that evidence be collected or that objects and data material to his or her analysis and opinion be secured. If an expert witness attends a site inspection, a reconstruction of the event or some other acts of collecting evidence, he or she may propose that specific circumstances be clarified or that the person being examined be asked specific questions.

Article 180

(1) The expert witness shall examine objects in the presence of the authority in charge of the proceedings and the recording clerk, except where an extensive examination is necessary, where the examination is conducted in a professional institution or a public entity or where moral considerations render it inappropriate.

(2) If an analysis of a specific substance is necessary in order to arrive at an expert analysis, the expert witness shall be given, if possible, a sample of the substance and the remainder shall be kept in case later analyses appear necessary.

Article 181

The findings and opinion shall immediately be entered in the record. The expert witness may be allowed to submit his or her findings or opinion in writing within a prescribed period of time determined by the authority conducting the proceedings.

Article 182

(1) If an expert analysis is entrusted to a professional institution or a public entity, the authority conducting the proceedings shall issue a warning that a person referred to in Article 178 of the present Code or a person who for some other reason provided for in the present Code is disqualified from being an expert witness may not participate in giving findings and opinions, as well as warning them of the consequences of presenting a false finding or opinion.

(2) The professional institution or the public entity shall be provided with the material necessary for the expert analysis and, if necessary, shall proceed in accordance with the provisions under Article 179 paragraph 3 of the present Code.

(3) The professional institution or the public entity shall send the court its findings and opinion in writing, signed by the persons who carried out the expert analysis.

(4) The parties may request from the head of the professional institution or the public entity the names of the expert witnesses who will perform the expert analysis.

(5) Article 179 paragraphs 1 through 2 of the present Code shall not apply when the expert analysis has been entrusted to a professional institution or a public entity. The authority in charge of the proceedings may request the professional institution or the public entity to provide explanations regarding their findings and opinion.

Article 183

(1) The record of the expert analysis or the written result of the findings and opinion shall indicate the name of the person who performed the expert analysis, his or her occupation, professional training and specialty.

(2) When the expert analysis is completed in the absence of the parties, they shall be notified that the expert analysis was completed and that they may inspect the record of the expert analysis or the written findings and opinion.

Article 184

If data in the findings of expert witnesses differ on essential points or if their findings are ambiguous, incomplete, contradictory in themselves or with respect to the circumstances examined and if such deficiencies cannot be removed by a new hearing of expert witnesses, the expert analysis shall be repeated with the participation of the same or different expert witnesses.

Article 185

If the opinion of expert witnesses contains contradictions or deficiencies, or if a reasonable doubt arises about the correctness of the presented opinion, and the deficiencies or doubt cannot be removed by a new hearing of expert witnesses, the opinion of other expert witnesses shall be sought.

2. POST MORTEM

Article 186

(1) The court shall order that a *post mortem* inspection and autopsy be performed when there is a suspicion or it appears obvious that death was caused by a criminal offence or

connected with the commission of a criminal offence. If the body has been buried, an exhumation shall be ordered to view the body and perform an autopsy.

(2) In carrying out an autopsy, necessary measures shall be taken to establish the identity of the body and for this purpose information on its external and internal physical characteristics shall be described in particular.

Article 187

(1) If an autopsy has not been performed in a professional institution, it shall, if necessary, be performed by a physician or by two or more physicians, preferably specialists in forensic medicine. The pre-trial judge shall direct this expert analysis and shall enter the findings and opinion of the expert witnesses in the record.

(2) An autopsy may not be entrusted to the physician who treated the deceased. He or she may be called in during the autopsy to give explanations about the course and circumstances of the disease.

Article 188

(1) In giving their opinion, the expert witnesses shall indicate in particular the immediate cause of death, what brought that cause about and the time of death.

(2) If an injury is found on the body, the examination should establish whether someone else inflicted it and, if so, with what, how and how long before death occurred and whether that injury had caused death. If several injuries are discovered on the body the examination should establish whether each one was inflicted by the same instrument and which of them caused death, and if there were several fatal injuries, it should establish which of them by their combined effect caused death.

(3) In the case provided for in paragraph 2 of the present article, it should be established, in particular, whether death was caused by the very type and general nature of the injury, by the personal characteristics or the particular condition of the constitution of the injured person, by accidental circumstances or by the circumstances in which the injury was inflicted.

(4) It should also be established whether assistance given on time might have prevented death from occurring.

Article 189

(1) In inspecting and performing an autopsy on a foetus, attention should focus, in particular, on establishing its stage of development, its capacity to survive outside the womb and the cause of its death.

(2) In inspecting and performing an autopsy on a new-born child, attention should focus in particular on establishing whether he or she was delivered alive or dead, whether he or she was capable of living, how long he or she lived, when he or she died and the cause of death.

3. TOXICOLOGICAL ANALYSIS

Article 190

(1) If poisoning is suspected, the court shall order that suspicious substances found in the body or elsewhere be sent to an institute for toxicological research for expert analysis.

(2) In analyzing suspicious substances, the expert witness shall focus in particular on establishing the kind, quantity and effect of the poison discovered. If suspicious substances were found in the body, the quantity of the poison used should also be established wherever possible.

4. EXAMINATION OF BODILY INJURIES AND PHYSICAL EXAMINATION

Article 191

Expert analysis of bodily injuries is as a rule carried out by a physical examination, but, if that is not possible or necessary, on the basis of medical documentation or other information in the files.

(2) After the expert witness describes the injuries exactly, he or she shall give an opinion, especially on the nature and severity of each individual injury and their total effect with regard to their nature and the special circumstances of the case, the usual type of effect of these injuries, their specific effect in the particular case, the instrument used in inflicting them and the manner of their infliction.

Article 192

(1) A physical examination under the present article shall be conducted by a qualified physician or nurse in accordance with the rules of medical science and with full respect for the person's dignity and due consideration for the physical and psychological impact of the injury.

(2) A physical examination of the defendant may be conducted without his or her consent if this is necessary to establish facts that are important for the criminal proceedings and no detriment to his or her health is to be expected.

(3) A physical examination of a person other than the defendant may be conducted without his or her consent only if such person might be considered a witness, and if this is necessary to establish whether his or her body shows a particular trace or consequence of a criminal offence and no detriment to his or her health is to be expected.

(4) When necessary, hair and follicle samples, saliva, urine, nasal swabs, swabs of skin surface including the groin area, fingernail and under-fingernail samples and other similar samples which do not entail bodily intrusion can be taken during a physical examination.

(5) A physical examination involving bodily intrusion, such as taking a blood sample, during the physical examination, can only be conducted with a court order or with the voluntary consent of the person concerned.

(6) A blood sample or a sample of other body cells taken from a person during a physical examination may be used only for the purposes of the criminal proceedings for which they are taken or in other criminal proceedings which are pending; they shall be destroyed without delay as soon as they are no longer required for such purposes.

(7) A court order is not required for a physical examination under paragraphs 1 to 4 of the present article.

Article 193

The provision under Article 167 paragraph 2 of the present Code shall apply *mutatis mutandis* to cases in which a person, other than the defendant, refuses to undergo an examination ordered by the court. Compulsion may be used only upon a separate order of the court.

5. MOLECULAR AND GENETIC EXAMINATIONS AND DNA ANALYSIS

Article 194

(1) A court may order that material obtained by measures under Article 191 and Article 192 of the present Code be subjected to molecular and genetic examination, insofar as such measures are necessary to establish ancestry or to ascertain whether traces found originate from the defendant or the injured party.

(2) Examinations admissible under paragraph 1 of the present article may also be carried out on materials in evidence that have been found, secured or seized.

Article 195

(1) For the purpose of establishing identity in criminal proceedings, cell tissue may be collected from a defendant for DNA identification.

(2) The cell tissue collected may be used only for DNA identification provided for in paragraph 1 of the present article; it shall be destroyed without delay once it is no longer

required for that purpose. Information other than that required to establish the DNA code may not be ascertained during the examination and shall be inadmissible.

6. AUDIT

Article 196

(1) When an expert audit of business books is called for, the court shall instruct an expert witness as to the aim and scope of the audit and the facts and circumstances which have to be ascertained.

(2) If an expert audit of business books of a business organization or a legal person requires that the accounts should first be regularized, the costs of such task shall be borne by the business organization or legal person.

(3) The ruling on regularizing accounts shall be rendered by the court upon a written and substantiated report by the expert witnesses appointed to examine the business books. The ruling shall also specify the amount to be deposited with the court by the business organization or legal person as an advance on the costs entailed in regularizing the accounts. No appeal shall be permitted against this ruling.

(4) After the accounts have been regularized, the court shall, on the basis of the report of the expert witnesses, render a ruling by which it shall determine the amount of the costs incurred thereby and order that the costs be borne by the business organization or legal person. The business organization or legal person may appeal concerning the basis of the decision on refunding the costs and the amount of the costs. The appeal shall be decided by the three-judge panel.

(5) The payment of the costs, if their amount has not been advanced, shall be credited to the authority that has already paid the costs in advance and remunerated the expert witnesses.

PART THREE: PRE-TRIAL PROCEEDINGS

CHAPTER XXIII: CRIMINAL REPORT

Article 197

(1) All public entities have a duty to report criminal offences prosecuted *ex officio* of which they have been informed or which they have learned of in some other manner.

(2) In submitting a criminal report, the public entities referred to in paragraph 1 of the present article shall present evidence known to them and shall undertake steps to preserve traces of the criminal offence, objects upon which or with which the criminal offence was committed and other evidence.

Article 198

(1) Any person is entitled to report a criminal offence which is prosecuted *ex officio* and shall have a duty to do so when the failure to report a criminal offence constitutes a criminal offence.

(2) A social worker, a health care worker, a teacher, a tutor or another person working in a similar capacity who learns of or discovers that there is a reasonable suspicion that a child has been a victim of a criminal offence, and in particular of a criminal offence against sexual integrity, shall immediately report this.

Article 199

(1) A criminal report shall be submitted to the competent public prosecutor in writing, by technical means of communication or orally.

(2) If a criminal offence has been reported orally, the person reporting it shall be warned of the consequences of making a false criminal report. A record shall be compiled of oral reports and an official note shall be made of reports received over the telephone or other technical means of communication.

(3) A criminal report submitted to a court, to the police or to a public prosecutor who is not competent shall be accepted and forwarded without delay to the competent public prosecutor.

1. GENERAL DUTIES AND POWERS OF THE POLICE

Article 200

(1) The police shall investigate criminal offences and shall take all measures without delay, in order to prevent the concealment of evidence.

(2) As soon as the police obtain knowledge, either through the filing of a criminal report or in some other way, of a suspected criminal offence prosecuted *ex officio*, they shall without delay, and no later than twenty-four hours from the receipt of this information, inform the public prosecutor and thereafter provide him or her with further reports and supplementary information as soon as possible.

(3) The public prosecutor shall direct and supervise the work of the judicial police in the pre-trial phase of the criminal proceedings.

Article 201

(1) If there is a reasonable suspicion that a criminal offence prosecuted *ex officio* has been committed, the police have a duty, either *ex officio* or on the request of the public prosecutor, to take all steps necessary to locate the perpetrator, to prevent the perpetrator or his or her accomplice from hiding or fleeing, to detect and preserve traces and other evidence of the criminal offence and objects which might serve as evidence, and to collect all information that may be of use in criminal proceedings.

(2) In order to perform the tasks under paragraph 1 of the present article the police shall have the power:

1) To gather information from persons;

2) To perform provisional inspection of vehicles, passengers and their luggage;

3) To restrict movement in a specific area for the time this action is urgently necessary;

4) To take the necessary steps to establish the identity of persons and objects;

5) To organize a search to locate an individual or an object being sought by sending out a search circular;

6) To search specific buildings and premises of public entities in the presence of a responsible person and to examine specific documentation belonging to them;

7) To confiscate objects which must be confiscated under the Provisional Criminal Code or which may serve as evidence in criminal proceedings;

8) To provide for a physical examination of the injured party, in accordance with Article 192 of the present Code; and

9) To undertake other necessary steps and actions provided for by the law.

(3) A record or official note shall be made on the facts and circumstances which are established by undertaking individual actions and which may be of interest for the criminal proceedings as well as on the objects which have been found or confiscated.

Article 202

The police have the right to detain and gather information from persons found at the scene of the criminal offence who may provide information important for the criminal proceedings if it is likely that the gathering of information from these persons at a later time and date would be impossible or would significantly delay the proceedings or cause other difficulties. The detention of such persons may last no longer than necessary for names, addresses and other relevant information to be gathered, and in any case it shall not exceed six hours. Such detention should only be used when no other means are available to gather the information.

Article 203

Article 155 of the present Code shall apply to gathering information from persons under Articles 201 and 202 of the present Code.

Article 204

(1) If there is a danger that a person is carrying a weapon or a dangerous object that can be used for attack or self-injury, the police can perform a provisional security search of such person to search for weapons or other dangerous objects.

(2) A provisional security search shall not constitute a search of a person and will be limited to frisking the outside of the person's clothing and, exceptionally, provisionally checking the luggage or vehicle of a person under direct control of such person.

(3) A provisional security search of a person shall be conduced by a police officer of the same sex as the person being searched unless this is absolutely not possible due to special circumstances.

(4) If in conducting a provisional security search the police finds objects that may be used as evidence in criminal proceedings, the police shall proceed in accordance with the provisions governing the search of persons under the present Code.

Article 205

(1) The police may photograph a person and take his or her fingerprints, if there is a reasonable suspicion that he or she has committed a criminal offence.

(2) The public prosecutor may authorize the police to release the photograph for general publication, when this is necessary to establish the identity of a suspect or in other cases of importance for the effective conduct of proceedings.

(3) If it is necessary to identify whose fingerprints have been found on certain objects, police may take the fingerprints of persons likely to have come into contact with such objects.

(4) Police may with the assistance of a qualified physician or nurse or in exigent circumstances on their own collect the samples referred to in Article 192 paragraph 4 of the present Code from a suspect if it is urgent. The public prosecutor shall be informed immediately of the collection of such samples.

(5) Police may request a suspect to take an alcohol test by providing urine or breath samples, and the refusal of the suspect to provide such samples constitutes admissible evidence. The suspect shall be notified of this in advance. Neither sample shall be taken by compulsion without a court order.

Article 206

(1) When gathering information from an injured party, the police shall inform the injured party of his or her rights under Article 82 of the present Code and upon the request of the injured party and, where the injured party belongs to one of the categories referred to in Article 82 paragraph 1 of the present Code, shall notify the Victim Advocacy Unit.

(2) A person against whom any of the measures provided for in Articles 201, 202, 204 or 205 of the present Code has been taken is entitled to file a complaint with the competent public prosecutor within three days.

(3) The public prosecutor shall, without delay, verify the grounds for the complaint referred to in paragraph 2 of the present article and if it is established that the actions or measures undertaken violate the criminal law or the code of conduct applicable to the police or employment obligations, he or she shall act in accordance with the law and shall inform the person who filed the complaint.

Article 207

(1) On the basis of information gathered the police shall draw up a police criminal report setting out evidence discovered in the process of gathering information.

(2) The police criminal report shall be submitted to the public prosecutor along with objects, sketches, photographs, reports obtained, records of the measures and actions undertaken, official notes, statements taken and other materials which might contribute to the effective conduct of proceedings.

(3) If, after submitting the police criminal report, the police learn of new facts, evidence or traces of the criminal offence, they have a continuing duty to gather the necessary information and to submit immediately to the public prosecutor a report to that effect, as a supplement to the police criminal report.

(4) If the measures and actions undertaken by the police and the information gathered provide no basis for a police criminal report and there is no reasonable suspicion that a criminal offence has been committed, the police will nevertheless send a separate report to that effect to the public prosecutor.

2. GENERAL DUTIES AND POWERS OF THE PUBLIC PROSECUTOR

Article 208

(1) The public prosecutor shall dismiss a criminal report (a police criminal report or a criminal report from other persons) if it is evident from the report that:

1) There is no reasonable suspicion that a specific person has committed the indicated criminal offence, unless it is reasonably likely that further investigation by the police may provide sufficient information, in which case the prosecutor shall follow the requirements of Article 209 of the present Code;

2) The act reported is not a criminal offence which is prosecuted *ex officio*;

3) The period of statutory limitation for criminal prosecution has expired;

4) The criminal offence is covered by an amnesty or pardon;

5) The suspect is protected by immunity and a waiver is not possible or not granted by the appropriate authority; or

6) There are other circumstances that preclude prosecution.

(2) The public prosecutor shall notify the injured party of the dismissal of the report and the reasons for this (Article 62 of the present Code) within eight days of the dismissal of the report.

(3) The public prosecutor shall immediately notify the police of the dismissal of the police criminal report.

Article 209

(1) If from the criminal report itself the public prosecutor is unable to conclude whether the allegations contained in it are probable, or if information in the report does not provide a sufficient basis for an investigation to be initiated, especially if the perpetrator is unknown, or if the public prosecutor has only heard a rumour that a criminal offence was committed, the public prosecutor, if he or she is unable to do so on his own, shall request that the judicial police gather the necessary information. The judicial police are bound to follow the public prosecutor's lawful requests.

(2) The public prosecutor may also gather such information on his or her own, or from other public entities, including by speaking to witnesses and injured parties, and their legal

counsel. The public prosecutor may participate with the judicial police in any examination of the defendant, but is likewise bound by the requirements of the present Code.

(3) The judicial police shall have a duty to report immediately to the public prosecutor on the measures they have undertaken under his or her instruction or, if they are unable to undertake them, they shall immediately report to the public prosecutor the reasons for their inability to undertake such measures.

(4) The public prosecutor may request necessary data from public entities and may for this purpose summon the person who has submitted the criminal report.

(5) The public prosecutor shall dismiss the criminal report as provided for in Article 208 of the present Code, if the circumstances under paragraph 1 of the present article obtain, even after actions under paragraphs 2, 3 and 4 of the present article have been undertaken.

(6) The police, public prosecutor and other public entities have a duty to proceed cautiously in gathering or supplying information, taking care not to harm the dignity and reputation of the person to whom such information refers.

CHAPTER XXIV: PROVISIONAL ARREST AND POLICE DETENTION

Article 210

If a person is caught in the act of committing a criminal offence prosecuted *ex officio* or is being pursued, the police or any other person shall be authorized to arrest him or her provisionally even without a court order. The person deprived of his or her liberty by persons other than the police shall be immediately turned over to the police or, where that proves impossible, the police or the public prosecutor must be immediately notified. The police shall act in accordance with Article 211 and 212 of the present Code.

Article 211

The police may deprive a person of liberty if there are reasons for detention under Article 281 paragraph 1 of the present Code, but shall be obliged to bring him or her without delay to a pre-trial judge to rule on detention on remand.

Article 212

(1) Exceptionally the police can arrest and detain a person if:

1) There is a grounded suspicion that he or she has committed a criminal offence which is prosecuted *ex officio*;

2) Arrest and detention is necessary to establish the identity of the person, to check an alibi or to collect information and items of evidence for the criminal offence in question; and

3) There are reasons for detention under Article 281 paragraph 1 subparagraph 2 points (i) and (iii) of the present Code; or there is good reason to fear that the person might destroy evidence of the criminal offence (Article 281 paragraph 1 subparagraph 2, point (ii) of the present Code).

(2) The arrest and detention under paragraph 1 of the present article shall be authorized by the public prosecutor or, when due to exigent circumstances such authorization cannot be obtained prior to arrest, by the police who must inform the public prosecutor immediately after the arrest.

(3) Upon arrest, the arrested person shall be informed:

1) Orally of the rights set forth in Article 214 of the present Code; and

2) In writing of the other rights which he or she enjoys under the present Code.

(4) Detention under the present article may not exceed seventy-two hours from the time of arrest. On the expiry of that period the police shall release the detainee, unless a pre-trial judge has ordered detention on remand.

(5) As soon as possible after the arrest and no later than six hours from the time of the arrest, the public prosecutor or an authorized senior police officer shall issue to the arrested person a written decision on detention which shall include the first and last name of the arrested person, the place, date, and exact time of the arrest, the criminal offence of which he or she is suspected, the legal basis for the arrest and an instruction on the right of appeal.

(6) The arrested person shall have the right to appeal a decision under paragraph 5 of the present article to the pre-trial judge. The police and the public prosecutor have a duty to ensure that the appeal is delivered to the pre-trial judge. The appeal shall not stay execution of the decision. The pre-trial judge shall decide on the appeal within forty-eight hours of the arrest.

Article 213

(1) An arrested person has the right to the immediate assistance of defence counsel of his or her own choice upon arrest.

(2) If the arrested person does not engage a defence counsel and no one engages a defence counsel for him or her under Article 69 paragraph 6 of the present Code, he or she shall be provided with a defence counsel, in accordance with UNMIK Administrative Direction No. 2001/15 of 13 October 2001 Implementing Regulation No. 2001/28 on the Rights of Persons Arrested by Law Enforcement Authorities.

(3) The arrested person has the right to communicate confidentially with defence counsel orally and in writing. Communications between an arrested person and his or her defence counsel may be within sight but not within the hearing of a police officer.

(4) The right to the assistance of defence counsel may be waived in accordance with Article 69 paragraphs 3, 4 and 5 of the present Code.

(5) If the arrested person is suspected of terrorism or organized crime and there are grounds to believe that the defence counsel chosen by the arrested person is involved in the commission of the criminal offence or will obstruct the conduct of the investigation, the pre-trial judge may, upon the application of the public prosecutor, order that alternative defence counsel be appointed to represent the arrested person for a maximum period of seventy-two hours from the time of arrest.

Article 214

(1) An arrested person has the following rights:

1) To be informed about the reasons for the arrest, in a language that he or she understands;

2) To remain silent and not to answer any questions, except to give information about his or her identity;

3) To be given the free assistance of an interpreter, if he or she cannot understand or speak the language of the police;

4) To receive the assistance of defence counsel and to have defence counsel provided if he or she cannot afford to pay for legal assistance;

5) To notify or require the police to notify a family member or another appropriate person of his or her choice about the arrest; and

6) To receive a medical examination and medical treatment, including psychiatric treatment.

(2) If the arrested person is a foreign national, he or she has the right to notify or to have notified and to communicate orally or in writing with the liaison office or the diplomatic mission of the State of which he or she is a national or with the representative of a competent international organization, if he or she is a refugee or is otherwise under the protection of an international organization.

Article 215

(1) An arrested person has the right to notify or to require the police to notify a family member or another appropriate person of his or her choice about the arrest and the place of detention, immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change.

(2) When an arrested person has not reached the age of eighteen years, the police shall notify the legal representative of the arrested person about the arrest and the place of detention immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change. If such notification is impossible, would be detrimental to the interests of the arrested person or is expressly refused by the arrested person, the police shall notify the Centre for Social Work.

(3) When an arrested person displays signs of mental disorder or disability, the police shall notify a person nominated by the arrested person and the Centre for Social Work about the arrest and the place of detention immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change.

(4) Notification of a family member or another appropriate person in accordance with paragraph 1 of the present article may be delayed for up to twenty-four hours where the public prosecutor determines that the delay is required by the exceptional needs of the investigation of the case. There shall be no delay if the arrested person is under 18 years of age or displays signs of mental disorder or disability.

Article 216

(1) An arrested person has the right, upon request, to be examined by a doctor or dentist of his or her own choice as promptly as possible after his or her arrest and at any time during detention. If such doctor or dentist is not available, a doctor or dentist shall be designated by the police.

(2) An arrested person has the right to medical treatment, including psychiatric treatment, whenever necessary, upon the request of the arrested person or family members.

(3) The police may also appoint a doctor to conduct a medical examination or to provide medical treatment at any time in the case of physical injury or other apparent medical necessity. In case the arrested person refuses to undergo a medical examination or to accept medical treatment, the doctor shall render a final decision on the necessity of such examination or treatment, after due consideration of the rights of the arrested person.

(4) If an arrested person displays signs of mental illness, the police may immediately order an examination by a psychiatrist.

(5) The results of any medical examination or any medical treatment undertaken pursuant to the present article shall be duly recorded, and such records shall be made available to the arrested person and his or her defence counsel.

Article 217

(1) An arrested person shall be detained separately from sentenced persons or persons in detention on remand.

(2) Persons of different sex shall not be detained in the same room.

(3) A person detained for more than twelve hours shall be provided with three meals daily.

(4) In any period of twenty-four hours, an arrested person shall have the right to at least eight hours of uninterrupted rest, during which he or she shall not be examined and shall not be disturbed by the police in connection with the investigation.

Article 218

(1) During all examinations by the police, an arrested person has the right to the presence of defence counsel. If defence counsel does not appear within two hours of being informed of the arrest, the police shall arrange alternative defence counsel for him or her. Thereafter, if the alternative defence counsel does not appear within one hour of being contacted by the police, the arrested person may be examined only if the public prosecutor or the police determine that further delay would seriously impair the conduct of the investigation.

(2) Article 231, Article 232, Article 233 paragraphs 2 and 3, Article 234 and Article 235 of the present Code shall apply *mutatis mutandis* to the examination of the arrested person.

(3) There shall be short breaks in the examination of an arrested person at intervals of approximately two hours. A break may be delayed if there are reasonable grounds to believe that delay would:

1) Involve a risk of harm to persons or serious loss of, or damage to, property;

2) Unnecessarily prolong the person's detention or the conclusion of the examination; or

3) Otherwise prejudice the outcome of the investigation.

(4) During an examination an arrested person shall not be required to stand and shall not be denied food, water or any necessary medical attention.

Article 219

(1) The police shall keep a single written record of all actions undertaken with respect to an arrested person, including:

1) The personal data of the arrested person;

2) The reasons for the arrest;

3) The criminal offence of which he or she is suspected;

4) The authorization or notification of the public prosecutor;

5) The place, date, and exact time of the arrest;

6) The circumstances of the arrest;

7) Any decision of the public prosecutor or an authorized senior police officer regarding detention;

8) The place of detention;

9) The identity of the police officers and the public prosecutor concerned;

10) Oral and written notification to the arrested person of his or her rights, as provided for in Article 212 paragraph 3 of the present Code;

11) Information about the exercise of the rights, as provided for in Articles 214 of the present Code, especially the right to defence counsel and to notification of family members or other appropriate persons;

12) Visible injuries or other signs which suggest the need for medical help;

13) The conduct of a medical examination or the provision of medical treatment; and

14) Information about the provisional security search of the person and a description of objects taken from the person at the time of the arrest or during detention.

(2) The police shall keep a written record of any examination of the arrested person, including the time of beginning and concluding the examination and the identity of the police officer who conducted the examination and any other persons present. If the defence counsel was not present, this shall be duly noted.

(3) The written records under paragraph 1 of the present article shall be signed by the appropriate police officer and countersigned by the arrested person. If the arrested person refuses to sign the written records, the police authorities shall record such refusal and any explanation and append any comments offered by the arrested person orally or in writing.

(4) The written records under paragraphs 1 and 2 of the present article shall be made available to the arrested person and his or her defence counsel on their request and in a language that the arrested person understands.

(5) These records shall be preserved by the police for a period of ten years from the time of the official end of the criminal proceedings or the person's release from detention, whichever is later.

CHAPTER XXV: INITIATION AND DURATION OF AN INVESTIGATION

Article 220

(1) The public prosecutor shall initiate an investigation against a specified person, on the basis of a criminal report or other sources, if there is a reasonable suspicion that that person has committed a criminal offence which is prosecuted *ex officio*.

(2) During the investigation the public prosecutor shall ascertain not only inculpatory but also exculpatory circumstances and evidence, and shall ensure that evidence, which may not be available at the main trial, is taken.

(3) The aim of an investigation is to collect evidence and data necessary for deciding whether to file an indictment or to discontinue proceedings and to collect evidence which might be impossible or difficult to reproduce at the main trial.

(4) If the information from a criminal report forms the basis for a reasonable suspicion that a specific person has committed a criminal offence which is prosecuted *ex officio* or if at any time during the gathering of information from persons the police obtain knowledge that a specific person has committed a criminal offence which is prosecuted *ex officio*, such person shall be treated as a defendant and shall be entitled to the rights of a defendant under the present Code, even if a formal investigation has not yet been initiated.

Article 221

(1) The investigation shall be initiated by a ruling of the public prosecutor. The ruling shall specify the person against whom an investigation will be conducted, the time of the initiation of the investigation, a description of the act which specifies the elements of the criminal offence, the legal name of the criminal offence, the circumstances and facts warranting the reasonable suspicion of a criminal offence, and evidence and information already collected. A stamped copy of the ruling on the investigation shall be sent without delay to the pre-trial judge.

(2) The result of investigative actions (such as collection of evidence) shall be made part of the file on the investigation.

(3) The investigation shall be conducted and supervised by the public prosecutor.

(4) The public prosecutor may undertake investigative actions or authorize the judicial police to undertake investigative actions relating to the collection of evidence.

Article 222

(1) The investigation shall be conducted only in relation to the criminal offence and the defendant specified in the ruling on the initiation of the investigation.

(2) If it appears in the course of the investigation that the proceedings should be expanded to another criminal offence or against another person, the public prosecutor shall initiate a new investigation or expand the existing one. All this shall be noted in the record of the investigation, and the public prosecutor shall inform the pre-trial judge about this.

Article 223

(1) The public prosecutor may render a ruling to suspend the investigation if the defendant, after committing a criminal offence, has become afflicted with a temporary mental disorder or disability or some other serious disease, if he or she has fled or if there are other circumstances which temporarily prevent successful prosecution of the defendant.

(2) Before the investigation is suspended, all obtainable evidence regarding the criminal offence and the criminal liability of the defendant shall be collected.

(3) The public prosecutor shall resume the investigation after the obstacles that had caused suspension cease to exist.

(4) The public prosecutor shall make an official note in the record of the investigation of the time and reasons for suspending the investigation and of the time when it was resumed. The public prosecutor shall inform the pre-trial judge of this suspension.

(5) The time when the investigation was suspended shall not be taken into account in calculating the period of time for completing the investigation (Article 225 of the present Code).

Article 224

(1) The public prosecutor shall terminate the investigation if at any time it is evident from the evidence collected that:

1) There is no reasonable suspicion that a specific person has committed the indicated criminal offence;

2) The act reported is not a criminal offence which is prosecuted *ex officio*;

3) The period of statutory limitation for criminal prosecution has expired;

4) The criminal offence is covered by an amnesty or pardon; or

5) There are other circumstances that preclude prosecution.

(2) The public prosecutor shall within eight days of the termination of the investigation notify the injured party of this fact and the reasons for this (Article 62 of the present Code). The public prosecutor shall immediately inform the pre-trial judge about the termination of the investigation.

Article 225

(1) If the investigation is not completed within a period of six months, the public prosecutor shall submit to the pre-trial judge a written application supported by reasoning for an extension of the investigation.

(2) The pre-trial judge may authorize an extension of the investigation for up to six months if this is justified by the complexity of the case. The pre-trial judge may authorize another extension for up to six months for criminal offences punishable by at least five years of imprisonment. In exceptional cases the Supreme Court may authorize a further extension of up to six months.

(3) After receiving the application for the extension, the pre-trial judge shall, subject to paragraph 4 of the present article, notify the defendant and the injured party of the investigation and the public prosecutor’s request for its extension. The defendant and the injured party have the right to file written statements regarding the extension of the investigation within 3 days of notification.

(4) The public prosecutor may request in the application for the extension that the defendant and/or the injured party are not notified about the investigation and the request for extension if this is necessary for the successful completion of the investigation.

(5) A decision by the pre-trial judge regarding the extension can be appealed by the public prosecutor, the injured party or the defendant to the three-judge panel. If a decision of the pre-trial judge is appealed only by the injured party and his or her appeal is successful, the injured party shall be considered to have thereby assumed prosecution as a subsidiary prosecutor.

(6) Pending the decision on the extension of the investigation, investigative actions that call for urgent attention may be undertaken by the public prosecutor. The pre-trial judge shall be informed as soon as possible of such investigative actions undertaken.

(7) The public prosecutor shall make an official note in the record of the investigation of the time of the request for the extension of the investigation and of any investigative actions undertaken under the previous paragraph.

CHAPTER XXVI: SUSPENDING, TERMINATING OR REFRAINING FROM PROSECUTION OF LESS SERIOUS CRIMINAL OFFENCES

Article 226

(1) The public prosecutor may suspend the criminal prosecution of a criminal offence punishable by a fine or imprisonment of up to three years, with the consent of the injured party taking into account the nature, circumstances and character of the criminal offence and the perpetrator, if the defendant undertakes to behave as instructed by the public prosecutor and to fulfil certain obligations to relieve or remove the harmful consequences of the criminal offence, including:

1) The elimination of, or compensation for, damage;

2) The payment of a contribution to a public institution or a charity or fund for compensation for damage to victims of criminal offences; or

3) The performance of useful work.

(2) If the defendant fulfils the obligation within a prescribed period of time not exceeding six months, the criminal report shall be dismissed or the investigation shall be terminated.

(3) If a criminal report is dismissed or an investigation is terminated pursuant to paragraph 2 of the present article, the injured party shall not have the right to undertake or continue prosecution under Article 62 paragraphs 2 and 4 of the present Code. The public prosecutor shall inform the injured party of the loss of this right before the injured party gives consent under paragraph 1 of the present article.

(4) If the defendant fails to act in accordance with his or her undertaking under paragraph 1 of the present article, the public prosecutor may recommence the prosecution of the criminal offence.

(5) The present article shall not apply in cases of domestic or sexual violence.

Article 227

The public prosecutor shall not be obliged to initiate a criminal prosecution or may abandon prosecution:

1) If the criminal law provides that the court may waive the punishment of a perpetrator of a criminal offence and the public prosecutor determines that in view of the actual circumstances of the case a judgment alone without a criminal sanction is not necessary; or

2) If the perpetrator of a criminal offence punishable by a fine or imprisonment of up to one year expresses genuine remorse over the criminal offence and has prevented harmful consequences or compensated for damage and the public prosecutor determines that in view of the actual circumstances of the case a criminal sanction would not be justified.

CHAPTER XXVII: MEDIATION PROCEDURE

Article 228

(1) The public prosecutor may refer the criminal report on a criminal offence punishable by a fine or by imprisonment of up to three years for mediation. Before so doing, the public prosecutor shall take account of the type and nature of the act, the circumstances in which it was committed, the personality of the perpetrator and his or her prior convictions for the same criminal offence or for other criminal offences, as well as his or her degree of criminal liability.

(2) The mediation shall be conducted by an independent mediator. The mediator shall be obliged to accept a case referred by the public prosecutor and shall be obliged to take measures to ensure the contents of the agreement are proportionate to the seriousness and consequences of the act.

(3) An agreement may only be reached through mediation with the consent of the defendant and the injured party.

(4) On receiving notification that an agreement has been reached, the public prosecutor shall dismiss the criminal report. The mediator is obliged to inform the public prosecutor of a failure to reach an agreement and the reasons for such failure. The length of time for reaching an agreement may not exceed three months.

(5) If a criminal report is dismissed pursuant to paragraph 4 of the present article, the injured party shall not have the right to undertake or continue prosecution under Article 62 paragraphs 2 and 4 of the present Code. The mediator shall inform the injured party of the loss of this right before the injured party consents to the agreement.

(6) An Administrative Direction shall set forth detailed procedures on conducting mediation.

CHAPTER XXVIII: INVESTIGATIVE ACTIONS

1. EXAMINATION OF THE DEFENDANT

Article 229

The defendant shall be examined, at the latest, prior to the conclusion of the investigation unless the proceedings result in termination. In simple matters, it shall be sufficient to give the defendant an opportunity to respond in writing.

Article 230

The defendant shall be obliged to appear before the public prosecutor upon being summoned. Article 269 paragraphs 2 through 5 of the present Code shall apply *mutatis mutandis*. The defendant may appeal to the pre-trial judge to decide on the lawfulness of his or her being made to appear before the public prosecutor.

Article 231

(1) The examination of the defendant shall be conducted by the public prosecutor. The public prosecutor may entrust the examination to the judicial police or, in exceptional cases, to the regular police.

(2) Before any examination, the defendant, whether detained or at liberty, shall be informed of:

1) The criminal offence with which he or she has been charged;

2) The right to remain silent and not to answer any questions, except to give information about his or her identity;

3) The right to be given the free assistance of an interpreter if he or she cannot understand or speak the language of the person conducting the examination;

4) The right to receive the assistance of defence counsel and to consult with him or her prior to as well as during the examination;

5) The fact that his or her statements might be used as evidence before the court; and

6) The fact that he or she may request evidence to be taken in his or her defence.

If the defendant is in detention on remand, he or she shall also be informed before any examination of his or her right to have defence counsel provided if he or she cannot afford to pay for legal assistance.

(3) The defendant has the right to consult with his or her defence counsel prior to as well as during the examination.

(4) An examination of the defendant by the police or public prosecutor when acting under the present article may be audio- or video-recorded in accordance with Article 90 of the present Code. In cases where this is impossible in practice, a written record of the examination shall be made in accordance with Articles 87, 88 and 89 of the present Code and the record shall specify the reasons why the examination could not be audio- or video-recorded.

Article 232

(1) The defendant shall be examined through an interpreter in instances provided for by the present Code.

(2) If the defendant is deaf or mute, the examination shall be conducted through a qualified sign language interpreter or in writing. If the examination cannot be carried out in that way, a person who knows how to communicate with the defendant shall be invited to act as interpreter, unless there is a conflict of interest.

(3) If the interpreter has not taken an oath beforehand, he or she shall take an oath that he or she shall faithfully interpret the questions which are put to the defendant and the statements which he or she shall make.

(4) The provisions of the present Code on expert witnesses shall apply, where appropriate, to interpreters.

Article 233

(1) At the first examination, the defendant should be asked to provide his or her first name and surname and nickname, if any; the name and surname of his or her parents and the maiden name of his or her mother; his or her place of birth and place of residence; the day, month and year of his or her birth; his or her personal identification number; his or her nationality and citizenship; his or her occupation and family conditions; whether he or she is literate; his or her education; his or her personal income and his or her financial position; whether criminal proceedings against him or her for some other criminal offence are in progress; and if he or she is a minor, the identity of his or her legal representative. He or she shall be informed of the obligation to report any change in address or an intended change of the place of current residence.

(2) The defendant shall be examined orally. He or she may be permitted to make use of his or her notes during the examination.

(3) The examination should give the defendant an opportunity to dispel the grounds for suspicion against him or her and to assert the facts that are in his or her favour.

Article 234

(1) The examination shall be conducted with full respect for the dignity of the defendant.

(2) The defendant shall be asked questions in a clear, distinct and precise manner. Questions to the defendant must not proceed from the assumption that the defendant has admitted something he or she has not admitted.

(3) The prohibitions under paragraph 2 of the present article shall apply irrespective of the defendant's consent.

(4) Objects which are related to the criminal offence or which serve as evidence shall be presented to the defendant for recognition, after he or she has first described them. If these objects cannot be brought, the defendant may be taken to the place where they are located.

Article 235

If the examination of the defendant was conducted in violation of the provisions of Article 155 paragraph 1, Article 231 paragraphs 2 and 3 or Article 234 paragraph 2 of the present Code, the statements of the defendant shall be inadmissible.

Article 236

In order to clarify certain technical or other expert issues which arise in relation to evidence which has been collected or at the examination of the defendant or in the course of undertaking other investigative actions, the public prosecutor may ask a specialist or a specialized institution to give him or her a necessary explanation in regard to these issues. If the defendant or defence counsel is present when the explanation is given, he or she may request that the specialist give a more detailed explanation and that it be entered into the record.

2. WITNESSES AND EXPERT WITNESSES

Article 237

(1) Witnesses and expert witnesses shall be obliged to appear before the public prosecutor upon being summoned and to make statements or give opinions on the subject matter. Unless otherwise provided, the provisions of Chapters XX, XXI and XXII of the present Code concerning witnesses and expert witnesses shall apply *mutatis mutandis*. No oath shall be administered on the occasion of the examination of witnesses and expert witnesses before the public prosecutor.

(2) A *post mortem*, a physical examination, except in cases of Articles 192 paragraphs 2 through 4 and 205 of the present Code, a psychiatric examination, a molecular and genetic examination and a DNA analysis can only be ordered by a pre-trial judge unless the witness or the injured party grants consent to the police or the public prosecutor for such actions.

(3) If a witness or expert witness fails or refuses to appear without justification, the office of the public prosecutor shall have the authority to take the measures provided for in Articles 167 and 177 of the present Code. The imposition of a fine under Article 167 or 177 of the present Code or imprisonment under Article 167 of the present Code can only be ordered by the pre-trial judge upon the application of the public prosecutor.

(4) The public prosecutor may decide to invite the defendant, his or her defence counsel and the injured party to be present during the examination of the witness or expert witness.

3. EXTRAORDINARY INVESTIGATIVE OPPORTUNITY

Article 238

(1) The public prosecutor or the defendant may, on an exceptional basis, request the pre-trial judge to take testimony from a witness or request an expert analysis for the purpose of preserving evidence where there is a unique opportunity to collect important evidence or there is a significant danger that such evidence may not be subsequently available at the main trial. An appeal can be filed with the three-judge panel against the refusal of the pre-trial judge to take such testimony.

(2) In cases under paragraph 1 of the present article, the pre-trial judge shall take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defendant. The defendant and his or her defence counsel and the public prosecutor shall be present at the hearing for the taking of testimony. The injured party and his or her legal representative or authorized representative shall also be informed of the hearing and will have the right to attend. The taking of testimony before the pre-trial judge shall be conducted in accordance with the provisions of Chapters XX, XXI and XXII of the present Code regarding witnesses and expert witnesses.

(3) Article 165 shall apply, *mutatis mutandis*, to the examination of the witness and the expert witness.

4. APPLICATIONS OF THE DEFENDANT OR OF THE INJURED PARTY TO COLLECT EVIDENCE

Article 239

(1) During the investigation the injured party or the defendant may apply to the public prosecutor to collect certain evidence.

(2) The public prosecutor shall collect such evidence if there is a danger that the evidence will be lost or if such evidence may justify the release of the defendant from detention on remand, or there are other justified reasons to collect such evidence. If the public prosecutor rejects the application to collect evidence, he or she shall render a decision supported by reasoning and notify the injured party or the defendant. The injured party or the defendant may appeal such decision to the pre-trial judge.

5. SEARCH AND TEMPORARY CONFISCATION

Article 240

(1) A pre-trial judge may order a search of a house and other premises and property of a specific person if there is a grounded suspicion that such person has committed a criminal offence prosecuted *ex officio* and there is a sound probability that the search will result in the arrest of such person or in the discovery and confiscation of evidence important for the criminal proceedings.

(2) A pre-trial judge may order a search of a house and other premises and property of a person not suspected of a criminal offence only in cases in which

1) There is a sound probability that the search will result in the arrest of a defendant; or

2) It is necessary to preserve evidence of a criminal offence or to confiscate specific objects which cannot be preserved or obtained without the search and there is a sound probability that such evidence or objects are in the premises or property to be searched.

(3) A pre-trial judge may order a personal search of a specific person if there is a sound probability that the search will result in the discovery of traces or confiscation of evidence of a criminal offence.

(4) A search order shall be issued in writing upon a written application of the public prosecutor or, in exigent circumstances, the judicial police.

(5) A search order shall contain: an identification of the person against whom the order is directed, a designation of the criminal offence in relation to which the order has been issued, an explanation of the basis for the grounded suspicion and sound probability in accordance with the present article, a description of the objects sought in the search, a separate description of the person, premises or property to be searched and other information relevant for the implementation of the search.

(6) The provisions of this and other Articles that refer to the search of a house and other premises and property shall also apply *mutatis mutandis* to searches of concealed spaces in vehicles and other means of transportation.

Article 241

(1) A search order shall be executed by the judicial police with the necessary assistance of other police officers within forty-eight hours of the issuance of the order.

(2) The judicial police shall, as a rule, execute the search order between the hours of 06:00 and 22:00. Exceptionally, a search may be conducted outside these hours if it began within them and is not completed by 22:00 or if there are reasons under Article 245 of the present Code, or if the pre-trial judge determines that a delay could lead to the escape of the person being sought or to the destruction of traces or evidence of a criminal offence and specifically permits a search outside the hours provided for by the present paragraph.

Article 242

(1) Before beginning the search, the judicial police shall provide the order to the person against whom the order is directed and such person shall be informed that he or she has the right to contact a lawyer who has the right to be present during the search.

(2) If the person requests a lawyer to be present during the search, the judicial police shall postpone the search until the arrival of the lawyer, but no longer than two hours after the lawyer has been informed about the search. In the meantime the judicial police may restrict the movement of the person concerned and other persons in the premises that are about to be searched. In exigent circumstances the judicial police may begin the search even before the expiry of the time limit for the lawyer to arrive.

(3) Before beginning the search the judicial police shall ask the person to surrender voluntarily the person or the objects sought.

(4) Exceptionally, a search may start without the prior presentation of the order or the prior request for surrender of the person or objects sought if armed resistance is expected, or if the effectiveness of the search is likely to be undermined if it is not conducted instantly and without warning, or if a search is conducted on public premises.

Article 243

(1) During a search of a house or other premises the person whose house or other premises and property is being searched or a representative of such person shall have the right to be present.

(2) During a search of a person, a house or other premises, two adult persons shall be required to be present as witnesses. Before the search begins the witnesses shall be warned to observe closely how the search is conducted, and shall be informed of their right to make objections, if any, to the contents of the record of the search before it is signed.

(3) A search of a female person shall only be carried out by a female and only female persons shall be witnesses.

(4) The search of residential premises shall be carried out considerately, to avoid disturbing the peace. Locked premises, furniture or other objects may be opened forcibly only if their owner is not present or refuses to open them voluntarily. In opening these objects care should be taken to avoid unnecessary damage.

(5) A search of a person may include an intimate search which shall be conducted by a qualified medical doctor or nurse in accordance with the rules of medical science and with full respect for the person's dignity.

(6) If a search is conducted on the premises of a public entity, the head thereof shall be invited to attend the search.

(7) A record shall be made of each search of a person, house or premises. Such record shall be signed by the person who has been searched or whose premises or property have been searched, his or her lawyer if present during the search and persons whose presence is obligatory. When conducting a search, only the objects and documents related to the purpose of that particular search may be confiscated. The objects and documents confiscated shall be entered and accurately described in the record, and the same shall be indicated in the receipt, which shall be immediately given to the person whose objects or documents have been confiscated.

Article 244

If during a search of a person, house or premises objects are found which are not related to the criminal offence which justified the search but which point to another criminal offence prosecuted *ex officio*, these objects shall also be described in the record and confiscated, and a receipt of confiscation shall immediately be issued. A notification thereof shall immediately be sent to the public prosecutor so that he or she can initiate criminal proceedings. The objects confiscated shall be returned immediately if the public prosecutor finds that there are no grounds for criminal proceedings, nor any other legal ground for confiscating the objects.

Article 245

(1) Police may, if necessary and to the extent necessary, enter the house and other premises of a person and conduct a search without an order of the pre-trial judge if:

1) The person concerned knowingly and voluntarily consents to the search;

2) A person is calling for help;

3) A perpetrator caught in the act of committing a criminal offence is to be arrested after a pursuit;

4) Reasons of safety of people and property so require; or

5) A person against whom an order for arrest has been issued by the court is to be found in the house or other premises.

(2) In the instances under paragraph 1 of the present article a record shall not be made if no search has been conducted, but the person shall be given an official note indicating the reason for the entry of the house or other premises. If during the entry under paragraph 1 of the present article a search was also conducted, the provisions of Article 243 paragraphs 2 and 7 of the present Code shall apply.

(3) Exceptionally, in exigent circumstances, if a written order for a search cannot be obtained in time and there is a substantial risk of delay which could result in the loss of evidence or of danger to the lives or health of people, the judicial police may begin the search pursuant to the verbal permission of a pre-trial judge.

(4) Exceptionally, a search may be conducted without witnesses being present if their presence cannot be secured immediately and it would be dangerous to delay the beginning of the search. The reasons for conducting the search without the presence of witnesses shall be noted in the record.

(5) The police may conduct a search of a person without an order or the presence of witnesses when executing a ruling to compel a person to appear or when making an arrest, if there is a grounded suspicion that the person possesses a weapon or a tool for attack or that he or she will dispose of, hide or destroy objects which should be taken from him or her as evidence in criminal proceedings.

(6) If the police have conducted a search without a written judicial order they shall send a report to that effect to the public prosecutor and the pre-trial judge, if any pre-trial judge is assigned to the case, no later than twelve hours after the search.

Article 246

Evidence obtained by a search shall be inadmissible if:

1) The search was executed without an order from a pre-trial judge in breach of the provisions of the present Code;

2) The order of the pre-trial judge was issued in breach of the procedure provided for by the present Code;

3) The substance of the order of the pre-trial judge was in breach of the requirements of the present Code;

4) The search was implemented in breach of an order of the pre-trial judge;

5) Persons whose presence is obligatory were not present during the search (Article 243 paragraphs 1 and 2 of the present Code); or

6) The search was conducted in breach of Article 245 paragraphs 1, 3, 4 and 5 of the present Code.

Article 247

(1) Objects that can temporarily be confiscated are objects which are to be confiscated under the Provisional Criminal Code, which may prove to be evidence in criminal proceedings or which constitute material benefit obtained from the commission of a criminal offence and under the law may be confiscated.

(2) Objects that are temporarily confiscated shall be put into the custody and control of the public prosecutor.

(3) The custodian of objects that can be temporarily confiscated has a duty to hand them over at the request of the court. The court shall issue such request on the written application of the public prosecutor. If a custodian declines to hand over the objects, he or she may be fined under Article 85 paragraph 1 of the present Code; if after being fined he or she still refuses to hand them over, he or she may be imprisoned. The imprisonment shall last until the objects have been handed over or until the end of criminal proceedings, but no longer than one month. Such arrest and imprisonment may only be ordered by the court.

(4) An appeal against a ruling by which a fine was imposed or imprisonment was ordered shall be determined by the three-judge panel. An appeal against a ruling on imprisonment shall not stay the execution of the ruling.

(5) When objects are confiscated, an indication shall be given of where they were found and they shall be described. If necessary, the establishment of their identity shall be secured in some other way. A receipt of confiscation shall be issued for the objects confiscated.

Article 248

(1) The following objects shall not be subject to temporary confiscation:

1) Written communications between the defendant and persons who, according to the present Code, may not testify (Article 159 of the present Code) or are exempted from the duty to testify and have refused to do so (Article 160 of the present Code);

2) Notes by persons under Article 159 of the present Code concerning confidential information entrusted to them by the defendant; and

3) Other objects covered by the rights of the persons referred to in Articles 159 and 160 of the present Code.

(2) These restrictions shall apply only if these objects are in the custody of a person who cannot testify (Article 159 of the present Code) or is exempted from the duty to testify and has refused to do so (Article 160 of the present Code). Objects covered by the rights of persons referred to in Article 160 paragraph 1 subparagraph 5 of the present Code shall also not be subject to confiscation if they are in the custody of a hospital or other medical institution. The restrictions shall not apply to persons who may not testify (Article 159 of the present Code) or are exempted from the duty to testify and have refused to do so (Article 160 of the present Code), if such persons are suspected of incitement or complicity or obstruction

of justice or receiving stolen goods or where the objects concerned have been obtained by a criminal offence or have been used or are intended for use in perpetrating a criminal offence or where they emanate from a criminal offence.

Article 249

(1) Public entities may refuse to present and deliver files and other documents if they consider that disclosure of their contents would harm the general interest. If they refuse to do so, the final decision thereon shall be given by the three-judge panel.

(2) Business organizations and legal persons may request that information concerning their business be not published.

Article 250

(1) If files, including computer files, of evidentiary value are temporarily confiscated, a list of them shall be made. If that is not possible, they shall be put in an envelope and sealed. The owner of the files may put his or her stamp on the envelope.

(2) The person whose files or documents have been confiscated shall be invited to be present when the envelope is opened. If he or she does not respond to the summons or if he or she is absent, the envelope shall be opened in his or her absence.

(3) When the files are being examined, care must be taken that unauthorized persons do not become acquainted with their contents.

Article 251

Objects temporarily confiscated during criminal proceedings shall be returned to the owner or possessor if the proceedings are suspended or terminated and there are no grounds for them to be confiscated (Article 489 of the present Code). If the suspension of the criminal proceedings is due to the failure of the defendant to appear or the mental incapacity of the defendant, or if there is a reasonable likelihood that a suspended investigation will be likely to resume, the public prosecutor may request and the pre-trial judge or the presiding judge may permit a delay in the return of the confiscated objects upon good cause.

Article 252

(1) If an object found on the defendant belongs to another person who is not known, the body conducting the criminal proceedings shall describe that object and publish the description on the notice-board of the municipal assembly in the territory where the defendant lives and in the territory where the criminal offence was committed. In the notice the owner shall be summoned to come forward within a period of one year from the day of publication of the notice, because otherwise the object will be sold. The money obtained by the sale shall be transferred to the budget.

(2) If the objects are of considerable value, the notice may also be published in the daily newspapers.

(3) If the object is perishable or if keeping it involves considerable expense, it shall be sold according to the provisions applicable to enforcement proceedings and the proceeds shall be transferred to a bank for safekeeping.

(4) Paragraph 3 of the present article shall also apply to objects belonging to a defendant who has fled or to an unknown criminal offender.

Article 253

(1) If within one year no person claims the object or the proceeds from its sale, the court shall render a ruling that the object shall become the property of the competent public entity or that the proceeds from the sale shall be transferred to the budget.

(2) The owner shall have the right to seek the restitution of the object or of the proceeds from its sale in civil litigation. The period of statutory limitation for this right shall run from the day of publication of the notice.

6. SITE INSPECTION AND RECONSTRUCTION

Article 254

(1) The public prosecutor or the court can order a site inspection or a reconstruction to examine the evidence collected or to clarify facts that are important for criminal proceedings.

(2) Such site inspection or reconstruction shall be conducted by the court, by the public prosecutor or by the police. The public prosecutor and police may conduct such site inspection or reconstruction for their own knowledge to assist in their determination of credibility or fact-finding, but in such case, where notice to the defendant or his or her defence counsel is not given, the results are inadmissible in court. The public prosecutor may repeat such site inspection or reconstruction with notice as required by the present article. If so, the results shall then be admissible.

(3) The defendant and his or her defence counsel have the right to be present at the site inspection or reconstruction.

(4) A reconstruction shall be conducted by recreating facts or situations under the circumstances in which on the basis of the evidence taken the event had occurred. If facts or situations are presented differently in testimonies of individual witnesses, the reconstruction of the event shall as a rule be carried out with each of the witnesses separately.

(5) In reconstructing an event care must be taken not to violate law and order, offend public morals or endanger the lives or health of people.

(6) In conducting a site inspection or a reconstruction, the assistance of specialists in forensic science, traffic and other fields of expertise may be obtained to protect or describe

the evidence, make the necessary measurements and recordings, draw sketches or gather other information.

(7) An expert witness may also be invited to attend a site inspection or reconstruction, if his or her presence is considered of service by the public prosecutor or the court.

7. IDENTIFICATION OF PERSONS AND OBJECTS

Article 255

(1) Where there is a need to establish whether a witness can recognize a person or an object, such witness shall first be asked to provide a description of and indicate the distinctive features of such person or object.

(2) The witness shall then be shown the person with other persons unknown to the witness, or their photographs, or the object with other objects of the same kind, or their photographs.

(3) The witness shall be instructed that he or she is under no obligation to select any person or object or photograph, and that it is just as important to state that he or she does not recognize a person, object or photograph as to state that he or she does.

CHAPTER XXIX: COVERT AND TECHNICAL MEASURES OF SURVEILLANCE AND INVESTIGATION

Article 256

For the purposes of the present Chapter:

1) A covert or technical measure of surveillance or investigation ("a measure under the present Chapter") means any of the following measures:

   i) Covert photographic or video surveillance;

   ii) Covert monitoring of conversations;

   iii) Search of postal items;

   iv) Interception of telecommunications;

   v) Interception of communications by a computer network;

   vi) Controlled delivery of postal items;

   vii) Use of tracking or positioning devices;

   viii) A simulated purchase of an item;

ix) A simulation of a corruption offence;

x) An undercover investigation;

xi) Metering of telephone-calls; and

xii) Disclosure of financial data.

2) The term "covert photographic or video surveillance" means the monitoring, observing, or recording of persons, their movements or their other activities by a duly authorized judicial police officer by means of photographic or video devices, without the knowledge or consent of at least one of the persons subject to the measure;

3) The term "covert monitoring of conversations" means the monitoring, recording, or transcribing of conversations by a duly authorized judicial police officer by technical means without the knowledge or consent of at least one of the persons subject to the measure;

4) The term "search of postal items" means the search by a duly authorized judicial police officer of letters and other postal items which may include the use of X-ray equipment;

5) The term "controlled delivery of postal items" means the delivery by a duly authorized judicial police officer of letters and other postal materials;

6) The term "use of tracking or positioning devices" means the use by a duly authorized judicial police officer of devices, which identify the location of the person or object to whom it is attached;

7) The term "a simulated purchase of an item" means an act of buying from a person suspected of having committed a criminal offence an item which may serve as evidence in criminal proceedings or a person suspected to be a victim of the criminal offence of Trafficking in Persons, as defined in Article 139 of the Provisional Criminal Code;

8) The term "a simulation of a corruption offence" means an act, which is the same as a criminal offence related to corruption, except that it has been performed for the purpose of collecting information and evidence in a criminal investigation;

9) The term "an undercover investigation" means the planned interaction of a duly authorized judicial police officer who is not identifiable as a duly authorized judicial police officer or of a person acting under the supervision of a duly authorized judicial police officer with persons suspected of having committed a criminal offence;

10) The term "metering of telephone calls" means obtaining a record of telephone calls made from a given telephone number;

11) The term "disclosure of financial data" means obtaining information from a bank or another financial institution on deposits, accounts or transactions;

12) The term "authorizing judicial officer" means the pre-trial judge or public prosecutor under whose authority an order under the present Chapter has been issued; and

13) The term "subject of an order" means the person against whom a measure under the present Chapter has been ordered.

Article 257

(1) Covert photographic or video surveillance, covert monitoring of conversations in public places, metering of telephone calls or disclosure of financial data may be ordered against a particular person if:

1) There is a grounded suspicion that such person has committed a criminal offence which is prosecuted *ex officio* or, in cases in which attempt is punishable, has attempted to commit a criminal offence which is prosecuted *ex officio*; and

2) The information that could be obtained by the measure to be ordered would be likely to assist in the investigation of the criminal offence and would be unlikely to be obtained by any other investigative action without unreasonable difficulty or potential danger to others.

(2) Metering of telephone calls or disclosure of financial data may also be ordered against a person other than the suspect, where the criteria in paragraph 1 subparagraph 1 of the present article apply to a suspect and the precondition in paragraph 1 subparagraph 2 of the present article is met and if there is a grounded suspicion that:

1) Such person receives or transmits communications originating from or intended for the suspect or participates in financial transactions of the suspect; or

2) The suspect uses such person's telephone.

(3) Covert monitoring of conversations in private places, search of postal items, interception of telecommunications, interception of communications by a computer network, controlled delivery of postal items, the use of tracking or positioning devices, a simulated purchase of an item, a simulation of a corruption offence or an undercover investigation may be ordered against a particular person if:

1) There is a grounded suspicion that such person has committed or, in cases in which attempt is punishable, has attempted to commit:

(i) A criminal offence punishable by imprisonment of at least four years; or

(ii) One or more of the following criminal offences, if committed in the furtherance of terrorism or organized crime:

(1) Coercion, as defined in Article 160 of the Provisional Criminal Code;

(2) Causing a General Danger, as defined in Article 291 of the Provisional Criminal Code;

(3) Showing Pornographic Material to Persons under the Age of Sixteen Years, as defined in Article 203 of the Provisional Criminal Code;

(4) A criminal offence related to forgery of documents and money, as defined in Articles 239, 244 and 245 of the Provisional Criminal Code;

(5) Prohibited Trade, as defined in Article 246 of the Provisional Criminal Code;

(6) Unjustified Acceptance of Gifts, as defined in Article 250 of the Provisional Criminal Code;

(7) Unjustified Giving of Gifts, as defined in Article 251 of the Provisional Criminal Code;

(8) Intrusion into Computer Systems, as defined in Article 264 of the Provisional Criminal Code;

(9) False statements, as defined in Article 307 of the Provisional Criminal Code;

(10) Trading in Influence, as defined in Article 345 of the Provisional Criminal Code;

(11) Criminal Association, as defined in Article 26 of the Provisional Criminal Code;

(12) Unauthorized Ownership, Control, Possession or Use of Weapons, as defined in Article 328 of the Provisional Criminal Code;

(13) Non-compliance with Weapon Authorization Requirements, as defined in Article 329 of the Provisional Criminal Code;

(14) Accepting Bribes, as defined in Article 343 of the Provisional Criminal Code;

(15) Giving Bribes, as defined in Article 344 of the Provisional Criminal Code;

(16) Unlawful Deprivation of Liberty, as defined in Article 162 of the Provisional Criminal Code; or

(17) Unauthorized Border or Boundary Crossings, as defined in Article 114 of the Provisional Criminal Code; and

2) The information that could be obtained by the measure to be ordered would be likely to assist in the investigation of the criminal offence and would be unlikely to be obtained by any other investigative action without unreasonable difficulty or potential danger to others.

(4) The search of postal items, the interception of telecommunications or the interception of communications by a computer network may also be ordered against a person other than the suspect, where the criteria in paragraph 3 subparagraph 1 of the present article apply to a suspect and the precondition in paragraph 3 subparagraph 2 of the present article is met and if there is a grounded suspicion that:

1) Such person receives or transmits communications originating from or intended for the suspect; or

2) The suspect is using such person's telephone or point of access to a computer system.

Article 258

(1) A public prosecutor may issue an order for each of the following measures:

1) Covert photographic or video surveillance in public places;

2) Covert monitoring of conversations in public places;

3) An undercover investigation: or

4) Metering of telephone calls.

(2) A pre-trial judge may issue an order for each of the following measures on the basis of an application by a public prosecutor:

1) Covert photographic or video surveillance in private places;

2) Covert monitoring of conversations in private places;

3) Search of postal items;

4) Interception of telecommunications;

5) Interception of communications by a computer network;

6) Controlled delivery of postal items;

7) Use of tracking or positioning devices;

8) A simulated purchase of an item;

9) A simulation of a corruption offence; or

10) Disclosure of financial data.

(3) An application for one of the measures provided for in paragraph 1 or 2 of the present article shall be made in writing and shall include the following information:

1) The identity of the duly authorized judicial police officer or the public prosecutor making the application;

2) A complete statement of the facts relied on by the applicant to justify his or her belief that the relevant criteria in Article 257 are satisfied; and

3) A complete statement of any previous application known to the applicant involving the same person and the action undertaken by the authorizing judicial officer on such application.

(4) In emergency cases, if the delay that would result from a pre-trial judge issuing an order under paragraph 2 of the present article would jeopardize the security of investigations or the life and safety of an injured party, witness, informant or their family members, a public prosecutor may issue a provisional order for one of the measures provided for in paragraph 2 of the present article. Such provisional order ceases to have effect if it is not confirmed in writing by a pre-trial judge within twenty-four hours of issuance. When confirming the provisional order of a public prosecutor, the pre-trial judge shall make a written determination as to its lawfulness *ex officio*. A public prosecutor may not use his or her authority under this paragraph to issue an order pursuant to Article 259 paragraphs 3 or 5 of the present Code.

Article 259

(1) An order for a measure under the present Chapter shall be in writing and shall specify:

1) The name and address of the subject or subjects of the order;

2) The nature of the measure;

3) The grounds for the order;

4) The period within which the order shall have effect, which shall not exceed 60 days from the date of the issuance of the order; and

5) The agency of the judicial police authorized to implement the measure and the officer responsible for supervising such implementation.

(2) An order for a measure under the present Chapter shall require that duly authorized judicial police officers provide the authorizing judicial officer a report on the implementation of the order at 15 day intervals from the date of the issuance of the order.

(3) An order for covert photographic or video surveillance in private places, monitoring of conversations in private places, interception of telecommunications, interception of communications by a computer network or the use of tracking or positioning devices may

authorize duly authorized judicial police officers to enter private premises if a pre-trial judge determines that such entry is necessary to activate or disable the technical means for the implementation of such measures. If duly authorized judicial police officers enter private premises pursuant to an order under this paragraph, their actions in the private premises shall be limited to those specified in the order.

(4) An order for the metering of telephones or the interception of communications by a computer network shall include all the elements for the identification of each telephone or point of access to a computer network to be intercepted. Except as provided in paragraph 5 of the present article, an order for the interception of telecommunications shall include all the elements for the identification of each telephone to be intercepted.

(5) Upon the application of a public prosecutor, an order for the interception of telecommunications may include only a general description of the telephones which may be intercepted, where a three-judge panel of the competent District Court has determined that there is a grounded suspicion that:

1) The suspect is using various telephones so as to avoid surveillance by duly authorized judicial police officers; and

2) A telephone or telephones, as described in the order, are being used or are about to be used by the suspect.

(6) If an order for the interception of telecommunications is issued by a three-judge panel of a District Court pursuant to paragraph 5 of the present article,

1) The duly authorized judicial police officers after implementing the order in respect of a particular telephone shall promptly inform the three-judge panel in writing of the relevant facts, including the number of the telephone;

2) The order may not be used to intercept the telecommunications of a person who is not the suspect; and

3) The duration of the order is limited to 15 days and may be renewed up to a total period of 90 days from the date of issuance of the order.

(7) An order for the search of postal items or for the controlled delivery of postal items shall designate the address on the postal items to be searched or delivered. Such address shall be that of the subject or subjects of the order.

(8) An order for interception of telecommunications, interception of communications by a computer network, metering of telephone calls, search of postal items, controlled delivery of postal items or disclosure of financial data shall include as an annex a separate written instruction to persons other than duly authorized judicial police officers whose assistance may be necessary for the implementation of the order. Such written instruction shall be addressed to the director or the official in charge of the telecommunications system, computer network, postal service, bank or other financial institution and shall specify only the information, which is required for assistance in the implementation of the order.

Article 260

(1) A duly authorized judicial police officer shall commence the implementation of an order for a measure under the present Chapter no later than fifteen days after it has been issued.

(2) The implementation of an order shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under the present Chapter.

(3) If any of the conditions for ordering the measure cease to apply, duly authorized judicial police officers shall suspend implementation of the order and shall notify in writing the authorizing judicial officer. If the order was issued by a pre-trial judge, the judicial police officers shall also notify the public prosecutor. On receiving the written notification the authorizing judicial officer shall make a written determination as to whether the order shall be terminated.

(4) Duly authorized judicial police officers shall make a record of the time and date of the beginning and end of each action undertaken in implementing the order. The record shall state the names of the duly authorized judicial police officers who carried out each operation and the functions they performed. Such records shall be annexed to the report submitted to the authorizing judicial officer under Article 259 paragraph 2 of the present Code.

(5) With respect to the implementation of an order for interception of telecommunications, interception of communications by a computer network, search of postal items, controlled delivery of postal items and metering of telephone calls, persons responsible for the operation of telecommunications, computer-networks or postal services shall facilitate the implementation of an order under the supervision of the director or official in charge of the telecommunications system, computer network, or postal services.

(6) With respect to the implementation of an order for the disclosure of financial data, employees of a financial institution shall facilitate the implementation of such order under the supervision of the director or the official in charge of the financial institution.

(7) A duly authorized judicial police officer or a person acting under the supervision of a duly authorized judicial police officer may perform a simulated purchase of an item or a simulation of a corruption offence.

(8) With respect to the implementation of an order for an undercover investigation, a simulated purchase of an item or a simulation of a corruption offence:

1) A person implementing the order may not incite another person to commit a criminal offence which that person would not have committed but for the intervention of the person implementing the order; and

2) A person who, in accordance with the provisions of the present Chapter, implements such order does not commit a criminal offence.

(9) Criminal proceedings shall not be initiated in respect of a criminal offence which has been incited in breach of paragraph 8 of the present Article.

(10) With respect to the implementation of an order for the interception of telecommunications, interception of communications by a computer network or search of postal items, such an order may not be implemented in relation to communications between a suspect and his or her lawyer, unless there is a grounded suspicion that the suspect and the lawyer are engaged together in criminal activity which constitutes the grounds for the order.

Article 261

(1) The authorizing judicial officer may not issue a further written order for the extension of an order under the present Chapter, unless the preconditions for ordering a measure under the present Chapter, as set forth in Article 257 of the present Code, continue to apply and there is a reasonable explanation of the failure to obtain some or all of the information sought under the earlier order.

(2) An order for covert photographic or video-surveillance in public places, covert monitoring of conversations, search of postal items, interception of communications by a computer network, controlled delivery of postal items, use of tracking or positioning devices, an undercover investigation, metering of telephone-calls or disclosure of financial data may be extended for a maximum period of 60 days, which may be renewed up to a total period of 360 days from the date of the issuance of the order.

(3) An order for covert photographic or video-surveillance in private places or interception of telecommunications may be extended for a maximum of 60 days, which may be renewed for a further maximum period of 60 days.

(4) An order for a simulated purchase of an item or a simulation of a corruption offence shall only authorize a single purchase of an item or a single simulation of a corruption offence. An authorizing judicial officer may issue a further such order in respect of the same subject, if the preconditions for ordering a measure under the present Chapter, as set forth in Article 257 of the present Code, continue to apply and there is a reasonable explanation of the failure to obtain some or all of the information sought under the earlier order.

(5) The authorizing judicial officer may modify an order at any time, if he or she determines that such modification is necessary to ensure that the preconditions for ordering a measure under the present Chapter, as set forth in Article 257 of the present Code, still apply.

(6) The authorizing judicial officer may terminate an order at any time if he or she determines that the preconditions for ordering a measure, as set forth in Article 257 of the present Code, cease to apply.

(7) The extension of an order for a measure ordered by a pre-trial judge may only be ordered on the motion of a public prosecutor.

Article 262

(1) On the completion of the implementation of a measure under the present Chapter, the duly authorized judicial police officers shall send all documentary records, tapes and other items relating to the order and its implementation ("collected materials") to the public prosecutor.

(2) The collected materials shall be kept securely at all times.

(3) Postal items, which do not contain information that will assist in the investigation of a criminal offence, shall immediately be forwarded to the recipient.

Article 263

(1) The public prosecutor shall promptly inform in writing by registered mail each subject of an order that he or she has been the subject of that order, that he or she has a right to submit a complaint through the Head of the competent public entity in the field of judicial affairs to a Surveillance and Investigation Review Panel (Article 265 of the present Code) within six months of being informed and that he or she shall be permitted access to the collected materials, if:

1) There is no longer a grounded suspicion that the suspect has committed a criminal offence; or

2) The public prosecutor does not file an indictment within one year of the termination of an order for a measure under the present Chapter.

(2) A pre-trial judge may, upon the application of a public prosecutor, order that

1) The subject of the order shall not be permitted access in accordance with paragraph 1 of the present article to certain items in the collected materials, if the access of the subject of the order to such items would jeopardize the security of investigations or the life or safety of an injured party, witness, informant or their family members; or

2) The obligation to inform the subject of the order in accordance with paragraph 1 of the present article be delayed for a period of no more than one year if the performance of such obligation before the expiry of the prescribed period of time would jeopardize the security of investigations or the life or safety of an injured party, witness, informant or their family members.

(3) Exceptionally, a pre-trial judge may, upon the application of the public prosecutor, order in writing in respect of an informant or a duly authorized judicial police officer who has implemented a measure under this chapter that:

1) Names, addresses, place of work, profession or any other data or information in the collected materials that could be used to identify such person be expunged or omitted; or

2) Records in collected materials identifying such person not be disclosed;

if he or she determines that the items of evidence are not deemed exculpatory and revealing those items of evidence to the defendant or his or her defence counsel would jeopardize the security of investigations or the life or safety of such person or his or her family member. Such order may be issued before the subject of the order is informed in accordance with paragraph 1 of the present article.

(4) Nothing in the present article shall be construed in any way to prejudice the right of the defendant and the defence counsel to examine the record in accordance with the law, except that the defendant and the defence counsel may be denied access to certain data, information or records pursuant to paragraph 3 of the present article, on the condition that:

1) The items of evidence may not be the basis for a decision on detention or guilt; and

2) The order of the pre-trial judge under paragraph 3 of the present article shall be reviewed by the president of the trial panel at the beginning of the trial and after all the witnesses have been examined. If the president of the trial panel determines that such items of evidence are exculpatory, he or she shall notify the public prosecutor of the determination and with the agreement of the public prosecutor the items shall be placed on the court file. If the public prosecutor does not agree to place the items of evidence on the court file, the issue in respect of which they are deemed exculpatory by the president of the trial panel shall be interpreted in the favour of the defendant by the court.

(5) If the Head of the competent public entity in the field of judicial affairs does not receive a complaint from the subject of an order six months after the subject has been informed in accordance with paragraph 1 of the present article, the public prosecutor shall destroy the collected materials.

(6) The public prosecutor shall make a written record of the destruction of the collected materials under paragraph 5 of the present article.

Article 264

(1) Evidence obtained by a measure under the present Chapter shall be inadmissible, if the order for the measure and its implementation are unlawful.

(2) Evidence which has been obtained by covert monitoring of conversations in private places, search of postal items, interception of telecommunications, interception of communications by a computer network, the controlled delivery of postal items, the use of tracking or positioning devices, a simulated purchase of an item, a simulation of a corruption offence or an undercover investigation is only admissible in criminal proceedings in respect of a criminal offence which is specified in Article 257 paragraph 3 of the present Code.

(3) Before the indictment becomes final, the judge who conducts the proceedings on the confirmation of the indictment (Articles 309 through 318 of the present Code) shall review the admissibility of the collected materials *ex officio*. The provisions of Article 154 of the present Code shall apply *mutatis mutandis*. Upon receipt of the collected materials together with the indictment, the judge shall issue to the parties a written ruling as to whether the order for a measure under the present Chapter and its implementation have been lawful. A party may submit an appeal against that ruling to a three-judge panel within 72 hours of its service. The ruling that an order or its implementation is unlawful is final:

1) When the three-judge panel takes its decision on an appeal; or

2) On the expiry of the prescribed period of time for appeal against the ruling of the judge if no appeal has been submitted.

(4) When the ruling that an order or its implementation is unlawful is final, the judge who conducts the proceedings on the confirmation of the indictment shall remove all collected materials from the record and submit such materials through the Head of the competent public entity in the field of judicial affairs to a Surveillance and Investigation Review Panel for a decision on compensation.

Article 265

(1) A Surveillance and Investigation Review Panel ("Review Panel") shall:

1) Adjudicate on a complaint submitted under paragraph 5 of the present article in respect of a measure or an order for a measure under the present Chapter and decide on compensation where appropriate; or

2) Decide on compensation for the subject or subjects of an order under the present Chapter if a judge has made a final ruling under Article 264 paragraph 3 of the present Code that the order or its implementation is unlawful.

(2) A Review Panel shall be composed of three international judges who shall be assigned by the competent authority to adjudicate on an individual complaint or to decide on compensation following an individual ruling under Article 264 paragraph 3 of the present Code. None of the three members of the Review Panel shall be professionally connected with the subject of the complaint or the collected materials, which are the subject of the ruling under Article 264 paragraph 3 of the present Code.

(3) Judicial police officers and public prosecutors shall provide the Review Panel with such documents as the Review Panel shall require to perform its functions and shall, on request, provide oral testimony to the Review Panel.

(4) When a ruling of a judge that an order for a measure under the present Chapter or its implementation is unlawful is final, it is binding on the Review Panel.

(5) If a person considers that he or she has been the subject of a measure under the present Chapter, which is unlawful, or an order for a measure under the present Chapter, which is unlawful, he or she may submit a complaint through the Head of the competent public entity in the field of judicial affairs to a Review Panel for adjudication.

(6) If on adjudicating on a complaint the Review Panel finds that a measure under the present Chapter is unlawful or an order for such measure is unlawful, it may decide to:

1) Terminate the order, if it is still in force;

2) Order the destruction of the collected materials; and/or

3) Award compensation to the subject or subjects of the order.

Article 266

The judicial police may, where appropriate, seek the assistance of other authorities responsible for maintaining law and order and a secure environment in Kosovo in connection with the implementation of measures under the present Chapter.

Article 267

The provisions of the present Chapter are without prejudice to the powers granted to official persons under the applicable law to conduct surveillance and investigation when providing customs and other related services.

CHAPTER XXX: MEASURES TO ENSURE THE PRESENCE OF THE DEFENDANT, TO PREVENT RE-OFFENDING AND TO ENSURE SUCCESSFUL CONDUCT OF THE CRIMINAL PROCEEDINGS

1. GENERAL PROVISIONS

Article 268

(1) The measures which may be used to ensure the presence of the defendant, to prevent re-offending and to ensure successful conduct of the criminal proceedings are:

1) Summons;

2) Order for arrest;

3) Promise of the defendant not to leave his or her place of current residence;

4) Prohibition on approaching a specific place or person:

5) Attendance at a police station:

6) Bail;

7) House detention; and

8) Detention on remand.

(2) In deciding which measure to apply, the court shall be obliged to take account of the conditions specified for the individual measures and to ensure that it does not apply a more severe measure if a less severe measure would suffice.

(3) These measures shall be terminated when the reasons that necessitated them cease to exist or shall be replaced by more lenient measures if the conditions are met for this.

(4) The decisions regarding these measures shall be made by the pre-trial judge before the indictment has been filed and by the presiding judge after the indictment has been filed, unless provided otherwise by the present Code.

2. SUMMONS

Article 269

(1) The presence of the defendant in the proceedings shall be ensured by serving a summons. A summons shall be sent to the defendant by the court.

(2) A summons shall be sent to the defendant in the form of a sealed letter containing: the name and address of the court sending the summons; the name and surname of the defendant; the designation of the criminal offence with which he or she is charged; the place, day and hour at which he or she is to appear; an indication that he or she is being summoned as the defendant; a warning that he or she will be compelled to appear if he or she fails to appear; and the official stamp and name of the judge who issues the summons.

(3) When summoned for the first time, the defendant shall be advised in the summons of his or her right to engage a defence counsel and of the right of the defence counsel to attend his or her examination.

(4) The defendant shall immediately notify the court of any change in address or the intention to change the place of current residence. The defendant shall be informed of this obligation on the occasion of the first examination or the serving of an indictment, summary indictment or a private charge and at the same time he or she shall be warned of the consequences of non-compliance as provided for by the present Code.

(5) If by reason of an illness or some other insurmountable obstacle the defendant is unable to comply with the summons, he or she shall be examined at the place where he or she is found or shall be transported to the court building or another place where the proceedings are taking place or the examination shall be postponed.

3. ORDER FOR ARREST

Article 270

(1) A pre-trial judge or a presiding judge may issue an order for arrest *ex officio*, upon the application of the public prosecutor or, in exigent circumstances, upon the application of the police if the conditions under Article 281 paragraph 1 of the present Code exist, or if a defendant, after being duly summoned, fails to appear and to justify his or her absence or if the summons could not be duly delivered and it is evident from the circumstances that the defendant is avoiding the receipt of the summons.

(2) The order for arrest shall be issued in writing and shall contain: the name and surname of the defendant and other personal data known to the judge; the designation of the criminal offence with which he or she is charged and an indication of the pertinent provision of the

Provisional Criminal Code and of the grounds on which the order is issued; and the official stamp and signature of the judge who orders the arrest.

(3) The order for arrest shall be executed by the police.

(4) The police officer in charge of executing the order shall serve the order on the defendant and ask the defendant to accompany him or her. If the defendant refuses to comply, the police officer shall compel him or her to appear.

(5) An order for the compulsory appearance of police officers or guards in an institution in which persons are kept in detention shall be executed through the intermediary of their command or warden.

(6) At the time of the arrest, the person shall be informed of the reasons for the arrest in a language which he or she understands and of his or her rights under Article 214 of the present Code.

(7) An arrested person shall, immediately after the arrest, be brought before the judge who issued the order.

4. PROMISE OF THE DEFENDANT NOT TO LEAVE HIS OR HER PLACE OF CURRENT RESIDENCE

Article 271

(1) The court may seek a promise from the defendant not to go into hiding, nor to leave his or her place of current residence without the permission from the court, if there is a grounded suspicion that he or she has committed a criminal offence and there are reasons to suspect that the defendant may go into hiding or leave for an unknown destination or leave Kosovo during the course of criminal proceedings. The promise of the defendant shall be written down in the record.

(2) The travel document of a defendant obligated by the promise under paragraph 1 of the present article may be temporarily confiscated. An appeal against a ruling to confiscate temporarily a travel document shall not stay execution.

(3) On giving such promise, the defendant shall be warned that the court may order detention on remand if he or she violates the promise.

5. PROHIBITION OF APPROACHING A SPECIFIC PLACE OR PERSON

Article 272

(1) The court may prohibit the defendant from approaching a specific place or person, if:

1) There is a grounded suspicion that the defendant has committed a criminal offence;

2) The circumstances under Article 281 paragraph 1 subparagraph 2 Items (ii) or (iii) of the present Code obtain; and

3) Such prohibition can decrease the risk that the defendant will destroy evidence of the criminal offence, influence witnesses, co-perpetrators or accessories after the fact, repeat the criminal offence, complete an attempted criminal offence or commit a threatened criminal offence.

(2) The court shall decide on a measure under the present article in a ruling supported by reasoning. The ruling must contain the justification for determining that the conditions under paragraph 1 of the present article are met and that there is a need for this measure.

(3) The court shall stipulate in the ruling an appropriate distance from the specific place or person which the defendant shall respect and may not intentionally cross.

(4) The ruling shall be served on the defendant and, where applicable, a copy shall be served on the person protected under the measure.

(5) The court shall order detention on remand if the defendant violates the ruling. The defendant must always be informed of the consequences of non-compliance in advance.

(6) If the person protected under the measure intentionally violates the distance that the defendant is obligated to respect, the court may punish the protected person by a fine provided for in Article 85 of the present Code.

(7) Unless otherwise provided in the present article, the provisions of the present Code concerning detention on remand shall apply *mutatis mutandis* to the ordering, duration, extension and termination of the measure under the present article.

(8) The extension of a measure under the present article before the indictment is filed shall be decided by the pre-trial judge *ex officio* or upon the application of the public prosecutor.

6. ATTENDANCE AT POLICE STATIONS

Article 273

(1) The court may order that the defendant must periodically appear at a specified time at the police station in the area where the defendant has permanent or current residence or where the defendant happens to be at the time of the order, if:

1) There is a grounded suspicion that the defendant has committed a criminal offence; and

2) There are grounds to suspect that the defendant will go into hiding or leave for an unknown destination or leave Kosovo.

(2) The court shall decide on a measure under the present article in a ruling supported by reasoning. The ruling must contain the justification for determining that the conditions under paragraph 1 of the present article are met and that there is a need for this measure.

(3) The ruling shall be served on the defendant and a copy shall be sent to the relevant police station on the territory where the measure is to be implemented.

(4) The court may order detention on remand, if the defendant violates the ruling. The defendant must always be informed of the consequences of non-compliance in advance.

(5) Unless otherwise provided in the present article, the provisions of the present Code concerning detention on remand shall apply *mutatis mutandis* to the ordering, duration, extension and termination of the measure under the present article.

(6) The extension of a measure under the present article before the indictment is filed shall be decided by the pre-trial judge *ex officio* or upon the application of the public prosecutor.

(7) The travel document of a person subject to a ruling under the present article may be temporarily confiscated. An appeal against the ruling to confiscate temporarily a person's travel document shall not stay execution.

7. BAIL

Article 274

(1) The court may order that the defendant remain at liberty on bail or be released on bail from detention on remand, if:

1) There is a grounded suspicion that the defendant has committed a criminal offence;

2) The only basis for detention on remand is a fear that the defendant may flee; and

3) The defendant has promised that he or she will not go into hiding or leave his or her place of current residence without permission.

(2) The court may also order by a ruling that the defendant remain at liberty on bail or be released on bail from detention on remand, if:

1) There is a grounded suspicion that the defendant has committed a criminal offence;

2) The defendant is not suspected of a criminal offence punishable by imprisonment of at least five years under Chapters XIII, XIV, XV, XIX, XX, XXV, XXVII and XXVIII of the Provisional Criminal Code;

3) The only basis for detention on remand is a risk that the defendant will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit; and

4) The defendant has promised not to repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit.

(3) The bail ordered by the court shall be provided by the defendant or another person on his or her behalf.

Article 275

(1) The court shall decide on the measure under Article 274 of the present Code in a ruling supported by reasoning. The ruling must contain the justification for determining that the conditions under Article 274 of the present Code are met and that there is a need for this measure.

(2) The ruling on bail shall be rendered by the pre-trial judge and, after the indictment has been filed, by the presiding judge of the trial panel.

(3) The ruling by which bail is granted and the ruling by which it is cancelled shall be rendered after hearing the opinion of the public prosecutor, if the criminal offence is being prosecuted *ex officio*, and the opinion of the defendant or the defence counsel.

(4) The ruling shall be served on the defendant.

(5) The travel document of a person subject to a ruling on bail may be temporarily confiscated. An appeal against the ruling to confiscate temporarily a person’s travel document shall not stay execution.

Article 276

(1) Bail shall always be defined as an amount of money determined relative to the gravity of the criminal offence, the personal and family conditions of the defendant and the material position of the person who gives bail.

(2) Bail may be provided in cash, securities, valuable objects and other movable objects of high value which may readily be converted into cash and deposited for safekeeping, in the form of a mortgage for the amount of bail on a real estate of the person who gives bail, or as a personal liability of one or more persons who undertake to pay the amount of bail in case the defendant flees.

(3) If the defendant flees, the amount given as bail shall be assigned to the budget by a ruling.

Article 277

(1) When bail has been ordered under Article 274 paragraph 1 of the present Code, the defendant shall be detained on remand and bail shall be cancelled, if after being duly summoned he or she fails to appear and to justify his or her non-appearance, if he or she is preparing to flee or if some other legal ground for his or her detention on remand arises while he or she is at liberty.

(2) When bail has been ordered under Article 274 paragraph 2 of the present Code, the defendant shall be detained and the amount given as bail shall be assigned to the budget by a ruling, if he or she repeats the criminal offence, completes an attempted criminal offence or commits a criminal offence which he or she has threatened to commit.

(3) The defendant must always be informed of the consequences of non-compliance in advance.

(4) Bail shall be cancelled once criminal proceedings have been terminated by a final ruling discontinuing the proceedings or by a final judgment. If the defendant is punished by imprisonment, bail shall be cancelled only after he or she has started serving the sentence.

(5) Upon the cancellation of bail, any deposited cash, securities, valuable objects and other movable objects of high value shall be returned and any mortgage shall be released.

8. HOUSE DETENTION

Article 278

(1) The court may order that the defendant be placed under house detention, if:

1) There is a grounded suspicion that the defendant has committed a criminal offence; and

2) The circumstances under Article 281 paragraph 1 subparagraph 2 of the present Code obtain.

(2) The court shall decide on a measure under the present article in a ruling supported by reasoning. The ruling must contain the justification for determining that the conditions under paragraph 1 of the present article are met and that there is a need for this measure.

(3) The court shall determine in the ruling that the defendant may not move from the premises in which he or she permanently or currently resides or from a public treatment or care institution. The court may restrict or prohibit contacts between the defendant and persons with whom he or she does not live or persons who are not dependent on the defendant. Exceptionally, the court may allow the defendant to move for a specific time away from the premises where house detention is being implemented whenever this is unavoidably necessary to ensure essential living needs or to perform work.

(4) The ruling shall be served on the defendant and a copy shall be sent to the relevant police station on the territory where the measure is to be implemented.

(5) The court may order detention on remand, if the defendant violates the ruling. The defendant must always be informed of the consequences of non-compliance in advance.

(6) The court shall supervise the implementation of the measure of house detention, either directly or through the police. The police may at any time, even without a court request, verify the implementation of the measure of house detention and shall inform the court without delay of any possible violations of the measure.

(7) Unless otherwise provided for by the present article, the provisions of the present Code on detention on remand shall apply *mutatis mutandis* to the ordering, duration, extension and termination of the measure under the present article. Provisions of the Provisional Criminal Code on the inclusion of detention in the punishment imposed shall also apply *mutatis mutandis* to the measure under the present Article.

(8) The three-judge panel shall in all cases decide on the extension of house detention prior to the filing of the indictment based on a motion of the public prosecutor which is supported by reasoning. The defendant as well as his or her defence counsel, where the defendant has such, must be informed of the motion within the time period under Article 285 paragraph 2 of the present Code.

(9) The travel document of a person subject to house detention may be temporarily confiscated. An appeal against the ruling to confiscate temporarily a person's travel document shall not stay execution.

9. DETENTION ON REMAND

Article 279

(1) Detention on remand may only be ordered on the grounds and in accordance with the procedures provided for by the present Code.

(2) Detention on remand shall last the shortest possible time. All agencies participating in criminal proceedings and agencies that provide legal assistance to them have a duty to proceed with special urgency if the defendant is being held in detention on remand.

(3) Detention on remand shall, at any stage of the proceedings, be terminated and the detainee released as soon as the reasons for it cease to exist.

(4) Article 213 paragraphs 2 and 3, Article 214 paragraph 2, Article 215, Article 216, Article 217 paragraph 3 and Article 218 paragraphs 3 and 4 of the present Code shall apply throughout detention on remand.

(5) Upon arrest, the person subject to detention on remand shall be informed:

1) Orally of the rights set forth in Article 214 of the present Code; and

2) In writing of the other rights which he or she enjoys under the present Code.

Article 280

The arrest shall be reported to the competent social welfare body, if it is necessary to take measures for the safety of the children and other family members of the arrested person who are under his or her care.

Article 281

(1) The court may order detention on remand against a person if:

1) There is a grounded suspicion that such person has committed a criminal offence;

2) One of the following conditions is met:

i) He or she is in hiding, his or her identity cannot be established or other circumstances indicate that there is a danger of flight;

ii) There are grounds to believe that he or she will destroy, hide, change or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or

iii) The seriousness of the criminal offence, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit; and

3) The other measures listed in Article 268 paragraph 1 of the present Code would be insufficient to ensure the presence of such person, to prevent re-offending and to ensure the successful conduct of the criminal proceedings.

(2) When detention on remand is ordered pursuant to paragraph 1 subparagraph 2 point (i) of the present article solely because a person's identity cannot be established, it shall be terminated as soon as identity is established. When detention on remand is ordered pursuant to paragraph 1 subparagraph 2 point (ii) of the present article, it shall be terminated as soon as the evidence on account of which detention on remand was ordered has been taken or secured.

(3) If the defendant has violated one of the measures under Articles 271, 272, 273, 274 or 278 of the present Code, this shall be taken into particular consideration by the court when establishing the existence of circumstances under paragraph 1 subparagraphs 2 and 3 of the present article.

Article 282

(1) Detention on remand shall be ordered by the pre-trial judge of the competent court upon a written application of the public prosecutor and after a hearing.

(2) After the arrested person has been brought before the pre-trial judge, he or she shall immediately inform such person of his or her rights under Article 214 of the present Code. This shall be entered in the record together with the exact time of the arrest and the time when the person was brought before the pre-trial judge.

(3) The pre-trial judge shall then conduct a hearing on detention on remand. The public prosecutor and the defence counsel shall be present at the hearing.

(4) If the arrested person fails to engage his or her own defence counsel within twenty-four hours of being informed of such right or declares that he or she will not engage a defence counsel, the court shall appoint a defence counsel for him or her *ex officio*.

(5) At the hearing on detention on remand, the public prosecutor shall state the reasons for his or her application for detention on remand. The defendant and his or her defence counsel may respond with their arguments.

(6) The pre-trial judge shall rule on the motions of the parties when the parties have made statements on all issues that could be relevant to the application of measures under the present Chapter.

Article 283

(1) Detention on remand shall be ordered by a written ruling including: the name and surname of the person to be detained on remand and his or her other personal data known to the pre-trial judge; the exact time of arrest; the time when the person was brought before the pre-trial judge; the time of the hearing for detention on remand; the criminal offence of which he or she has been charged; the legal grounds for detention on remand; instructions on the

right to appeal; and an explanation of all material facts which dictated detention on remand, including the reasons for the grounded suspicion that the person committed a criminal offence and the material facts under Article 281 paragraph 1 subparagraph 2 of the present Code.

(2) The ruling on detention on remand shall be served on the person concerned, his or her defence counsel and the public prosecutor. The time of the service of the ruling on the person concerned shall be indicated in the case file.

(3) Each party may file an appeal within twenty-four hours of being served with the ruling. The appeal shall not stay execution of the ruling. If only one party appeals, the appeal shall be served by the court on the other party who may submit arguments to the court within twenty-four hours of being served with the appeal. The appeal shall be decided within forty-eight hours of the filing of the appeal.

(4) If the pre-trial judge rejects the request of the public prosecutor for detention on remand, the pre-trial judge may order any other measure provided for under the present Chapter.

Article 284

(1) The detainee may be held in detention on remand on the initial ruling for a maximum period of one month from the day he or she was arrested. After that time period he or she may be held in detention on remand only under a ruling of the court ordering an extension of detention on remand.

(2) Prior to the filing of an indictment, detention on remand shall not exceed:

1) Three months, if proceedings are conducted for a criminal offence punishable by imprisonment of less than five years;

2) Six months, if proceedings are conducted for a criminal offence punishable by imprisonment of at least five years.

(3) In addition to the prescribed periods of time provided for in paragraph 2, detention on remand prior to the filing of an indictment may be extended by up to six months for a maximum of:

1) Nine months, if proceedings are being conducted for a criminal offence punishable by imprisonment of less than five years; or

2) Twelve months, if proceedings are being conducted for a criminal offence punishable by imprisonment of at least five years,

in exceptional circumstances where the failure to file an indictment within the periods provided for in paragraph 2 of the present article is due to the complexity of the case or to other factors not attributable to the public prosecutor.

(4) If the indictment is not filed before the expiry of the prescribed periods of time provided for under paragraphs 2 and 3 of the present article, the detainee shall be released.

Article 285

(1) Detention on remand may only be extended upon the motion of the public prosecutor. The public prosecutor shall show that there are grounds for detention on remand under Article 281 of the present Code, that the investigation has been initiated and that all reasonable steps are being taken to conduct the investigation speedily.

(2) The defendant and his or her defence counsel shall be informed of the motion no less than three days prior to the expiry of the current ruling on detention on remand.

(3) Detention on remand ordered by the pre-trial judge may be extended by the three-judge panel for a period not exceeding two months, within the limits provided for in Article 284 of the present Code, following written submissions from the defendant and his or her defence counsel.

(4) Detention on remand ordered by the three-judge panel may be extended by the pre-trial judge for a period not exceeding one month, within the limits provided for in Article 284 of the present Code, following a hearing conducted in accordance with Article 282 paragraphs 3, 4, 5, and 6 of the present Code.

(5) Each ruling on the extension of detention on remand can be appealed. Article 283 paragraphs 3 and 4 of the present Code shall apply *mutatis mutandis.*

Article 286

(1) At any time, the pre-trial judge may terminate *ex officio* detention on remand while the investigation is in progress, subject to the consent of the public prosecutor. If the pre-trial judge and the public prosecutor cannot reach agreement on the issue of termination, the pre-trial judge shall request the three-judge panel to rule on the matter. The three-judge panel shall render a ruling within forty-eight hours of receiving the request from the pre-trial judge.

(2) At any time, the detainee or his or her defence counsel may petition any pre-trial judge or presiding judge to determine the lawfulness of detention.

(3) The pre-trial judge or the presiding judge may conduct a hearing in accordance with Article 282 paragraphs 3, 4, 5, and 6 of the present Code if the petition establishes a *prima facie* case that:

1) The grounds for detention on remand in Article 281 of the present Code no longer exist due to changed circumstances or the discovery of new facts since the last court order on detention on remand; or

2) Detention is unlawful for some other reason.

(4) At the hearing the pre-trial judge or the presiding judge shall order the immediate release of the detainee if:

1) The grounds for detention on remand in Article 281 of the present Code no longer exist;

2) The period of detention on remand ordered by the court has expired;

3) The period of detention on remand ordered by the court exceeds the time-limits set forth in Article 284 paragraph 2 of the present Code or, in exceptional circumstances, the time-limits set forth in Article 284 paragraph 3 of the present Code; or

4) Detention is unlawful for some other reason.

Article 287

(1) After the indictment has been filed and until the conclusion of the main trial, detention on remand may only be ordered or terminated by a ruling of the trial panel or, when the trial panel is not in session, the presiding judge who shall first hear the opinion of the public prosecutor, if proceedings have been initiated at his or her request, and the opinion of the defendant or the defence counsel. The parties may appeal against the ruling. Article 283 paragraphs 3 and 4 of the present Code shall apply *mutatis mutandis.*

(2) Upon the expiry of two months from the last ruling on detention on remand, the trial panel or, when the trial panel is not in session, the presiding judge shall examine, even in the absence of a motion by the parties, whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated. The parties may appeal against the ruling. Article 283 paragraphs 3 and 4 of the present Code shall apply *mutatis mutandis.*

(3) No appeal shall be permitted against the ruling by which the motion for the ordering or terminating the detention on remand is rejected.

10. IMPLEMENTATION OF DETENTION ON REMAND

Article 288

(1) The personality and dignity of a person held in detention on remand must not be abused. The detainee on remand must be treated in a humane manner and his or her physical and mental health must be protected.

(2) Only those restrictions which are necessary to prevent escape or communications that might be harmful to the effective conduct of proceedings may be imposed against a person in detention on remand.

Article 289

(1) Admission to a facility for detention on remand (hereinafter "detention facility") shall be based on a written ruling of a judge.

(2) The detention facility shall be obliged to keep a record of the time of arrival of the detainee on remand at the detention facility and the time when the period of detention on remand ordered in respect of the detainee on remand expires and to inform the detainee on remand and his or her defence counsel about the date of expiry. If the detention facility does not receive a ruling of the court to extend detention on remand after the period in the ruling has expired, it shall immediately release the detainee on remand and inform the competent court of this.

Article 290

(1) The detention facility shall collect, process, store and maintain a database on detainees on remand to ensure the lawful and proper implementation of detention on remand.

(2) The database under paragraph 1 of the present article shall comprise data on:

1) The identity and personal status of the detainee on remand;

2) The ruling on detention on remand;

3) The work performed while in detention on remand;

4) Admission to the detention facility and the duration, extension and termination of detention on remand; and

5) The behaviour of the detainee on remand and any disciplinary measures.

(3) Data from the database shall be stored and used for the duration of detention on remand; after the detention on remand is terminated, the data shall be archived and stored permanently.

(4) The detention facility shall forward the data under paragraph 2 of the present article to the central records on detainees on remand, and such data may only be used by other persons authorized to use the data by law or pursuant to the written permission or request of the individual to whom the data refers.

(5) An Administrative Direction shall define in greater detail the data under paragraph 2 of the present article.

Article 291

(1) Detention on remand shall be served in special detention facilities or in a separate part of a facility for serving prison sentences.

(2) A person may not be detained on remand in the same room as a person of the opposite sex. As a rule, persons who participated in committing the same criminal offence shall not be accommodated in the same room and persons serving a sentence shall not be accommodated in the same room as persons in detention on remand. If possible, persons who have repeated a criminal offence shall not be accommodated in the same room as other persons in detention whom they could negatively influence.

(3) The competent court may transfer a detainee on remand from one detention facility to another for reasons of safety, order and discipline or for the successful and reasonable conduct of criminal proceedings, on the motion of the director of the detention facility in which the detainee on remand is accommodated.

Article 292

While in detention on remand, detainees on remand may have on their person and use items for personal use, items for maintaining hygiene, equipment to receive public media, printed matter, professional and other literature, money and other items which in view of their size and quantity facilitate normal activities in the living area and which do not disturb other detainees on remand. Other items shall be confiscated and put into storage during a personal inspection of the detainee on remand.

Article 293

(1) Detainees on remand have the right to eight hours of uninterrupted rest every twenty-four hours. In addition, detainees on remand must be guaranteed at least two hours of outdoor exercise per day.

(2) Detainees on remand may perform work that is necessary to maintain order and cleanliness in their area. To the extent that the institution has the facilities and on condition that it is not harmful to the conduct of criminal proceedings, detainees on remand shall be allowed to work in activities which suit their mental and physical abilities. The pre-trial judge or the presiding judge shall decide on this in agreement with the management of the detention facility.

(3) Detainees on remand are entitled to payment for work performed. The manner and amount of payment shall be set forth in an Administrative Direction.

Article 294

(1) With the permission of the pre-trial judge and under his or her supervision or the supervision of someone appointed by such judge, the detainee on remand may receive visits from close relatives and, upon his or her request, from a doctor or other persons, within the limits of the rules of the detention facility. Certain visits may be prohibited if they might be harmful to the conduct of the proceedings.

(2) With the knowledge of the pre-trial judge, representatives from a liaison office or diplomatic mission shall have the right to visit and to talk without supervision to detainees on

remand who are nationals of their country. Representatives of competent international organizations shall have the same right to visit and talk to detainees on remand who are refugees or otherwise under the protection of such international organizations.

(3) The Ombudsperson of Kosovo or his or her deputy may visit detainees on remand and may correspond with them without prior notification and without the supervision of the pre-trial judge or other persons appointed by such judge. Letters from detainees on remand to the Office of the Ombudsperson of Kosovo may not be examined. The Ombudsperson and his or her deputy may communicate confidentially with detainees on remand orally and in writing. Communications between a detainee on remand and the Ombudsperson and his or her deputy may be within the sight but not within the hearing of a police officer.

(4) Detainees on remand may correspond or have other contacts with persons outside the detention facility with the knowledge and under the supervision of the pre-trial judge. The pre-trial judge may, after consulting the public prosecutor, prohibit letters and other packages being received or sent or contacts being established which are harmful to the proceedings, but may not prohibit detainees on remand from sending requests or appeals or from communicating with their defence counsel.

(5) When the pre-trial judge refuses a visit pursuant to paragraph 1 of the present article or prohibits communication pursuant to paragraph 4 of the present article, the detainee on remand may apply to the three-judge panel to grant such permission.

(6) After the indictment and until the judgment becomes final, the presiding judge shall decide on matters under paragraphs 1 and 4 of the present article and paragraph 5 of the present article shall apply *mutatis mutandis*.

Article 295

(1) The pre-trial judge or the presiding judge may impose a disciplinary punishment of a prohibition or restriction on visits and correspondence on a detainee on remand who has committed a disciplinary breach.

(2) A disciplinary breach includes:

1) A physical attack on other detainees on remand, employees of the detention facility or other official persons;

2) The production, acceptance or introduction of items for attacks or escape;

3) The production or introduction of alcoholic beverages and narcotics and their distribution;

4) A violation of regulations on safety at work, fire safety and the prevention of the consequences of natural disasters;

5) Repeated violations of the internal order of the detention facility;

6) Causing serious material damage intentionally or through serious negligence; or

7) Insulting and undignified behaviour.

(3) A restriction or prohibition of a visit or correspondence shall not apply to visits by or correspondence with defence counsel, doctors, the Ombudsperson of Kosovo, representatives of a liaison office or diplomatic mission of the State of which the detainee on remand is a national or, in the case of a refugee or a person otherwise under the protection of an international organization, representatives of the competent organization.

(4) An appeal may be filed with the three-judge panel against a ruling on a punishment imposed under paragraph 1 of the present article within twenty-four hours of receipt thereof. The appeal shall not stay execution of the ruling.

Article 296

Unless otherwise provided for by the present Code and by other legislation issued pursuant to it, the provisions of the law which govern the execution of criminal sanctions shall apply *mutatis mutandis* to monitoring, pursuit, surveillance, maintenance of order and discipline, the use of force, personal search and search of premises in the case of detainees on remand.

Article 297

(1) The president of the competent court shall supervise the treatment of detainees on remand.

(2) The president of the court, or a judge appointed by him or her, shall be obliged to visit detainees on remand at least once a week and, if he or she considers it necessary, when the supervisors and warders are not present, to find out how the detainees on remand are being nourished, how their other needs are provided for and how they are treated. He or she is obliged to take necessary action to remove irregularities noticed during the visit to the detention facility. The appointed judge may not be the judge who ordered detention on remand.

(3) The president of the court and the judge who ordered detention on remand may, at any time, visit detainees on remand, talk to them and accept complaints.

CHAPTER XXXI: COOPERATIVE WITNESSES

Article 298

For the purposes of the present Chapter, the term “co-operative witness” means a suspect or a defendant with respect to whom the indictment has not yet been read at the main trial and who is expected to give evidence in court which is:

1) Likely to prevent further criminal offences by another person;

2) Likely to lead to the finding of truth in criminal proceedings;

3) Voluntarily made with full agreement to testify truthfully in court;

4) Determined by the court to be truthful and complete; or

5) Such that it might lead to a successful prosecution of other perpetrators of a criminal offence.

Article 299

(1) The public prosecutor may make a written application to a court for an order declaring a person to be a co-operative witness. The application shall contain a separate declaration of factual allegations by the public prosecutor.

(2) The prosecutor may make a reasoned request for an order to keep the factual allegations in the declaration secret from other parties and their legal counsel.

(3) The court may, at any time after receiving a request for secrecy from the public prosecutor, make an order for secrecy with respect to factual allegations contained in a declaration.

(4) Any violation of an order for secrecy established under paragraph 2 of the present article shall be prosecuted by the public prosecutor under Article 169 of the Provisional Criminal Code and Article 169 paragraph 2 of the Provisional Criminal Code shall not apply.

Article 300

(1) Upon receiving the application, the pre-trial judge or the presiding judge shall hear the application in a session which is closed to the public. The public prosecutor and the legal counsel of the co-operative witness may participate in a hearing to evaluate the credibility of the co-operative witness and to ensure that the requirements of Article 298 of the present Code are met. Statements made to the judge during this examination cannot be used in criminal proceedings against the co-operative witness or against any other person as evidence to support a finding of guilt.

(2) The provisions applicable to the examination of witnesses (Articles 163 through 167 of the present Code) shall be applied *mutatis mutandis* to the examination of the co-operative witness, and the examination shall be recorded pursuant to the provisions of the present Code.

(3) At the conclusion of the hearing the pre-trial judge or the presiding judge may issue an order declaring a person to be a co-operative witness if he or she determines that the criteria for a cooperative witness, as provided for in Article 298 of the present Code, are met.

(4) The order shall specify:

1) The criminal offences, by describing the acts and their qualifications, for which the prohibition of the initiation or continuation of criminal proceedings or the imposition of punishment is ordered;

2) A prohibition on the initiation or continuation of criminal proceedings against the co-operative witness and on the imposition of a punishment on the co-operative witness for the criminal offences specified in the order;

3) The nature and substance of cooperation given by the co-operative witness; and

4) The conditions for the revocation of the order.

(5) The pretrial judge or presiding judge shall not issue such order if the co-operative witness is suspected by the public prosecutor or charged by indictment of being the organiser or the leader of a group of two or more persons which commits a criminal offence.

(6) The order shall not prohibit the initiation or continuation of criminal proceedings against a co-operative witness for criminal offences committed after the order was issued or for criminal offences punishable by imprisonment of at least ten years.

Article 301

(1) Upon an application by the public prosecutor, the order provided for in Article 300 of the present Code may be revoked by a three-judge panel if it is established that the testimony of the co-operative witness was false in any relevant part or that the co-operative witness omitted to state the complete truth.

(2) The co-operative witness shall be warned of the consequences of giving testimony that is false in any relevant part or purposely omitting to state the complete truth before being heard by the pre-trial judge under Article 300 paragraph 1 of the present Code, and before giving testimony under the protection of the order. Any such testimony must be either in written form in the language of the co-operative witness, signed by him or her to acknowledge its truthfulness, or recorded on audio- or video-tape which is determined to be authentic by the court.

Article 302

The defendant against whom the co-operative witness is expected to testify shall be served with a copy of the order declaring the person to be a cooperative witness prior to the main trial of the defendant.

Article 303

(1) Upon an application by the public prosecutor, the court may waive the punishment of a perpetrator who is not a co-operative witness or reduce such punishment in accordance with Article 67 of the Provisional Criminal Code when the perpetrator voluntarily cooperated and his or her cooperation prevented any further criminal offences by others, or led to a successful prosecution of other perpetrators of a criminal offence.

(2) If the perpetrator is found guilty of a criminal offence for which a punishment of at least ten years of imprisonment can be imposed, the court shall not suspend or waive the punishment.

CHAPTER XXXII: INDICTMENT AND CONFIRMATION OF THE INDICTMENT

1. FILING OF AN INDICTMENT

Article 304

(1) After the investigation has been completed, or if the public prosecutor considers that the information that he has in relation to the criminal offence and the offender provide sufficient grounds for filing an indictment, proceedings before the court may be conducted only on the basis of an indictment filed by the public prosecutor.

(2) Provisions on the indictment under present section shall apply *mutatis mutandis* to a prosecution brought by a private prosecutor or a subsidiary prosecutor.

Article 305

(1) The indictment shall contain:

1) The first name and surname of the defendant and his or her personal data (Article 233 of the present Code);

2) An indication as to whether and for how long detention on remand or other measures under Chapter XXX of the present Code were ordered against the defendant, whether he or she is at liberty and, if he or she was released prior to the filing of the indictment, how long he or she was held in detention on remand;

3) The legal name of the criminal offence with a citation of the provisions of the Provisional Criminal Code;

4) The time and place of commission of the criminal offence, the object upon which and the instrument by which the criminal offence was committed, and other circumstances necessary to determine the criminal offence with precision;

5) An explanation of the grounds for filing the indictment on the basis of the results of the investigation and the evidence which establishes the key facts;

6) An indication of the court before which the main trial is to be held; and

7) A recommendation as to evidence that should be presented at the main trial along with the names of witnesses and expert witnesses, documents to be read and objects to be produced as evidence.

(2) If the defendant is at liberty, the prosecutor may make a motion in the indictment that detention on remand be ordered; if the defendant is in detention on remand, the prosecutor may make a motion that he or she be released.

(3) A single indictment may be filed for several criminal offences or against several defendants only when, in accordance with Article 33 of the present Code, joint proceedings may be conducted.

Article 306

(1) The indictment shall be filed in the competent court in as many copies as there are defendants and their defence counsel, plus one copy for the court. A complete file on the investigation shall also be submitted to the court by the prosecutor.

(2) Immediately upon receiving the indictment, a judge who will conduct the proceedings to confirm the indictment shall check whether the indictment is drawn up in accordance with Article 305 of the present Code. If he or she finds that it does not comply with the provisions of the Article 305 of the present Code, he or she shall return it to the prosecutor to amend within three days. The judge may, on the motion of the prosecutor, extend this prescribed period of time for good reason. If the subsidiary prosecutor or the private prosecutor fails to observe the time limit it shall be considered that they have refrained from prosecution and the proceedings shall be terminated.

(3) A judge will also examine the indictment and the file to see if it contains any inadmissible evidence or reference to such evidence. If such evidence or reference to it is included, the judge shall render a separate ruling to declare such evidence inadmissible and inform the prosecutor of this. Article 154 of the present Code shall apply *mutatis mutandis*. If the exclusion of inadmissible evidence causes the amendment of the indictment, paragraph 2 of the present article shall apply *mutatis mutandis*.

(4) If the indictment contains a motion for ordering detention on remand against the defendant or for his or her release from detention on remand, the three-judge panel shall decide on the recommendation immediately and at the latest within 48 hours of the filing of the indictment.

(5) If the defendant is in detention on remand and the indictment does not contain a motion for his or her release, the three-judge panel shall ask *ex officio* and within three days from the date of receipt of the indictment whether there are still reasons for detention on remand and render a ruling on the extension or termination of detention on remand. An appeal against this ruling shall not stay execution of the ruling.

Article 307

(1) No later than at the filing of the indictment the prosecutor shall provide the defence counsel with the following materials or copies thereof which are in his or her possession, control or custody, if these materials have not already been given to the defence counsel during the investigation:

1) Records of statements or confessions, signed or unsigned, by the defendant;

2) Names of witnesses whom the prosecutor intends to call to testify and any prior statements made by those witnesses;

3) Information identifying any persons whom the prosecutor knows to have admissible and exculpatory evidence or information about the case and any records of statements, signed or unsigned, by such persons about the case;

4) Results of physical or mental examinations, scientific tests or experiments made in connection with the case;

5) Criminal reports and police reports; and

6) A summary of, or reference to, tangible evidence obtained in the investigation.

(2) The statements of the witnesses shall be made available in a language which the defendant understands and speaks.

(3) After the filing of the indictment, the prosecutor shall provide the defence counsel with any new materials provided for in paragraph 1 of the present article within 10 days of their receipt.

(4) The provisions of the present article are subject to the measures protecting injured parties, witnesses and their privacy and confidential information, as provided for by law.

Article 308

(1) No later than eight days after the defence counsel receives the materials provided for under Article 307 of the present Code from the prosecutor or no later than at the confirmation hearing or, where there is no such hearing, before the beginning of the main trial, whichever is later, the defence shall, where appropriate:

1) Notify the prosecutor of the intent to present an alibi, specifying the place or places at which the defendant claims to have been present at the time of the alleged criminal offence and the names of witnesses and any other evidence supporting the alibi;

2) Notify the prosecutor of the intent to present a ground for excluding criminal liability, specifying the names of witnesses and any other evidence supporting such ground; and

3) Provide the prosecutor with the names of witnesses whom the defence intends to call to testify.

(2) If the defence counsel has not performed the duty under the previous paragraph and the court finds no justifiable reasons for such omission, the court may impose a fine of up to 250 EUR upon the defence counsel (Article 146 of the present Code) and inform the bar association of this.

2. CONFIRMATION OF THE INDICTMENT

Article 309

(1) After the judge is satisfied that the indictment is drawn up in accordance with Article 305 of the present Code, he or she shall immediately schedule the confirmation hearing.

(2) The court shall immediately summon the defendant and the prosecutor to the confirmation hearing. The defendant and his or her defence counsel shall be served with the indictment at least eight days before the confirmation hearing. The injured party shall also be invited to the confirmation hearing.

(3) After being served with the indictment, the defendant has the right:

1) To waive the review of the indictment and of the evidence;

2) To waive the confirmation hearing and submit written objections to the indictment or the admissibility of evidence; or

3) To proceed with the confirmation hearing.

(4) The defendant can also submit the names of the witnesses and expert witnesses he or she wants to call at the main trial.

(5) In the summons for the confirmation hearing, the court shall inform the defendant of the rights under paragraphs 1 through 3 of the present article and of his or her duty under Article 308 of the present Code.

Article 310

(1) If the defendant wishes to waive the review of the indictment and of the evidence, he or she shall file a written waiver with the judge at least three days before the date on which the confirmation hearing has been scheduled.

(2) The judge shall render a ruling to accept the waiver and to cancel the confirmation hearing if he or she is satisfied that the defendant understands the consequences of such waiver. The judge shall immediately inform the defendant, the prosecutor and the injured party of the ruling.

(3) If the judge renders a ruling to reject the waiver of the defendant, the confirmation hearing shall proceed as scheduled.

Article 311

(1) If the defendant wishes to waive the confirmation hearing and submit written objections to the indictment or the admissibility of evidence, he or she shall file a written waiver with the judge and shall submit any written objections at least three days before the date on which the confirmation hearing has been scheduled.

(2) The judge shall render a ruling to accept the waiver if he or she is satisfied that the defendant understands the consequences of such waiver. The judge shall immediately notify the defendant, the prosecutor and the injured party of the ruling and serve written objections of the defendant on the prosecutor and the injured party.

(3) The prosecutor and the injured party may file their own written statements within eight days of the notification.

(4) Within three days of the receipt of written statements from the prosecutor and the injured party or of the expiry of the prescribed period of time under paragraph 3 of the present article, the judge shall proceed in accordance with Article 316 of the present Code.

(5) If the judge renders a ruling to reject the waiver of the defendant, the confirmation hearing shall proceed as scheduled.

Article 312

(1) The judge may *ex officio* render a ruling on the indictment or the admissibility of evidence pursuant to Article 316 of the present Code if:

1) The judge accepts the waiver of the review of the indictment and of the evidence pursuant to Article 310 of the present Code;

2) The defendant does not submit written objections to the indictment pursuant to Article 311 of the present Code; or

3) The defendant does not submit written objections to the admissibility of evidence pursuant to Article 311 of the present Code.

(2) The judge may render a ruling under paragraph 1 of the present article no later than two months from the date of filing of the indictment.

Article 313

(1) The confirmation hearing shall be conducted by a judge.

(2) The prosecutor and the defendant must be present at the confirmation hearing. The injured party has the right to attend.

(3) Provisions of the present Code regarding the public nature of the main trial, the conduct of the main trial, and the adjournment and recess of the main trial shall apply *mutatis mutandis* to the confirmation hearing.

Article 314

(1) At the beginning of the confirmation hearing the judge shall instruct the defendant of the rights not to plead his or her case or to answer any questions and, if he or she pleads his or her case, not to incriminate himself or herself or his or her next of kin, nor to confess guilt; to defend himself or herself in person or through legal assistance by a defence counsel of his or her own choice; to object to the indictment; and to challenge the admissibility of evidence presented in the indictment.

(2) The judge shall then satisfy himself or herself that the right of the defendant to defence counsel has been respected and that both parties have fulfilled the obligation relating to the disclosure of evidence (Articles 307 and 308 of the present Code).

(3) The prosecutor shall then read the indictment to the defendant.

(4) The judge shall satisfy himself or herself that the defendant understands the indictment and afford the defendant the opportunity to plead guilty or not guilty. If the defendant has not understood the indictment, the judge shall call on the prosecutor to explain it in a way the defendant may understand without difficulty. If the defendant does not want to make any statement regarding his or her guilt, he or she shall be considered to have pleaded not guilty.

(5) The defendant and/or his or her defence counsel and the prosecutor have the right to make statements at the confirmation hearing. The judge can allow the injured party to make a statement.

(6) No witnesses or expert witnesses shall be examined or other evidence presented during the confirmation hearing.

(7) After hearing the statements of the parties, the judge shall proceed in accordance with Article 316 of the present Code.

Article 315

(1) Where the defendant pleads guilty on each count of the indictment under Article 314 paragraph 4 of the present Code, the judge shall determine whether:

1) The defendant understands the nature and consequences of the guilty plea;

2) The guilty plea is voluntarily made by the defendant after sufficient consultation with defence counsel, if the defendant has a defence counsel;

3) The guilty plea is supported by the facts of the case that are contained in the indictment, materials presented by the prosecutor to supplement the indictment

and accepted by the defendant; and any other evidence, such as the testimony of witnesses, presented by the prosecutor or the defendant; and

4) None of the circumstances under Article 316 paragraphs 1 to 3 of the present Code exists.

(2) In considering the guilty plea of the defendant, the judge may invite the views of the prosecutor, the defence counsel and the injured party.

(3) If the judge is not satisfied that the matters provided for in paragraph 1 of the present article are established, he or she shall proceed with the confirmation hearing as if the guilty plea has not been made.

(4) If the judge is satisfied that the matters provided for in paragraph 1 of the present article are established, he or she shall render a ruling to accept the guilty plea made by the defendant and proceed in accordance with Article 316.

Article 316

(1) The judge shall render a ruling to dismiss the indictment and to terminate the criminal proceedings if he or she determines that:

1) The act charged is not a criminal offence;

2) Circumstances exist which exclude criminal liability;

3) The period of statutory limitation has expired, an amnesty or pardon covers the act, or other circumstances exist which bar prosecution; or

4) There is not sufficient evidence to support a well-grounded suspicion that the defendant has committed the criminal offence in the indictment.

(2) The judge shall render a ruling to dismiss the indictment and suspend the proceedings, if he or she determines that the indictment was not filed by an authorized prosecutor or that the motion of the injured party is missing or that the permission of a public entity is missing or has been withdrawn or that other circumstances exist which temporarily bar prosecution.

(3) The judge shall render a ruling to declare the court not competent and refer the matter to the competent court, if he or she determines that the criminal offence in the indictment falls within the jurisdiction of another court. The parties may file an appeal of such ruling to a three-judge panel.

(4) The judge shall render a ruling to confirm the indictment, if he or she determines that none of the circumstances under paragraphs 1 through 3 of the present article exist.

(5) The judge shall render a separate ruling to declare specific evidence inadmissible if he or she determines that such evidence obtained during the investigation or proposed by the prosecutor for presentation at the main trial is inadmissible. Article 154 of the present Code shall apply *mutatis mutandis*.

(6) In rendering a ruling under the present article, the judge shall not be bound by the legal designation of the criminal offence as set forth by the prosecutor in the indictment or be bound by any agreements between the prosecutor and the defence regarding modification of the charges or the guilty plea.

Article 317

(1) All rulings rendered by the judge in connection with the confirmation of the indictment shall be supported by reasoning but in such a way as not to prejudice the adjudication of the matters which will be considered in the main trial.

(2) The ruling of the judge to dismiss the indictment can be appealed by the prosecutor and the injured party to the three-judge panel.

(3) If a ruling of the judge to dismiss the indictment is appealed only by the injured party and the appeal is successful, the injured party shall be considered to have thereby assumed prosecution as a subsidiary prosecutor.

Article 318

(1) The indictment shall become final:

1) On the day when the ruling on the indictment pursuant to Article 316 of the present Code becomes final; or

2) On the day when the ruling under Article 310 paragraph 2 or Article 311 paragraph 2 of the present Code becomes final, if the judge does not proceed in accordance with Article 312 of the present Code.

(2) After the indictment becomes final, the judge shall immediately send the indictment and the case record to the presiding judge at the main trial.

PART FOUR: MAIN TRIAL AND JUDGMENT

CHAPTER XXXIII: PREPARATIONS FOR THE MAIN TRIAL

Article 319

(1) The day, hour and venue of the main trial shall be determined by an order issued by the presiding judge.

(2) The presiding judge shall schedule the main trial as soon as the indictment becomes final. If he or she fails to schedule the main trial to commence within one month from when the indictment becomes final, he or she shall inform the president of the court of the reasons for this. The president of the court shall, if necessary, take steps to schedule the main trial.

(3) If the presiding judge determines that there are inadmissible records and information in the court files, he or she shall render a separate ruling to declare such evidence inadmissible. Article 154 of the present Code shall apply *mutatis mutandis*.

Article 320

(1) The main trial shall be held at the place where the court has its seat, and in the courthouse.

(2) Where, in a particular case, the courthouse is unsuitable due to the lack of space or other justified reasons, the president of the court may order that the main trial be held in another building.

(3) The main trial may also be held at another place within the territory of the competent court if upon a motion supported by reasoning of the president of the court approval is granted by the president of an immediately higher court.

Article 321

(1) The persons summoned to appear at the main trial shall include the accused, his or her defence counsel, the prosecutor, the injured party and their legal representatives and authorized representatives, as well as the interpreter. Witnesses and expert witnesses proposed by the prosecutor in the indictment and by the accused after being served with the indictment, except those whose presence at the main trial in the opinion of the presiding judge is not necessary, shall also be summoned to the main trial. The prosecutor and the accused may repeat at the main trial motions which the presiding judge has not approved.

(2) Articles 269 and 163 of the present Code shall apply to the contents of the summonses served on the accused and witnesses. The summons served on the accused shall state that he or she will be deemed to have renounced his or her right to appeal if he or she fails to declare an appeal within eight days of the date of the announcement of the judgment. When defence is not mandatory, the accused shall be instructed in the summons that he or she has the right to engage defence counsel but that the main trial need not be postponed because defence counsel has not come to the main trial or because the accused has engaged defence counsel only at the main trial.

(3) The accused shall be served with the summons no less than eight days before the main trial so as to have sufficient time between the service of the summons and the day of the main trial to prepare his or her defence. At the request of the accused, or at the request of the prosecutor and with the agreement of the accused, this prescribed period of time may be shortened.

(4) The injured party who has not been summoned to appear as a witness shall be informed in a summons that the main trial may be held in his or her absence and that his or her statement on a property claim shall be read. He or she shall likewise be instructed that if he or she fails to appear, it will be considered that he or she does not intend to continue prosecution if the public prosecutor withdraws the indictment.

(5) The subsidiary prosecutor and the private prosecutor shall be informed in a summons that if they fail to appear at the main trial or to send an authorized representative, they will be considered to have withdrawn the indictment.

(6) The accused, witnesses and expert witnesses shall be informed in the summonses of the consequences of failure to appear at the main trial (Articles 341 and 343 of the present Code).

(7) At the request of the Ombudsperson of Kosovo, the Ombudsperson shall also be notified of the main trial for the purpose of monitoring the criminal proceedings within the limits of his or her authority.

Article 322

(1) The parties, defence counsel and the injured party may request even after the main trial has been scheduled that new witnesses or expert witnesses be summoned to the main trial or that new evidence be collected. The request must be supported by reasoning and must indicate which facts are to be proven and by which of the items of evidence proposed.

(2) If the presiding judge rejects the motion for new evidence to be collected, such motion may be repeated during the main trial.

(3) The presiding judge may order that new evidence be collected for the main trial even without a motion of the parties.

(4) The parties and defence counsel shall be informed of the order to collect new evidence prior to the opening of the main trial.

Article 323

If it appears that the main trial may last for some time the presiding judge may request the president of the court to assign one or two judges or lay judges to attend the main trial in order to replace members of the trial panel in the event that they are prevented from attending the main trial.

Article 324

(1) If a witness or an expert witness who was summoned to the main trial is unable to appear because of a chronic illness or some other impediment, such witness or expert witness may be examined at the place where he or she resides, unless such witness or expert witness has already been examined under Article 238 of the present Code.

(2) The parties, defence counsel and the injured party shall be informed of the time and place of the examination if that is possible considering the urgency of the proceedings. If the accused is in detention on remand the presiding judge shall decide whether his or her presence at the examination is necessary, providing that in the absence of the accused his or her defence counsel can be present. When the parties, the defence counsel and the injured party are present, they shall have the rights under Article 238 paragraph 2 of the present Code.

Article 325

The presiding judge may for well-founded reasons adjourn the date of the main trial upon motion of the parties or the defence counsel or *ex officio*.

Article 326

(1) If the prosecutor withdraws the indictment prior to the opening of the main trial the presiding judge shall notify the persons summoned to the main trial. The injured party shall be specially notified of his or her right to continue prosecution (Articles 62 and 64 of the present Code). If it has been impossible to serve the notification on the injured party because he or she has failed to notify the court of a change of address or place of current residence, the injured party shall be deemed to have abandoned the prosecution.

(2) If the injured party abandons prosecution, the presiding judge shall terminate criminal proceedings by a ruling. The ruling shall be sent to the parties and the injured party.

Article 327

(1) The summons shall notify the parties and the injured party of a guilty plea on each count of the indictment made by the accused and confirmed by the judge at the confirmation hearing (Article 315 of the present Code). The summons shall notify the accused that he or she will be asked to confirm the guilty plea at the main trial.

(2) The presiding judge shall not summon the witnesses and expert witnesses to the main trial, if the guilty plea of the accused is confirmed at the confirmation hearing.

CHAPTER XXXIV: THE MAIN TRIAL

1. PUBLIC NATURE OF THE MAIN TRIAL

Article 328

(1) The main trial shall be held in open court.

(2) The main trial may be attended by adult persons.

(3) Persons attending the main trial may not carry arms or dangerous instruments, except the guards of the accused who may be armed.

Article 329

At any time from the beginning until the end of the main trial, the trial panel may exclude on the motion of the parties or *ex officio*, but always after it has heard the parties, the public from the whole or part of the main trial if this is necessary for:

1) Protecting official secrets;

2) Maintaining the confidentiality of information which would be jeopardized by a public hearing;

3) Maintaining law and order;

4) Protecting the personal or family life of the accused, the injured party or of other participants in the proceedings;

5) Protecting the interests of children; or

6) Protecting injured parties and witnesses as provided for in Chapter XXI of the present Code.

Article 330

(1) The exclusion of the public shall not apply to the parties, the injured party, their representatives and the defence counsel, except under the conditions of the provisions regarding the protection of injured parties and witnesses as set forth in Chapter XXI of the present Code.

(2) The trial panel may grant permission for certain officials, academics, public figures and, on the request of the accused, also the spouse or extra-marital partner of the accused and his or her close relatives to attend a main trial which is not open to the public.

(3) The presiding judge shall warn the persons attending the main trial which is closed to the public of their obligation to keep confidential all information that comes to their knowledge at the trial and shall inform them that disclosing such information constitutes a criminal offence.

Article 331

(1) The exclusion of the public shall be determined by the trial panel in a ruling which must be supported by reasoning and made public.

(2) The ruling on the exclusion of the public may be challenged only in an appeal against the judgment.

2. CONDUCT OF THE MAIN TRIAL

Article 332

(1) The presiding judge, members of the trial panel, the recording clerk and the replacements of judges and lay judges (Article 323 of the present Code) shall be continuously present at the main trial.

(2) It shall be the duty of the presiding judge to confirm that the trial panel has been constituted in accordance with the law and whether there are reasons for excluding a member of the trial panel or the recording clerk (Article 40 paragraphs 1 and 2 of the present Code).

Article 333

(1) The presiding judge shall direct the main trial and call on the parties, the injured party, the legal and authorized representatives, the defence counsel, the expert witnesses and members of the trial panel to give their testimony or pose their questions.

(2) It shall be the duty of the presiding judge to ensure that the case is thoroughly and fairly examined in accordance with the rules of evidence as provided for by the present Code.

(3) The presiding judge shall rule on the motions of the parties, unless the ruling falls within the competence of the trial panel.

(4) Motions on which the parties disagree and motions on which the parties agree but with which the presiding judge disagrees shall be decided by the trial panel. The trial panel shall also decide on objections to measures taken by the presiding judge in conducting the main trial.

(5) The rulings of the trial panel shall always be announced and entered in the record of the main trial with a brief explanation.

Article 334

The main trial shall proceed in the sequence provided for by the present Code. However, the trial panel may decide to alter the sequence of the hearing due to special circumstances, in particular the number of accused, the number of criminal offences or the volume of the evidential material.

Article 335

(1) The presiding judge shall be obliged to ensure the maintenance of order in the courtroom and the dignity of the court. Toward this end, he or she may immediately upon the opening of the session warn the persons present to behave properly and not to obstruct the work of the court. The presiding judge may order a personal search of persons present at the main trial.

(2) The trial panel may order that the audience present at the main trial be removed from the session if it is not possible to ensure by the measures for the maintenance of order provided for by the present Code that the main trial shall be held without disturbance.

(3) Photography, film, television and other recordings apart from the official recording of the main trial are subject to Article 93 of the present Code.

Article 336

(1) If the accused, defence counsel, the injured party, legal or authorized representative, witness, expert witness, interpreter or some other person attending the main trial disturbs order or fails to comply with the directions of the presiding judge regarding the maintenance of order, the presiding judge shall warn him or her. If the warning is of no avail, the trial panel may order that the accused be removed from the courtroom, while other persons may not only be removed but can also be punished by a fine of up to 1.000 EUR.

(2) With the order of the trial panel the accused may be removed from the courtroom temporarily, but if he or she has already been examined in the main trial he or she may be removed for as long as the evidentiary proceedings last. Before the evidentiary proceedings are concluded, the presiding judge shall summon the accused and inform him or her of the course of the main trial. If the accused continues to violate order or if he or she abuses the dignity of the court, the trial panel may order him or her to be removed again. In such case, the main trial shall be concluded in the absence of the accused and the presiding judge or a judge sitting in the trial panel shall inform him or her of the judgment in the presence of the recording clerk.

(3) The trial panel may deny the defence counsel or the authorized representative the right to defend or represent their clients at the main trial if after being punished they continue to disturb order. In such case the party shall be requested to engage another defence counsel or authorized representative. If the accused cannot engage another defence counsel immediately or the latter cannot be appointed by the court without prejudice to the defence, the main trial shall be recessed or adjourned. If the private prosecutor or the subsidiary prosecutor cannot engage another authorized representative immediately, the trial panel may decide to hold the main trial in the absence of the authorized representative if after a careful consideration of all the circumstances it finds that the absence of the authorized representative will not prejudice the interests of the person whom he or she represents. The ruling on this issue, together with an explanation, shall be entered in the record of the main trial. A separate appeal against this ruling shall not be allowed.

(4) If the trial panel removes from the courtroom a subsidiary prosecutor or private prosecutor who has no authorized representative, or if it removes their legal representative

who has no authorized representative, the main trial shall be recessed or adjourned until they engage an authorized representative.

(5) If a public prosecutor violates order, the presiding judge shall notify the competent public prosecutor of this, and may also suspend the main trial and ask the competent public prosecutor to appoint another public prosecutor for the case.

(6) When the court removes from the courtroom or fines a member of the bar or an attorney in training who violates order, the bar association shall be informed.

Article 337

(1) An appeal may be filed against a ruling imposing punishment; and the trial panel may revoke the ruling.

(2) No appeal shall be permitted against other decisions relating to the maintenance of order and the direction of the main trial.

Article 338

(1) If the accused commits a criminal offence at the main trial, the provisions of Article 377 of the present Code shall apply.

(2) If a person other than the accused commits a criminal offence while the court is in session at the main trial, the trial panel may, upon an oral charge by the prosecutor, recess the main trial and try the criminal offence committed right away or may consider it after concluding the main trial.

(3) Where there are grounds to suspect that a witness or an expert witness has given false testimony at the main trial, such criminal offence may not be tried immediately. In such case, the presiding judge may order that a separate record be made of the testimony of the witness or the expert witness and that the record be referred to the public prosecutor.

(4) If the perpetrator of a criminal offence which is prosecuted *ex officio* cannot be tried immediately, the competent public prosecutor shall be notified of this for further action.

3. PRECONDITIONS FOR THE MAIN TRIAL

Article 339

The presiding judge shall open the session and announce the case to be tried at the main trial and the composition of the trial panel. He or she shall then determine whether all the persons summoned have appeared and, if they have not, he or she shall check whether they were served with a summons and whether the absent persons have justified their absence.

Article 340

(1) If the public prosecutor fails to appear at the main trial scheduled upon an indictment which he or she has filed, the main trial shall be adjourned and the presiding judge shall notify the higher public prosecutor thereof.

(2) If the subsidiary prosecutor or the private prosecutor or their authorized representative fails to appear at the main trial after being duly summoned, the trial panel shall render a ruling to terminate the proceedings.

Article 341

(1) If a duly summoned accused fails to appear at the main trial without justifying his or her absence, the presiding judge shall issue an order for arrest of the accused in accordance with Article 270 of the present Code. If the accused cannot be produced immediately, the trial panel shall adjourn the main trial and order that the accused be compelled to appear at the next session. If the accused justifies his or her absence before being arrested, the presiding judge shall revoke the order for arrest.

(2) If a duly summoned accused is obviously evading the main trial and there are no reasons for his or her detention on remand under Article 281 of the present Code, the trial panel may order detention on remand to ensure his or her presence at the main trial. An appeal against this ruling shall not stay its execution. Articles 279 through 297 of the present Code shall apply, *mutatis mutandis*, to detention on remand ordered for this reason. Unless terminated earlier, the detention shall last until the announcement of the judgment, but no longer than one month.

Article 342

If a duly summoned defence counsel fails to appear at the main trial without notifying the court of the reason for his or her absence as soon as he or she learns about it, or if the defence counsel leaves the main trial without permission of the trial panel, the court shall ask the accused to engage immediately another defence counsel. If the accused fails to do so and it is impossible to appoint a defence counsel without prejudicing the defence, the main trial shall be adjourned.

Article 343

(1) If a duly summoned witness or an expert witness fails to appear without justification, the trial panel may order that he or she be compelled to appear immediately.

(2) The main trial may commence in the absence of a summoned witness or expert witness. In such case, the trial panel shall decide in the course of the main trial whether the main trial should continue in the absence of the witness or the expert witness or should be adjourned or recessed.

4. ADJOURNMENT AND RECESS OF THE MAIN TRIAL

Article 344

(1) In addition to cases specified in the present Code, the main trial may be adjourned under a ruling of the trial panel, if new evidence has to be collected, or if it is established in the course of the main trial that the accused has become afflicted by a temporary mental disorder or disability after committing the criminal offence, or if there are other impediments which prevent the successful completion of the main trial.

(2) Whenever possible, the ruling by which the main trial is adjourned shall specify the day and hour at which the main trial shall be resumed. In the same ruling, the trial panel may order the collection of such evidence that is likely to be lost with the passing of time.

(3) No appeal shall be permitted against a ruling under paragraph 2 of the present article.

Article 345

(1) When the composition of the trial panel has changed, the adjourned main trial shall start from the beginning. However, after hearing the parties, the trial panel may in this case decide not to examine the witnesses and expert witnesses again and not to conduct a new site inspection, but rather to read the testimony of the witnesses and the expert witnesses given at the previous main trial or the record of the site inspection.

(2) If the composition of the trial panel has not changed, the adjourned main trial shall be continued and the presiding judge shall give a short account of the course of the previous main trial. However, the trial panel may in this case also decide to recommence the main trial from the beginning.

(3) If the main trial has been adjourned for more than three months or if it is held before a new presiding judge, the main trial shall recommence from the beginning and all the evidence shall be examined again.

Article 346

(1) In addition to instances specified in the present Code, the presiding judge may order a recess of the main trial for purposes of rest or at the end of the working day or in order to

allow a short period of time for specific evidence to be collected or for the preparation of the prosecution or the defence.

(2) A recessed main trial shall always continue in front of the same trial panel.

(3) If the main trial cannot continue in front of the same trial panel or if it is recessed for more than eight days, the provisions of the Article 345 of the present Code shall apply.

Article 347

If in the course of the main trial held before a trial panel of one professional judge and two lay judges the facts upon which the charge is founded indicate that a criminal offence is involved for which a trial panel of two professional judges and three lay judges is competent, the trial panel shall be expanded and the main trial shall recommence from the beginning.

5. THE RECORD OF THE MAIN TRIAL

Article 348

(1) A record must be made in writing of the proceedings of the main trial. The entire course of the main trial in its essentials must be entered in this record.

(2) In addition, the main trial shall be either audio- or video-recorded or recorded stenographically, unless there are reasonable grounds for not so doing.

(3) The record of the main trial shall include a transcript of the audio-recording of the main trial and a record of the course of the main trial, its main components and decisions taken, as provided for in Articles 350 and 351 of the present Code.

(4) When the accused has been punished by imprisonment or after the announcement of an appeal in other instances, the audio- or video-recording of the main trial shall be entirely transcribed within three working days after the completion of the main trial. The time limit may be extended by the presiding judge, if this is justified by circumstances, for a period of fifteen days. The presiding judge shall review and confirm the transcript and shall insert it in the record as a constituent part of the record of the main trial.

(5) The decision on how the main trial shall be recorded shall be taken by the presiding judge.

Article 349

(1) When the main trial is recorded only in writing, the presiding judge may order, upon a motion of a party or *ex officio*, that testimony which he or she considers particularly important be entered in the record verbatim.

(2) If necessary, and especially where testimony has been entered in the record verbatim, the presiding judge may order that particular part of the record to be read immediately. Testimony recorded verbatim shall always be read immediately if so requested by a party, defence counsel or the person whose testimony has been entered in the record.

Article 350

(1) The record of the main trial or the confirmation hearing shall be finalized at the end of the session. It shall be signed by the presiding judge and the recording clerk.

(2) The parties shall be entitled to check the finalized record and attachments, to make comments on the contents and to request corrections.

(3) Corrections of incorrectly entered names, numbers and other obvious writing errors may be ordered by the presiding judge upon a motion by a party or a person being examined or *ex officio*. Other corrections and additions to the record may only be ordered by the trial panel.

(4) Comments and motions of parties regarding the record, as well as corrections and amendments to the record, shall be entered in an addendum to the finalized record. The reasons why certain suggestions and comments were not accepted shall also be indicated in the addendum. The presiding judge and the recording clerk shall sign the addendum to the record.

Article 351

(1) The introductory part of the record of the main trial shall indicate: the court in which the main trial is held; the venue and the time of the session; the names of the presiding judge, panel members, recording clerk, prosecutor, the accused and his or her defence counsel, the injured party and his or her legal representative or authorized representative, and the name of the interpreter; the criminal offence in question, and whether the main trial was public or the public was excluded.

(2) The record shall contain in particular the following information: the identification of the indictment; whether the prosecutor changed or expanded the indictment; what motions were filed by the parties and what decisions the presiding judge or the panel have taken on them; what evidence has been presented; and whether certain records and other writings were read, or sound or other recordings played, and comments of the parties thereon. If the public was excluded from the main trial, the record shall indicate that the presiding judge warned those present of the consequences of unauthorized disclosure of confidential information of which they learned at the main trial.

(3) Only the essential content of the testimony of the defendant, witnesses and expert witnesses shall be entered in the record. Upon request of a party the presiding judge shall order that the record of a previous testimony, or a part thereof, be read.

(4) Upon the request of a party, a question or an answer which the panel dismissed as impermissible shall also be entered in the record.

Article 352

(1) The complete enacting clause of the judgment (Article 396 paragraphs 3, 4 and 5 of the present Code) and an indication of whether the judgment was announced in public shall be entered in the record of the main trial. The enacting clause of the judgment contained in the record of the main trial shall be considered as the original.

(2) A ruling on detention on remand (Article 393 of the present Code), if rendered, shall also be entered in the record of the main trial.

Article 353

(1) Separate records shall be kept concerning the decision-making and voting of the trial panel.

(2) The records on the decision-making and voting of the trial panel shall contain the course of the voting and the judgment rendered.

(3) These records shall be signed by all the members of the trial panel and the recording clerk. Separate opinions shall be appended to the record of the decision-making and voting unless they have been entered in the record.

(4) The record of the decision-making and voting of the panel of judges shall be sealed in an envelope. This record may be examined only by the higher court when it is ruling on a legal remedy, and in that case it must again seal the record in an envelope and indicate on the envelope that it has examined the record.

6. COMMENCEMENT OF THE MAIN TRIAL AND THE PLEA OF THE ACCUSED

Article 354

(1) After the presiding judge has established that all persons summoned have appeared at the main trial or the trial panel has decided to conduct the main trial in the absence of some of the persons summoned or to postpone a decision on these issues, the presiding judge shall call on the accused and ask him or her to give his or her personal data (Article 233 of the present Code), except data about prior convictions, in order to determine his or her identity.

(2) Data concerning prior convictions and sentences served by the accused shall not be part of the file and may be read after the presentation of evidence is completed (the last sentence of Article 375 of the present Code).

Article 355

(1) Having established the identity of the accused, the presiding judge shall direct the witnesses and expert witnesses to a designated place where they shall wait until called upon to testify. The presiding judge may, if necessary, call on the expert witnesses to remain in the courtroom to follow the course of the main trial.

(2) If the injured party is present and has not yet filed his or her property claim, the presiding judge shall remind him or her that he or she may file a motion to realize such claim within criminal proceedings, as well as of his or her rights under Article 63 of the present Code.

(3) If the subsidiary prosecutor or the private prosecutor is to be examined as a witness, he or she shall not be removed from the courtroom.

(4) The presiding judge may take necessary measures to prevent collusion between witnesses, expert witnesses and the parties.

Article 356

(1) The presiding judge shall invite the accused to follow closely the course of the main trial and shall instruct him or her that he or she may state his or her case, address questions to the co-accused, witnesses and expert witnesses, and make comments on and give explanations of their testimony.

(2) The presiding judge shall then instruct the accused that:

1) He or she has a right not to give testimony in connection with his or her case or to answer any questions;

2) If he or she gives testimony, he or she shall not be obliged to incriminate himself or herself or his or her next of kin, nor to confess guilt; and

3) He or she may defend himself or herself in person or through legal assistance by a defence counsel of his or her own choice.

Article 357

(1) The main trial shall open with the reading of the indictment or the private charge.

(2) The indictment or the private charge shall as a rule be read by the prosecutor, but the presiding judge may instead orally present the contents of the indictment filed by the

subsidiary prosecutor or the private prosecutor. In that case the subsidiary prosecutor or the private prosecutor shall be allowed to supplement the presentation of the presiding judge.

(3) If the injured party is present, he or she may give reasons for his or her property claim; if he or she is not present, his or her motion shall be read by the presiding judge.

Article 358

(1) The presiding judge shall satisfy himself or herself that the accused understands the indictment and afford the accused the opportunity to plead guilty or not guilty.

(2) If the accused has not understood the charge, the presiding judge shall call on the prosecution to explain the charge in a way the accused may understand without difficulty.

(3) If the accused does not want to give any testimony regarding his or her guilt, it shall be considered that he or she has pleaded not guilty.

Article 359

(1) If the accused pleaded guilty on each count of the indictment at the confirmation hearing and pleads not guilty at the main trial, the presiding judge may adjourn the main trial to summon the witnesses and expert witnesses.

(2) If the accused pleads guilty on each count of the indictment at the main trial, the trial panel shall determine whether the requirements under Article 315 paragraph 1 of the present Code have been met.

(3) In considering a guilty plea of the accused, the presiding judge may invite the views of the public prosecutor, the defence counsel and the injured parties.

(4) If the trial panel is not satisfied that the requirements under Article 315 paragraph 1 of the present Code have been met, it shall proceed as if the guilty plea has not been made.

(5) If the trial panel is satisfied that the requirements under Article 315 paragraph 1 of the present Code have been met, the main trial shall continue with the closing statements (Article 378 of the present Code).

(6) The accused may in the course of the main trial consult with his or her defence counsel, except that during an examination the accused may not consult either his or her defence counsel or any other person on how to answer a question put to him or her.

7. PRESENTATION OF EVIDENCE

Article 360

(1) Presentation of evidence shall include all facts deemed by the court to be important for a correct and fair adjudication.

(2) The rules of evidence as provided for in Part Two of the present Code shall be observed during the main trial.

(3) Evidence shall be presented in the sequence determined by the presiding judge. As a rule, evidence proposed by the prosecution shall be presented first, followed by evidence proposed by the defence counsel or the defendant and finally the evidence which the trial panel has ordered to be collected *ex officio*. The testimony of the injured party as a witness shall be presented before the testimony of other witnesses.

(4) The parties and the injured party may until the conclusion of the main trial move that new facts be looked into and that new evidence be collected and shall be entitled to repeat the motions which the presiding judge or the trial panel had earlier dismissed.

(5) In addition to the evidence proposed by the parties or the injured party, the trial panel shall have the authority to collect evidence that it considers necessary for the fair and complete determination of the case.

Article 361

(1) A witness who has not yet testified shall not, as a rule, attend the presentation of evidence, and an expert witness who has not yet given his or her expert findings and opinion shall not attend a hearing when another expert witness gives testimony on the same matter.

(2) The examination of a witness under the age of 14 years of age who is a victim of a criminal offence referred to in Article 82 paragraph 1 subparagraph 3 of the present Code shall not be permitted in the main trial if his or her testimony has already been taken in the pre-trial proceedings and if the trial panel recognizes that a new examination is not necessary. The court shall instead read the records of the previous examination of such witness, if the conditions set forth in Article 156 paragraph 2 of the present Code are met. If such witness is examined, the trial panel may decide to exclude the public.

(3) If a child is present at a hearing as a witness or an injured party, he or she shall be taken out of the courtroom as soon as his or her presence is no longer necessary.

(4) Measures for the protection of injured parties and witnesses as provided for in Chapter XXI of the present Code shall be observed during the main trial.

Article 362

(1) Before the examination of a witness, the presiding judge or the pre-trial judge when acting under Article 238 of the present Code may require the witness to take an oath. A child and a person proven or suspected with good reason to have committed the criminal offence or participated in the criminal offence in relation to which he or she is being examined cannot be required to take an oath. If a witness has taken an oath in the pre-trial proceedings, he or she shall only be reminded at the main trial of the oath already taken.

(2) The oath of a witness shall read: "Conscious of the significance of my testimony and my legal responsibility I solemnly swear that I shall tell the truth, the whole truth, and nothing but the truth, and that I shall not withhold anything which has come to my knowledge."

(3) Before the beginning of the examination of an expert witness, the presiding judge may require him or her to take an oath. Prior to the main trial, the expert witness may take an oath only before the court and only where there is a danger that he or she might be kept from appearing at the main trial. The reason for his or her taking an oath shall be entered in the record. A permanent expert witness who has taken a general oath for the type of examinations concerned shall be only reminded at the main trial of the oath already taken.

(4) The oath of an expert witness shall read: "Conscious of the significance of my testimony and my legal responsibility, I solemnly swear that I shall perform my expert analysis conscientiously and to the best of my knowledge and that I shall state my findings and opinion accurately and completely."

(5) Mute witnesses and expert witnesses who are literate shall take the oath by signing the text of the oath, and deaf witnesses and expert witnesses shall read the text of the oath. If a deaf or mute witness or expert witness is illiterate, the oath shall be given through an interpreter.

Article 363

(1) An expert witness shall communicate his or her findings and opinion to the court orally. If he or she prepared a report on his or her findings and opinion before the main trial, he or she may be allowed to read it, in which case the report shall be entered into the record.

(2) If the expert analysis is entrusted to a professional institution or a public entity, the court may decide not to summon the experts to whom the institution or body has entrusted the task, if the nature of the expert analysis to be carried out indicates that extensive explanations of the written findings and opinion will not be necessary. In such case the trial panel may decide that the findings and opinion of the professional institution or public entity should only be read at the main trial. However, if the trial panel subsequently establishes that the presence of experts who have carried out the expert investigation is necessary in view of other evidence presented and the observations of the parties (Article 370 of the present Code), it may decide that the experts who completed the expert analysis shall be directly examined.

Article 364

If a witness or an expert witness cannot recall the facts he or she has presented in previous testimony or if he or she deviates from his or her previous testimony, the presiding judge or the parties shall draw his or her attention to the previous testimony and ask him or her why he or she is now testifying differently. Where necessary, the presiding judge shall read the previous testimony or a part thereof.

Article 365

(1) Witnesses and expert witnesses who have been examined shall remain in the courtroom unless the presiding judge upon hearing the parties permits them to leave or removes them temporarily from the courtroom.

(2) The presiding judge may order, on the motion of the parties or *ex officio*, that the examined witnesses and expert witnesses be removed from the courtroom and then called in and examined again in the presence or in the absence of other witnesses and expert witnesses.

Article 366

(1) If it becomes known at the main trial that a summoned witness or expert witness is unable to appear before the court or that his or her appearance involves considerable difficulties, the trial panel may, if it deems his or her testimony to be important, order that he or she give his or her testimony to the presiding judge or a judge on the trial panel outside the main trial, or that the testimony be given to a pre-trial judge in whose jurisdictional territory the witness or expert witness resides.

(2) If a site inspection or reconstruction of the event has to be carried out outside the main trial, it shall be conducted by the presiding judge or a judge on the trial panel.

(3) The parties and the injured party shall always be advised when and where a witness shall be examined or when and where a site inspection or reconstruction of an event shall take place, and shall be instructed of their right to attend these actions. If the parties and the injured party are present at these actions, they shall have the rights under Article 238 paragraph 2 of the present Code.

Article 367

(1) The record of a site inspection conducted outside the main trial, of a search of premises and a person and of the confiscation of objects, documents, books, files and other papers as well as technical recordings of evidentiary value shall be read or reproduced at the main trial in order to establish their contents. The trial panel shall have the discretion to allow an oral summary of these records, as well as the reproduction of the sound or camera recordings of the course of these investigative actions. Documents of evidentiary value shall, if possible, be submitted in their original form.

(2) Objects which may serve to clarify an issue may in the course of the main trial be shown to the accused and, if need be, to a witness or an expert witness.

Article 368

(1) Except in cases provided for in the present Code, records containing the testimony of witnesses, the co-accused or participants who have already been convicted of the criminal offence as well as records and other documents regarding the findings and opinions of expert witnesses may be read according to a decision of the trial panel only in the following cases:

1) If the persons who have been examined have died, become afflicted with mental disorder or disability or cannot be found, or if their appearance before the court is impossible or involves considerable difficulties due to old age, illness or other important reasons;

2) If the witnesses or expert witnesses refuse to testify at the main trial without lawful reasons; or

3) If the parties agree that the direct examination of a witness or expert witness who has failed to appear, irrespective of whether he or she has been summoned or not, be replaced by reading the records of his or her previous examination.

(2) Records of previous examinations of persons exempt from the duty to testify (Article 160 of the present Code) may not be read if such persons were not summoned to the main trial or if they exercised their right not to testify at the main trial. If such persons exercised their right not to testify at the main trial after they had already been examined or if they did not come to court when summoned, the record of their prior examination shall be inadmissible evidence. Article 154 of the present Code shall apply *mutatis mutandis*.

(3) The reasons for the reading of the record shall be indicated in the record of the main trial and during the reading it shall be announced whether or not the witness or expert witness took the oath.

Article 369

In the cases referred to in Articles 364, 368 and 372 of the present Code, and also in other cases when it is necessary, the trial panel may decide, in addition to the reading of the record, also to reproduce at the main trial an audio- or video-recording of the examination of an accused, a witness or an expert witness (Article 90 of the present Code).

Article 370

After the examination of each witness or expert witness, as well as after the reading of each record or other document, the presiding judge shall ask the parties and the injured party whether they have anything to present.

Article 371

(1) After the examination of witnesses and expert witnesses and presentation of material evidence the examination of the accused who has pleaded not guilty, or to whom Article 358 paragraph 4 of the present Code applies, shall take place.

(2) The provisions applying to the examination of the defendant in the pre-trial proceedings (Articles 229 through 236 of the present Code) shall apply *mutatis mutandis* to the examination of the accused at the main trial.

(3) Co-accused who have not yet been examined shall not be present during the examination of the accused.

Article 372

(1) The presiding judge shall first call the prosecutor and then defence counsel to examine the accused. The injured party, legal representative, authorized representative, co-accused and expert witness may ask the accused direct questions only with the permission of the presiding judge.

(2) When the accused who is examined at the main trial deviates from his or her previous testimony, the prosecutor or presiding judge shall draw his or her attention to the previous testimony and ask him or her why he or she is now testifying differently, and, when necessary, he or she shall read the accused his or her previous testimony or a part of this testimony.

(3) After the presiding judge has assured himself or herself that the prosecutor, defence counsel and other persons under paragraph 1 of the present article have no more questions, he or she may proceed to examine the accused, if the testimony or answers of the accused contain gaps, ambiguities or contradictions. Thereafter, the trial panel may put questions directly to the accused.

(4) After the examination has been completed, the presiding judge shall ask the accused whether he or she has anything to add in his or her defence. If the accused elaborates upon his or her defence, he or she may again be examined.

Article 373

(1) After the examination of the first accused has finished, each of the other accused, if there are any, shall be examined in turn. After each question the person being examined shall be informed of the testimony of the co-accused examined previously and shall be asked whether he or she has any comments thereon. The accused who has been examined previously shall be asked whether he or she has any comments on the testimony of the co-accused subsequently examined. Each accused shall be entitled to address questions to the other co-accused who have been examined.

(2) If the testimony of individual co-accused on the same circumstances differ, the presiding judge may confront the co-accused.

Article 374

(1) Upon completion of the evidentiary proceedings, the presiding judge shall ask the parties and the injured party if they have any motions for supplementing the evidentiary proceedings.

(2) If no motions for supplementing the evidentiary proceedings are made or if such motion has been made and denied, and the court finds that the case has been clarified, the presiding judge shall announce that the evidentiary proceedings are concluded.

Article 375

The data from the criminal register as well as other data about convictions for criminal offences may be read only when the presentation of evidence is completed. When the accused has pleaded guilty, all the information regarding the previous convictions of the accused shall be read out before the parties make their closing statements.

8. AMENDMENTS AND EXTENSION OF THE INDICTMENT

Article 376

(1) If the prosecutor finds in the course of the main trial that the evidence presented indicates that the factual situation as described in the indictment has changed, he or she may modify the indictment orally during the main trial and may also make a motion to recess the main trial in order to prepare a new indictment.

(2) If the trial panel grants the recess of the main trial in order for a new indictment to be prepared, it shall determine the time in which the prosecutor shall be obliged to file a new indictment. A copy of the new indictment shall be served on the accused. No proceedings on the confirmation of such indictment shall be allowed. If the prosecutor fails to file a new indictment within the prescribed period of time, the court shall resume the main trial on the basis of the previous indictment.

(3) When the indictment has been modified, the accused or the defence counsel may make a motion to recess the main trial in order to prepare the defence. The trial panel shall recess the main trial to allow for the preparation of defence, if the indictment has been substantially modified or extended.

Article 377

(1) If the accused commits a criminal offence during a hearing in the course of the main trial or if a previous criminal offence committed by the accused is discovered in the course of the main trial, the trial panel shall, in acting upon a charge by the authorized prosecutor which may also be submitted orally, extend the main trial to include this act as well. No proceedings on the confirmation of the indictment shall be allowed for such charge.

(2) In such case, the court may recess the main trial to give the defence time to prepare, and after hearing the parties it may decide that the accused be tried separately for the act under paragraph 1 of the present article.

(3) If a higher court is competent to adjudicate a matter under paragraph 1 of the present article, the panel shall after hearing the parties decide whether it shall refer the matter about which it is conducting the main trial to the competent higher court for adjudication.

9. CLOSING STATEMENTS

Article 378

(1) Upon completion of the evidentiary proceedings, the presiding judge shall call on the parties, the injured party and the defence counsel to sum up their arguments. The prosecutor shall speak first, then the injured party and the defence counsel, and finally the accused.

(2) Persons presenting closing statements may refer to the admissible evidence, as well as the proceedings, the applicable law, the character and demeanour of the witnesses as observed in the judicial proceedings, and may use charts, diagrams, court-approved transcripts of tapes, summaries and comparisons of evidence, if they are based on admissible evidence, as well as enlargements of exhibits and any demonstrative or illustrative exhibit or demonstration made in court.

Article 379

In his or her closing statement the prosecutor shall present his or her evaluation of the evidence taken at the main trial, explain his or her conclusions concerning facts which are important for the decision, and shall present and justify his or her proposal regarding the criminal liability of the accused, the provisions of the Provisional Criminal Code to be applied and the mitigating and aggravating circumstances to be taken into consideration in considering the punishment. The prosecutor may not propose the amount of the punishment, although he or she may propose that a judicial admonition or one of the alternative punishments under Article 41 of the Provisional Criminal Code be imposed.

Article 380

In his or her closing statement, the injured party or his or her authorized representative may explain his or her property claim and call attention to evidence of the criminal liability of the accused.

Article 381

(1) The defence counsel or the accused himself or herself shall present the defence in a closing statement and may comment on the allegations of the prosecution and the injured party.

(2) After the defence counsel has presented arguments for the defence, the accused shall have the right to speak him or herself, to assert whether he or she agrees with the defence presented by his or her counsel and to supplement such defence.

(3) The prosecutor and the injured party shall have the right to respond to the defence, and defence counsel or the accused shall have the right to comment on those responses.

(4) The accused shall always have the right to speak last.

Article 382

(1) The presentation of closing statements by the parties may not be subject to time-limits.

(2) The presiding judge may, upon prior warning, interrupt the speaker who in his or her closing statements offends public order and morality, insults another person, repeats himself or herself or speaks at great length on matters manifestly irrelevant to the case. The interruption and the reason for this shall be noted in the record of the main trial.

(3) When several persons act for the prosecution and several defence counsel represent the defence, they shall not repeat the same arguments. The representatives of the prosecution or the defence shall select by mutual agreement the issues on which each of them will speak.

(4) After all closing statements have been presented, the presiding judge shall ask whether anyone has any further statement to make.

Article 383

(1) If after the closing statements of the parties the trial panel does not find a need for any further evidence, the presiding judge shall indicate that the main trial has been concluded.

(2) The trial panel shall then withdraw for deliberation and voting in order to render a judgment.

Article 384

(1) The trial panel shall dismiss the indictment by a ruling:

1) If the proceedings were conducted without the request of the authorized prosecutor;

2) If the required motion of the injured party or the permission of the competent public entity is lacking, or if the competent public entity has withdrawn permission; or

3) If there are other circumstances which temporarily bar prosecution.

(2) The trial panel may render a ruling by which the indictment is dismissed even after the main trial has been scheduled.

CHAPTER XXXV: JUDGMENT

1. RENDERING OF THE JUDGMENT

Article 385

(1) If in its deliberations the court finds that there is no need to re-open the main trial so as to supplement the proceedings or to obtain clarification of a particular issue, the court shall render a judgment.

(2) The judgment shall be rendered and announced in the name of the people.

Article 386

(1) The judgment may relate only to the accused and only to an act which is the subject of a charge contained in the indictment as initially filed or as modified or extended in the main trial.

(2) The court shall not be bound by the motions of the prosecutor regarding the legal classification of the act.

(3) The court shall not be bound by any agreement between the public prosecutor and the defence regarding modification of the charges or the guilty plea.

Article 387

(1) The court shall base its judgment solely on the facts and evidence considered at the main trial.

(2) The court shall be bound to assess conscientiously each item of evidence separately and in relation to other items of evidence and on the basis of such assessment to reach a conclusion whether or not a particular fact has been established.

2. TYPES OF JUDGMENTS

Article 388

(1) The court shall, by a judgment, reject the charge or acquit the accused of the charge or pronounce the accused guilty.

(2) If the charge includes several criminal offences, the judgment shall specify whether, and for which act, the charge is rejected or the accused is acquitted, or the accused is pronounced guilty.

Article 389

The court shall render a judgment rejecting the charge, if:

1) The prosecutor withdraws the charge during the period from the opening until the conclusion of the main trial;

2) The injured party withdraws the motion;

3) The accused was previously convicted or acquitted of the same act under a final judgment or proceedings against him or her were terminated in a final form by a ruling; or

4) The period of statutory limitation has expired, an amnesty or pardon covers the act, or there are other circumstances which bar prosecution.

Article 390

The court shall render a judgment acquitting the accused, if:

1) The act with which the accused is charged does not constitute a criminal offence;

2) There are circumstances which exclude criminal liability; or

3) It has not been proven that the accused has committed the act with which he or she has been charged.

Article 391

(1) In a judgment pronouncing the accused guilty the court shall state:

1) The act of which he or she has been found guilty, together with facts and circumstances indicating the criminal nature of the act committed, and facts and circumstances on which the application of pertinent provisions of criminal law depends;

2) The legal designation of the act and the provisions of the criminal law applied in passing the judgment;

3) The punishment imposed on the accused, including an alternative punishment under Article 41 of the Provisional Criminal Code, or a waiver of punishment;

4) An order to impose mandatory rehabilitation treatment of perpetrators addicted to alcohol or drugs or to confiscate the material benefit acquired by the commission of a criminal offence;

5) The decision to include the time spent in detention on remand or imprisonment under an earlier sentence in the amount of the punishment; and

6) The decision on costs of criminal proceedings and on a property claim and on whether the final judgment should be announced in the press or radio or television.

(2) If the accused is punished by a fine, the judgment shall state the time within which he or she must pay the fine and the manner of substituting the fine if the fine cannot be collected by means of compulsion.

3. ANNOUNCEMENT OF THE JUDGMENT

Article 392

(1) The judgment shall be announced by the presiding judge immediately after the court has rendered it. If the court is unable to render judgment on the day the main trial is completed, it shall postpone the announcement by a maximum of three days and shall determine the time and place for the announcement of the judgment.

(2) The presiding judge shall read the enacting clause of the judgment in open court and in the presence of the parties, their legal representatives and authorized representatives and defence counsel, after which he or she shall give a brief account of the grounds for the judgment.

(3) The judgment shall be announced even in the absence of a party, a legal representative, authorized representative or defence counsel. If the accused is not present, the trial panel may decide that the presiding judge report the judgment to him or her orally or that the judgment be served on him or her in writing.

(4) If the public was excluded from the main trial, the enacting clause of the judgment shall always be read out in open court. The trial panel shall decide whether and to what extent the public should be excluded while the grounds for the judgment are announced.

(5) All persons present shall stand while the enacting clause of the judgment is being read.

Article 393

(1) In rendering a judgment by which the accused is punished by imprisonment, the trial panel shall order detention on remand if conditions set forth in Article 281 paragraph 1 of the present Code are met and shall cancel detention on remand if the accused is in detention on remand and the grounds on which it was ordered have ceased to exist.

(2) The trial panel shall always cancel detention on remand and order the release of the accused if:

1) The accused is acquitted of the charge;

2) He or she is found guilty but the punishment has been waived;

3) He or she is only punished by a fine or has received a judicial admonition;

4) One of the alternative punishments is imposed, with exception of the punishment of semi-liberty (Article 53 of the Provisional Criminal Code);

5) Due to the inclusion of detention on remand in the amount of punishment he or she has already served the sentence; or

6) The charge is rejected, except in a case in which it is rejected on grounds of lack of competence of the court.

(3) Paragraph 1 of the present article shall apply to ordering or cancelling detention on remand after the announcement of the judgment until it becomes final. A decision thereon shall be rendered by the three-judge panel.

(4) Before ordering or terminating detention on remand under paragraphs 1, 2 and 3 of the present article, the panel shall first hear the opinion of the public prosecutor, if the proceedings were initiated upon his or her request, and either the accused or his or her defence counsel.

(5) If the accused is in detention on remand and the panel finds that the grounds on which detention on remand was ordered still exist or that there are grounds under paragraph 1 of the present article, it shall extend detention on remand under a separate ruling. It shall also render a separate ruling when detention on remand is to be ordered or cancelled. An appeal against this ruling shall not stay execution.

(6) Detention on remand ordered or extended under the provisions of paragraphs 1 through 5 of the present article may last until the judgment becomes final, but no longer than the expiry of the term of punishment imposed in the judgment of the court of first instance.

(7) An accused in detention on remand who has been punished by imprisonment may upon his or her request be transferred to a penal institution under a ruling of the presiding judge even before the judgment has become final.

Article 394

(1) After announcing the judgment, the presiding judge shall instruct the parties of their right to appeal and the obligation to announce the appeal in advance. The instruction shall be entered into the record of the proceedings of the main trial.

(2) Where an alternative punishment under the Article 41 of Provisional Criminal Code has been imposed, the presiding judge shall warn the accused of the meaning of the punishment and the conditions by which he or she is bound to abide.

(3) The presiding judge shall remind the parties of their obligation to report to the court any change in address until the final conclusion of proceedings.

4. DRAWING UP AND SERVING OF JUDGMENTS

Article 395

(1) The judgment shall be drawn up in writing within fifteen days of its announcement if the accused is in detention on remand and within thirty days in other instances. If a judgment is not drawn up within that time the presiding judge shall inform the president of the court of the reasons for this. The president of the court shall take the necessary measures for the judgment to be drawn up as soon as possible, but no later than thirty days from its announcement if the accused is in detention on remand and forty-five days in other instances.

(2) The judgment shall be signed by the presiding judge and the recording clerk. Where the trial panel was composed of two judges and three lay-judges (Article 24 paragraph 1 of the present Code) the second judge of the trial panel shall also sign the judgment.

(3) A certified copy of the judgment shall be served on the prosecutor. The judgment shall be served on the accused and his or her defence counsel in accordance with Article 127 of the present Code. If the accused is in detention on remand, certified copies of the judgment shall be sent within the prescribed periods of time provided for in paragraph 1 of the present article.

(4) The judgment served on the accused, the injured party, the private prosecutor and the subsidiary prosecutor shall contain an instruction on the right to appeal.

(5) A certified copy of the judgment with an instruction on the right to appeal shall be served on the injured party if he or she is entitled to appeal, on a person from whom an object is confiscated under the judgment (Article 60 paragraph 2 of the Provisional Criminal Code) and on a legal person upon which the confiscation of the material benefit acquired by the commission of a criminal offence has been imposed. The injured party not entitled to appeal shall be served with a certified copy of the judgment in instances under Article 63 paragraph 2 of the present Code with the instruction that he or she has the right to request a return to the *status quo ante*. The final judgment shall be served on the injured party, if he or she so requests.

(6) Where, under the provisions on a single punishment for concurrent criminal offences, the court has rendered a judgment taking into account judgments rendered by other courts, certified copies of the final judgment shall be sent to the courts concerned.

Article 396

(1) The judgment drawn up in writing shall be fully consistent with the judgment as it was announced. It shall have an introduction, the enacting clause and a statement of grounds.

(2) The introduction shall include: an indication that the judgment is rendered in the name of the people; the name of the court; the first name and surname of the presiding judge, members of the trial panel and the recording clerk; the first name and surname of the accused; the criminal offence of which the accused was convicted and an indication as to whether he or she was present at the main trial; the day of the main trial; whether the main trial was public; the first name and surname of the prosecutor, counsel, legal representative and authorized representative present at the main trial; and the day of the announcement of the judgment that has been rendered.

(3) The enacting clause of the judgment shall include the personal data of the accused (Article 233 paragraph 1 of the present Code) and the decision by which the accused is pronounced guilty of the act of which he or she is accused or by which he or she is acquitted of the charge for that act or by which the charge is rejected.

(4) If the accused has been convicted, the enacting clause of the judgment shall contain the necessary data specified in Article 391 of the present Code, and if he or she was acquitted or the charge was rejected, the enacting clause shall contain a description of the act with which he or she was charged and the decision concerning the costs of criminal proceedings and the property claim if such claim was filed.

(5) In the event of concurrent criminal offences the court shall indicate in the enacting clause, the punishment determined for each separate criminal offence, whereupon it shall indicate the aggregate punishment.

(6) In the statement of grounds for a judgment, the court shall present the grounds for each individual point of the judgment.

(7) The court shall state clearly and exhaustively which facts it considers proven or not proven, as well as the grounds for this. The court shall also, in particular, make an evaluation of the credibility of conflicting evidence, the grounds for not approving individual motions of the parties, and the reasons by which the court was guided in settling points of law and, in particular, in establishing the existence of a criminal offence and the criminal liability of the accused, as well as in applying specific provisions of criminal law to the accused and his or her act.

(8) If the accused has been sentenced to a punishment, the statement of grounds shall indicate the circumstances the court considered in determining the punishment. The court shall, in particular, explain by which grounds it was guided if it found that it was an especially serious case or that it is necessary to impose a sentence which is more severe than what has been prescribed (Article 70 of the Provisional Criminal Code), or if it found that it was necessary to reduce the sentence or to waive the sentence, or to impose an alternative punishment or to impose a measure of mandatory rehabilitation treatment or confiscation of the material benefit acquired by the commission of a criminal offence.

(9) If the accused is acquitted of a charge, the statement of grounds shall state, in particular, on which of the reasons provided for in Article 390 of the present Code it is acting.

(10) In the statement of grounds for a judgment rejecting a charge, the court shall not evaluate the principal matter but shall confine itself only to the reasons for the rejection of the charge.

Article 397

(1) Errors in names and numbers, other obvious writing and computing errors, deficiencies regarding the form of the written judgment and discrepancies between the judgment drawn up in writing and its original shall be corrected under a separate ruling of the presiding judge, on the motion of the parties, defence counsel or *ex officio*.

(2) If the judgment as drawn up in writing and its original differ with respect to the data provided for in Article 391 paragraph 1 subparagraphs 1 through 4 and subparagraph 6 of the present Code, the ruling on corrections shall be served on persons referred to in Article 395 of the present Code. In such case, the prescribed period of time for filing an appeal against the judgment shall run from the day of service of such ruling. No separate appeal may be permitted against this ruling.

PART FIVE: PROCEDURE FOR LEGAL REMEDIES

CHAPTER XXXVI: APPEAL AGAINST A JUDGMENT OF A COURT OF FIRST INSTANCE

1. RIGHT TO APPEAL

Article 398

(1) Authorized persons may file an appeal against a judgment rendered at first instance within fifteen days of the day the copy of the judgment has been served.

(2) An appeal filed in due time by an authorized person shall stay the execution of the judgment.

Article 399

(1) An appeal may be filed by the parties, the defence counsel, the legal representative of the accused and the injured party.

(2) The public prosecutor may file an appeal either to the detriment or to the benefit of the accused.

(3) An injured party may challenge a judgment only with respect to the court's decision on the punitive sanctions for criminal offences committed against life or body, against sexual integrity or against the security of public traffic and on the costs of criminal proceedings, but if the public prosecutor has taken the prosecution over from the subsidiary prosecutor (Article 65 paragraph 2 of the present Code), the injured party may file an appeal on all the grounds on which the judgment may be appealed (Article 402 of the present Code).

(4) An appeal may also be filed by a person whose property has been confiscated (Article 60 paragraph 2 of the Provisional Criminal Code) by a person from whom the material benefit acquired by the commission of a criminal offence has been confiscated (Article 83 paragraph 2 of the Provisional Criminal Code), and by a legal person from whom the material benefit has been confiscated (Article 85 of the Provisional Criminal Code).

(5) The defence counsel may file an appeal even without the separate authorization of the accused, but not against his or her will, except if the punishment of long-term imprisonment is imposed.

Article 400

(1) Persons entitled to appeal (Article 399 of the present Code) shall be obliged to announce an appeal. They may announce an appeal immediately after the announcement of the judgment or after the instruction on the right to appeal (Article 394 paragraph 1 of the present Code), but no later than eight days after the date of the announcement of the judgment.

(2) If a person entitled to appeal fails within the legally stipulated interval to announce an appeal, he or she shall be deemed to have waived the right to appeal, except in instances from paragraph 4 of the present article.

(3) If none of the persons entitled to appeal (Article 399 of the present Code) announces an appeal, the final written judgment need not contain a statement of grounds. In such instances, transcription of the audio-record of the main trial is also not necessary.

(4) If the accused has been punished by imprisonment and no appeal has been announced, the written judgment shall nevertheless contain a statement of the grounds and the audio-record of the main trial shall be transcribed.

(5) Until the court of second instance renders its judgment, the appellant may withdraw the appeal that has been filed. The withdrawal of an appeal may not be revoked.

2. CONTENT OF THE APPEAL

Article 401

(1) The appeal shall contain:

1) An indication of the judgment against which the appeal is filed;

2) The grounds for challenging the judgment (Article 402 of the present Code);

3) An explanation of the appeal;

4) A motion to reverse the challenged judgment in whole or in part, or to modify it; and

5) The signature of the appellant.

(2) If an appeal is filed by an accused, or by an injured party, subsidiary prosecutor or private prosecutor who has no authorized representative, and the appeal is not drawn up in accordance with the provisions of paragraph 1 of the present article, the court of first instance shall request the appellant to supplement it within a certain prescribed period of time by a written submission or orally for the record at that court. If the appellant does not comply with the request and the appeal does not contain information under paragraph 1 subparagraphs 2, 3 or 5 of the present article, the court shall dismiss it. If the appeal does not contain the information under paragraph 1 subparagraph 1 of the present article, the court shall dismiss it only if it cannot establish to which judgment the appeal relates. If the appeal has been filed in favour of the accused and it is possible to establish to which judgment it relates, the court shall nevertheless forward it to the court of second instance, but if the judgment to which the appeal relates cannot be established, the court shall dismiss the appeal.

(3) If an appeal against the judgment is filed by an injured party, subsidiary prosecutor or private prosecutor who has an authorized representative or by the public prosecutor, and if either the appeal does not contain information under paragraph 1 subparagraphs 2, 3 or 5 of the present article or the appeal does not contain information under paragraph 1 subparagraph

1 of the present article and it is impossible to establish to which judgment the appeal relates, the court shall dismiss the appeal.

(4) New evidence and facts may be presented in the appeal but the appellant shall be bound to give reasons for failing to present them before. In referring to new facts the appellant shall indicate the evidence by which these facts may be proven, and in referring to new evidence he or she shall indicate the facts which he or she intends to prove by that evidence.

3. GROUNDS ON WHICH THE JUDGMENT MAY BE CHALLENGED

Article 402

(1) A judgment may be challenged:

1) On the ground of a substantial violation of the provisions of criminal procedure;

2) On the ground of a violation of the criminal law;

3) On the ground of an erroneous or incomplete determination of the factual situation; or

4) On account of a decision on criminal sanctions, confiscation of the material benefit acquired by the commission of a criminal offence, costs of criminal proceedings, property claims as well as on account of an order to publish a judgment.

(2) A judgment cannot be challenged on the ground of an erroneous or incomplete determination of the factual situation when the accused has pleaded guilty to all counts of the indictment and the trial panel has accepted such plea (Article 358 of the present Code).

Article 403

(1) There is a substantial violation of the provisions of criminal procedure if:

1) The court was not properly constituted or the participants in the rendering of the judgment included a judge or a lay judge who did not attend the main trial or was excluded from adjudication under a final decision;

2) A judge or a lay judge who should be excluded from participation in the main trial participated therein (Article 40 paragraphs 1 and 2 of the present Code);

3) The main trial was conducted in the absence of persons whose presence at the main trial is required by law or the accused, defence counsel, the subsidiary prosecutor or the private prosecutor was, notwithstanding his or her request, denied the right to use his or her own language in the main trial and to follow the course of the main trial in his or her language (Article 15 of the present Code);

4) The public was excluded from the main trial in violation of the law;

5) The court violated the provisions of the criminal procedure relating to the issue of whether there exists a charge by an authorized prosecutor, a motion of the injured party or the approval of the competent public entity;

6) The judgment was rendered by a court which lacked subject matter jurisdiction to hear the case, or a court erroneously rejected the charge on the ground of lack of jurisdiction;

7) The court in its judgment did not fully adjudicate the substance of the charge;

8) The judgment was based on inadmissible evidence;

9) The accused, when asked to enter his or her plea, pleaded not guilty on all or certain counts of the charge and was examined before the presentation of evidence was completed;

10) The judgment exceeded the scope of the charge (Article 386 paragraph 1 of the present Code);

11) The judgment was rendered in violation of Article 417 of the present Code; or

12) The enacting clause of the judgment was incomprehensible or internally inconsistent or inconsistent with the grounds for the judgment; the judgment lacked any grounds; there was no statement of grounds relating to material facts; the statement of grounds was wholly unclear or inconsistent in a large part; or in regard to material facts there was a considerable discrepancy between the statement of grounds relating to the content of documents or records of testimony given in the proceedings on the one hand and these documents or records themselves on the other hand.

(2) There is also a substantial violation of the provisions of criminal procedure if in the course of the criminal proceedings, including the pre-trial proceedings, the court, the public prosecutor or the police

1) Omitted to apply a provision of the present Code or applied it incorrectly; or

2) Violated the rights of the defence;

and this influenced or might have influenced the rendering of a lawful and proper judgment.

Article 404

There is a violation of the criminal law if the criminal law is violated with respect to the following issues:

1) Whether the act for which the accused is prosecuted is a criminal offence;

2) Whether circumstances exist which preclude criminal liability;

3) Whether circumstances exist which preclude criminal prosecution and, in particular, whether criminal prosecution is prohibited by the period of statutory limitation or precluded due to an amnesty or pardon, or prior adjudication by a final judgment;

4) Whether an inapplicable law was applied to the criminal offence which is the subject-matter of the charge;

5) Whether in rendering a decision on punishment, alternative punishment or judicial admonition, or in ordering a measure of mandatory rehabilitation treatment or the confiscation of material benefit acquired by the commission of a criminal offence, the court exceeded its authority under the law; or

6) Whether provisions were violated in respect of crediting the period of detention on remand and an earlier served sentence.

Article 405

(1) A judgment may be challenged on grounds of an erroneous or incomplete determination of the factual situation.

(2) There is an erroneous determination of the factual situation when the court determines a material fact incorrectly or when the contents of documents, records on evidence examined or technical recordings seriously undermine the correctness or reliability of the determination of a material fact.

(3) There is an incomplete determination of the factual situation, if the court fails to establish a material fact.

Article 406

(1) A judgment may be challenged in respect of a decision on a punishment or a judicial admonition on the grounds that the court, while not exceeding its authority under the law (Article 404 subparagraph 5 of the present Code), has nevertheless failed to determine the punishment or judicial admonition correctly, having regard to the circumstances relevant to the level of the punishment or the judicial admonition. The judgment may also be challenged on the grounds that the court has applied or failed to apply the provisions on the mitigation or waiver of punishment or on judicial admonition, even though there were legal grounds for this.

(2) A decision on a measure of mandatory rehabilitation treatment of persons addicted to drugs or alcohol or on confiscation of the material benefit acquired by the commission of a criminal offence may be challenged on the grounds that the court, while not violating Article 404 subparagraph 5 of the present Code, has nevertheless rendered that decision incorrectly, or failed to impose the measure of mandatory rehabilitation treatment of persons addicted to

drugs or alcohol or the measure of confiscation of the material benefit acquired by the commission of a criminal offence even though there were legal grounds for this.

(3) A decision on the costs of criminal proceedings may be challenged if the court has determined these costs incorrectly or in violation of the provisions of the present Code.

(4) A decision on a property claim and a decision on an order to publish a judgment may be challenged if the court has decided these issues in violation of the provisions of the law.

4. THE APPEAL PROCEDURE

Article 407

(1) An appeal shall be filed with the court which rendered the judgment in first instance with a sufficient number of copies for the court and for the opposing side and defence counsel to reply to it.

(2) A belated appeal (Article 421 of the present Code) or an appeal which is impermissible (Article 422 of the present Code) shall be dismissed by a ruling of the presiding judge of the court of first instance.

Article 408

The court of first instance shall serve a copy of the appeal on the opposing side (Articles 127 and 128 of the present Code) who may file a reply to the appeal with the court within eight days of the service of the copy. The court of first instance shall send the appeal, the reply and the related files to the court of second instance.

Article 409

(1) The court of second instance shall upon receiving the files with the appeal, give the files to the reporting judge assigned in accordance with the court calendar. If the case concerns a criminal offence prosecuted *ex officio*, the reporting judge shall send the files to the competent public prosecutor who shall examine and return them to the court without delay.

(2) The public prosecutor may file his or her motion in returning the files, or may declare that he or she will file it during the session of the appellate panel.

(3) After the public prosecutor has returned the files, the presiding judge of the appellate panel shall schedule the session of the panel.

(4) The reporting judge may, when necessary, secure a report on violations of provisions of criminal procedure from the court of first instance, and he or she may also verify through that court, or in some other way, the allegations in the appeal relating to new evidence and new facts or he or she may secure the necessary reports or documents from other agencies or legal persons.

Article 410

(1) Notice of the session of the panel shall be sent to the competent public prosecutor when the criminal offence is prosecuted *ex officio*, and to the accused and his or her defence counsel. Notice shall only be sent to the subsidiary prosecutor or the private prosecutor if they so request in the appeal or in the response to the appeal.

(2) If an accused held in detention on remand or serving his or her sentence wishes to attend the session he or she shall be allowed to do so.

(3) The session of the panel shall open with the report of the reporting judge on the facts. The panel may ask the parties and the defence counsel who are present at the session to provide necessary explanations concerning allegations in the appeal. The parties and the defence counsel may make motions that certain files be read as a supplement to the report and may provide the necessary explanations of their positions as contained in the appeal or in the reply to the appeal, without repeating the contents of the report.

(4) If parties who were duly summoned to the session fail to appear, the panel shall nevertheless hold the session. If the accused failed to report a change in address or current residence, the panel may hold the session even though the accused has not been advised thereof.

(5) The public may be excluded from the session of the panel held in the presence of the parties only under conditions provided for by the present Code (Articles 329 through 331 of the present Code).

(6) The record of the session shall be enclosed with the files of the courts of first and second instance.

(7) Rulings under Articles 421 and 422 of the present Code may be rendered without informing the parties about the session of the panel.

Article 411

(1) The court of second instance shall take its decision in a session of the panel or in a hearing.

(2) The court of second instance shall decide in a session of the panel whether to conduct a hearing.

Article 412

(1) A hearing before the court of second instance shall be conducted only when it is necessary to take new evidence or to repeat evidence already taken due to an erroneous or incomplete determination of the factual situation, and when there are valid grounds for not returning the case to the court of first instance for retrial.

(2) A summons to appear at the hearing before the court of second instance shall be served on the accused and his or her defence counsel, the prosecutor, the injured party, legal representatives and authorized representatives of the injured party, of the subsidiary prosecutor and of the private prosecutor, and those witnesses and expert witnesses whom the court decides to hear pursuant to the motion of the parties or *ex officio*.

(3) If the accused is in detention on remand or is serving his or her sentence, the presiding judge of the court of second instance shall take the necessary steps for the accused to be brought to the hearing.

(4) Article 340 paragraph 2 of the present Code shall not apply to cases where the subsidiary prosecutor or the private prosecutor fails to appear at the hearing before the court of second instance.

Article 413

(1) The hearing before the court of second instance shall start with the report of the reporting judge who shall present the factual situation without giving his or her opinion on whether the appeal is well-founded.

(2) The judgment or the part of judgment to which the appeal relates, and, if necessary, also the record of the main trial, shall be read upon a motion or *ex officio*.

(3) After that the appellant shall be called to set out his or her appeal and the opposing party to give his or her reply. The accused and his or her defence counsel shall always have the last word.

(4) The parties may present new evidence and new facts during the hearing.

(5) The prosecutor may, having regard to the outcome of the hearing, withdraw the indictment completely or a part thereof or he or she may amend it in favour of the accused. If the public prosecutor withdraws the indictment completely, the injured party shall have the rights provided for by Article 63 of the present Code.

Article 414

Unless otherwise provided for in Articles 407 through 413 of the present Code, the provisions on the main trial before the court of first instance shall apply as appropriate to proceedings before the court of second instance.

5. SCOPE OF APPELLATE REVIEW

Article 415

(1) The court of second instance shall examine the part of the judgment which is challenged by the appeal. In addition, when an appeal is filed, the court shall examine *ex officio*:

1) Whether there exists a violation of the provisions of criminal procedure under Article 403 paragraph 1 subparagraphs 1, 2, 6 and 8 through 12 of the present Code;

2) Whether the main trial was, contrary to the provisions of the present Code, conducted in the absence of the accused;

3) Whether in a case of mandatory defence the main trial was conducted in the absence of defence counsel; and

4) Whether the criminal law was violated to the detriment of the accused (Article 404 of the present Code).

(2) If an appeal filed in favour of the accused does not contain the information under Article 401 paragraph 1 subparagraphs 2 or 3 of the present Code, the court of second instance shall confine itself to inquiring into violations under paragraph 1 subparagraphs 1 through 4 of the present article and to examining the decision on punishment, mandatory rehabilitation treatment and the confiscation of the material benefit acquired by the commission of a criminal offence (Article 406 of the present Code).

Article 416

In his or her appeal, the appellant may refer to a violation of law under Article 403 paragraph 1 subparagraph 2 of the present Code, only if he or she was unable to present that violation during the main trial, or if his or her presentation was disregarded by the court of first instance.

Article 417

Where only an appeal in favour of the accused has been filed, the judgment may not be modified to the detriment of the accused with respect to the legal classification of the act and the criminal sanction imposed.

Article 418

An appeal filed in favour of the accused on the ground of an erroneous and incomplete determination of the factual situation or on the ground of a violation of criminal law shall include an appeal against the decision on punishment, mandatory rehabilitation treatment and confiscation of the material benefit acquired by the commission of a criminal offence (Article 406 of the present Code).

Article 419

If upon an appeal the court of second instance finds that the reasons which governed its decision in favour of the accused, and which are not of a purely personal nature, are also to the advantage of a co-accused who has not filed an appeal or has not filed an appeal along the same lines, the court shall proceed *ex officio* as if such appeal was also filed by the co-accused.

6. DECISIONS OF THE COURT OF SECOND INSTANCE ON APPEAL

Article 420

(1) The court of second instance may in a session of the panel or on the basis of a hearing:

1) Dismiss an appeal as belated or inadmissible;

2) Reject an appeal as unfounded and affirm the judgment of the court of first instance;

3) Annul the judgment and return the case to the court of first instance for retrial and decision; or

4) Modify the judgment of the court of first instance.

(2) The court of second instance shall determine all appeals of the same judgment by a single decision.

(3) A decision of the court of second instance shall be signed by all the judges in the panel, except for a decision issued under Article 421 or 422 of the present Code. A member of the panel may submit a dissenting or concurring opinion on legal or factual questions regarding the appeal and such opinion will be attached to the main decision.

Article 421

The court of second instance shall dismiss an appeal as belated by a ruling if it establishes that it was filed after the expiry of the period of time prescribed by law.

Article 422

The court of second instance shall dismiss an appeal as not permitted by a ruling if it is established that it was filed by a person not entitled to file an appeal or by a person who has renounced the appeal, or if withdrawal from the appeal is established or if it is established that after withdrawal the appeal was filed again or if the appeal was not permitted under the law.

Article 423

The court of second instance shall reject by a judgment an appeal as unfounded and affirm the judgment of the court of first instance if it establishes that there are no grounds to challenge the judgment and no violations of the law under Article 415 paragraph 1 of the present Code.

Article 424

(1) The court of second instance shall, in accepting an appeal or in acting *ex officio*, annul by a ruling the judgment of the court of first instance and return the case for retrial if it finds that there exists a substantial violation of provisions of criminal procedure, except for cases provided for in paragraph 2 of the present article and Article 426 paragraph 1 of the present Code, or if it considers that a new main trial before the court of first instance is necessary because of an erroneous or incomplete determination of the factual situation.

(2) Where there is a substantial violation of the provisions of criminal procedure under Article 403 paragraph 1 subparagraph 8 of the present Code, the judgment of the court of first instance shall not be annulled if the annulment for that sole reason would be to the detriment of the accused.

(3) The court of second instance shall annul by a ruling the judgment of the court of first instance on the ground of an erroneous or incomplete determination of facts even though the judgment is not challenged on that particular ground if, when considering the appeal, serious doubts arise about the accuracy of the material facts which were determined in the judgment from which the court infers that the factual situation was erroneously or incompletely determined to the detriment of the accused.

(4) Where the only reason for annulling the judgment of the court of first instance is an erroneous determination of the factual state of affairs and where all that is required for a correct determination is a different assessment of already determined facts and not the collection of new evidence or the repetition of previously produced evidence, the court of second instance shall not annul the judgment of the court of first instance, but shall act according to Article 426 of the present Code.

(5) The court of second instance may annul the judgment of the court of first instance partially if particular parts of the judgment can be addressed separately without prejudice to a correct adjudication.

(6) If the accused is in detention on remand, the court of second instance shall examine whether there are still grounds for detention on remand and shall extend or terminate detention on remand by a ruling. No appeal shall be permitted against this ruling.

Article 425

The court of second instance shall, in considering an appeal, annul by a ruling the judgment of the court of first instance and reject the indictment, if it is established that the circumstances under Article 384 paragraph 1 of the present Code apply. The court of second

instance shall proceed in the same way if it finds that the first instance court lacked subject matter jurisdiction to adjudicate the case, except where the appeal was filed only in favour of the accused.

Article 426

(1) The court of second instance shall, in accepting an appeal or in acting *ex officio*, modify by a judgment the judgment of the court of first instance if it determines that the material facts have been properly determined in the judgment of the court of first instance but that having regard to the determination of the factual situation a different judgment should have been passed according to the correct application of the law. It shall also proceed in the same way, according to the circumstances of the matter, in the case of violations under Article 403 paragraph 1 subparagraphs 5, 10 and 11 of the present Code.

(2) If the court of second instance finds that there are legal grounds for a judicial admonition, it shall modify by a ruling the judgment of the court of first instance and render a judicial admonition.

(3) Where due to a modification of the judgment of the court of first instance there are grounds for ordering or cancelling detention on remand under Article 393 paragraphs 1 and 2 of the present Code, the court of second instance shall render a separate ruling thereon. No appeal against this ruling shall be permitted.

Article 427

(1) In the statement of grounds for its judgment or ruling the court of second instance shall assess the statements which are the subject of the appeal and indicate the violations of law which it has recognized *ex officio*.

(2) If the judgment of the court of first instance is annulled on grounds of a substantial violation of provisions of criminal procedure the statement of grounds shall contain an indication of the provisions which were violated and the nature of the violation (Article 403 of the present Code).

(3) If the judgment of the court of first instance is annulled on grounds of an erroneous or incomplete determination of the factual situation, the statement of grounds shall indicate what the deficiencies in the factual determination are, or why new evidence and new facts are important for reaching a correct decision and why they influence that decision.

Article 428

(1) The court of second instance shall return all files to the court of first instance together with a sufficient number of certified copies of its decision to be served on the parties and other persons concerned.

(2) If the accused is in detention on remand, the court of second instance shall send its decision and the files to the court of first instance no later than three months from the day it has received the files from the court below.

Article 429

(1) The court of first instance to which a matter has been referred for adjudication shall proceed on the basis of the prior indictment. If the judgment of the court of first instance has been partly annulled the court shall take as its basis only that part of the indictment which refers to the annulled part of the judgment.

(2) The parties shall be entitled to introduce new facts and present new evidence at the new main trial.

(3) The court of first instance shall undertake all procedural actions and examine all contentious points indicated in the decision of the court of second instance.

(4) In rendering a new judgment, the court of first instance shall be bound by the prohibition provided for by Article 417 of the present Code.

(5) If the accused is in detention on remand the panel of the court of first instance shall proceed as provided for in Article 287 paragraph 2 of the present Code.

CHAPTER XXXVII: APPEAL AGAINST A JUDGMENT OF A COURT OF SECOND INSTANCE

Article 430

(1) An appeal against a judgment of a court of second instance may be filed with the Supreme Court of Kosovo in the following instances:

1) If a court of second instance has imposed a punishment of long-term imprisonment or has affirmed the judgment of a court of first instance by which such punishment was imposed;

2) If a court of second instance after conducting a hearing has made a different determination of the factual situation from the court of first instance and based its judgment on such factual determination; or

3) If a court of second instance has modified a judgment of acquittal by the court of first instance and rendered instead a judgment of conviction.

(2) The Supreme Court of Kosovo shall consider an appeal against a judgment of a court of second instance in a session of the panel, according to provisions applying to the appellate procedure in second instance. A hearing may not be conducted before the Supreme Court.

(3) A judgment of the Supreme Court shall be signed by all judges on the panel. A member of the panel may submit a dissenting or concurring opinion on legal or factual questions regarding the appeal and such opinion will be attached to the judgment.

(4) The provisions of Article 419 of the present Code shall also apply to a co-accused who had no right to appeal against a judgment of the court of second instance.

CHAPTER XXXVIII: APPEAL AGAINST RULINGS

Article 431

(1) An appeal against a ruling of a pre-trial judge and against other rulings rendered in first instance may be filed by the parties and persons whose rights have been violated, unless an appeal is explicitly prohibited by the provisions of the present Code.

(2) No appeal shall be permitted against a ruling rendered by the three-judge panel in the pre-trial stage of the proceedings, unless otherwise provided for by the present Code.

(3) A ruling rendered in connection with the preparation of the main trial and judgment may only be challenged in an appeal against the judgment, unless otherwise provided for by the present Code.

(4) No appeal shall be permitted against a ruling rendered by the Supreme Court of Kosovo.

Article 432

(1) An appeal shall be filed with the court which has rendered the ruling.

(2) Unless otherwise provided for by the present Code, an appeal against a ruling shall be filed within three days of the service of the ruling.

Article 433

Unless otherwise provided for by the present Code, the filing of an appeal shall stay the execution of the ruling being challenged.

Article 434

(1) An appeal against a ruling of the court of first instance shall be decided by the court of second instance in a session of the panel, unless otherwise provided for by the present Code.

(2) An appeal against a ruling of the pre-trial judge or the judge who conducts the proceedings on the confirmation of the indictment shall be decided by the three-judge panel of the same court, unless otherwise provided for by the present Code.

(3) In deciding on an appeal the court may dismiss by a ruling the appeal as belated or inadmissible, reject it as unfounded or accept it and modify the ruling, or annul it and return it for reconsideration where necessary.

(4) In deciding on an appeal against a ruling by which the indictment is dismissed, the court may reject the appeal by a judgment if it finds that there are grounds for such judgment.

(5) In examining an appeal, the court shall inquire *ex officio* into whether the court of first instance had the subject matter jurisdiction to render the ruling and whether the ruling was rendered by the authority empowered to render it.

Article 435

The provisions of Articles 399 through 401, Article 407, Articles 409 and 417, and Article 419 of the present Code shall apply, *mutatis mutandis*, to the procedure for appeals against rulings.

Article 436

Unless otherwise provided for by the present Code, the provisions set forth in Articles 431 and 435 of the present Code shall apply, *mutatis mutandis*, to all other rulings rendered under the present Code.

Article 437

The provisions of Article 401 of the present Code shall apply *mutatis mutandis* also to decisions, against which a separate appeal is permitted.

CHAPTER XXXIX: EXTRAORDINARY LEGAL REMEDIES

1. REOPENING OF CRIMINAL PROCEEDINGS

Article 438

Criminal proceedings terminated by a final ruling or a final judgment may be reopened upon the request of authorized persons only in instances and under conditions provided for by the present Code.

Article 439

(1) A final judgment may be modified even without reopening criminal proceedings:

1) When, in two or more judgments against the same convicted person, several punishments were imposed in a final form without applying the provisions on imposing an aggregate punishment for concurrent criminal offences;

2) When, in imposing an aggregate punishment by the application of provisions on concurrent criminal offences (Article 72 of the Provisional Criminal Code), a punishment already included in a punishment imposed under an earlier judgment in accordance with provisions on concurrent criminal offences was also taken into consideration; or

3) When a final judgment in which an aggregate punishment was imposed for several criminal offences is partly unenforceable due to an amnesty, pardon or other reasons.

(2) In a case under paragraph 1 subparagraph 1 of the present article, the court shall modify by a new judgment the earlier judgments in respect of the punishments imposed therein and shall impose an aggregate punishment. The rendering of a new judgment shall fall within the jurisdiction of the court of first instance which adjudicated the matter in which the most severe type of punishment was imposed. Where punishments of the same type were imposed, the new judgment shall be rendered by the court in which the most severe punishment was imposed, and where the punishments are equal it shall be passed by the court which imposed the punishment last.

(3) In a case under paragraph 1 subparagraph 2 of the present article, the court which in imposing an aggregate punishment erroneously included a punishment already comprised in an earlier judgment shall modify its judgment.

(4) In a case under paragraph 1 subparagraph 3 of the present article, the court which adjudicated in first instance shall modify the earlier judgment in respect of the punishment and impose a new punishment, or it shall determine what part of the punishment imposed in the earlier judgment should be enforced.

(5) The new judgment shall be passed at a session of the panel upon a motion of the public prosecutor if the proceedings were initiated at his or her request or upon that of the accused, but after hearing the opposing party.

(6) In a case under paragraph 1 subparagraph 1 or 2 of the present article, if judgments of other courts were taken into consideration in imposing the punishment, a certified copy of the new final judgment shall be sent to those courts.

Article 440

(1) If the indictment was dismissed under Article 316 paragraph 2 or Article 384 of the present Code, proceedings shall be resumed upon the request of the authorized prosecutor as soon as the reasons for the rendering of such ruling cease to exist.

(2) If the indictment was dismissed because of lack of subject matter jurisdiction by a final ruling, proceedings shall continue before the competent court on the matter upon the request of the authorized prosecutor.

Article 441

(1) Criminal proceedings which were dismissed in a final form before the main trial can be reopened if the public prosecutor withdrew the indictment and it is proven that this withdrawal was a result of the criminal offence of the abuse of the official function of the public prosecutor. While proving this criminal offence, provisions of Article 442 paragraph 2 of the present Code shall be applied.

(2) If the criminal proceedings were terminated because the subsidiary prosecutor withdrew the prosecution or because he or she is deemed according to the present Code to have withdrawn it, the subsidiary prosecutor cannot request the reopening of proceedings.

(3) If the indictment was dismissed at the proceedings on the confirmation of the indictment by a final ruling because there was not sufficient evidence to support a well-grounded suspicion that the defendant has committed the criminal offence as described in the indictment and if new facts and evidence are discovered and obtained, a new indictment can be filed if the three-judge panel determines that new evidence and facts justify this.

Article 442

(1) Criminal proceedings terminated by a final judgment may only be reopened if:

1) It is proven that the judgment rests on a forged document or a false statement of a witness, expert witness or interpreter;

2) It is proven that the judgment ensued from a criminal offence committed by a judge, a lay judge or a person who undertook investigative actions;

3) New facts are discovered or new evidence is produced which, alone or in connection with previous evidence, appears likely to justify the acquittal of the convicted person or his or her conviction under a less severe criminal provision;

4) A person was tried more than once for the same act or several persons were convicted of the same act which could have been committed only by a single person or only by some of them; or

5) In the case of conviction for a continuous criminal offence, or some other criminal offence which under the law includes several acts of the same kind or different kinds, new facts are discovered or new evidence is produced which indicates that the convicted person did not commit an act included in the criminal offence, of which he or she was convicted and the existence of these facts would have critically influenced the determination of punishment.

(2) Criminal proceedings terminated by a final judgment may be reopened only in favour of the defendant, except that if it is proven that the circumstances under paragraph 1 subparagraphs 1 and 2 of the present article have been a result of a criminal offence committed by the defendant or his or her agent against a witness, expert witness, interpreter, public prosecutor, judge or lay judge or those close to such persons, criminal proceedings terminated by a final judgment may be reopened against the defendant. The reopening of criminal proceedings against a defendant is only permissible within five years of the time the final judgment was rendered.

(3) In cases under paragraph 1 subparagraphs 1 and 2 or paragraph 2 of the present article, it must be proven by a final judgment that the persons concerned have been found guilty of criminal offences in question. If proceedings against these persons cannot be conducted because they are dead or because other circumstances exist which preclude criminal prosecution, the facts under paragraph 1 subparagraphs 1 and 2 or paragraph 2 of the present article may be proven by using other evidence.

Article 443

(1) The reopening of criminal proceedings may be requested by the parties and defence counsel. After the death of the convicted person, the reopening may be requested by the public prosecutor or by the spouse, the extramarital spouse, a blood relation in a direct line to the first degree, an adoptive parent, an adopted child, a brother, a sister or a foster parent of the convicted person.

(2) The reopening of criminal proceedings may be requested even after the convicted person has served his or her sentence and irrespective of the period of statutory limitation, an amnesty or a pardon.

(3) The court which is competent to decide on the reopening of criminal proceedings (Article 444 of the present Code) shall, upon learning of the existence of grounds to reopen criminal proceedings, notify thereof the convicted person or another person authorized to file the request.

Article 444

(1) A request for reopening criminal proceedings shall be decided by the three-judge panel of the court which adjudicated in first instance in the previous proceedings.

(2) The request shall specify the legal ground on which the reopening is requested and the evidence supporting the facts on which the request rests. If the request does not contain this information, the court shall ask the requesting party to supplement the request within a specified time.

(3) A judge who participated in rendering the judgment in previous proceedings may not take part in the deliberations of the panel on the request for reopening.

Article 445

(1) The court shall dismiss the request by a ruling on the basis of the request itself and the files of previous proceedings if it finds that

1) The request has been filed by an unauthorized person;

2) There are no legal grounds for reopening of proceedings;

3) The facts and evidence on which the request rests were presented in an earlier request for reopening of proceedings which was rejected by a final ruling;

4) The facts and evidence obviously do not provide adequate grounds to grant the reopening of proceedings; or

5) The person who requests the reopening of proceedings did not abide by the provisions under Article 444 paragraph 2 of the present Code.

(2) If the request is not dismissed, the court shall serve a copy of the request on the opposing party who shall be entitled to reply within eight days. After the court has received the reply to the request, or after the time limit for the reply has expired, the presiding judge shall order that the facts and evidence indicated in the request and the reply thereto be produced and examined.

(3) After inquiries have been completed, the presiding judge shall order that the files be sent to the public prosecutor if criminal offences prosecuted *ex officio* are involved. The prosecutor shall be obliged to return the files without delay, together with his or her opinion.

Article 446

(1) After the public prosecutor has returned the files, the court may order that the inquiries be supplemented. On the basis of the results of the inquiries the court shall either grant the request and allow the reopening of criminal proceedings or reject the request.

(2) If the court finds that the grounds on which it has allowed the reopening of proceedings also benefit a co-accused who has not requested the reopening of proceedings, it shall proceed *ex officio* as if such request had also been filed by that person.

(3) In the ruling by which the reopening of criminal proceedings is allowed the court shall order that a new main trial be scheduled immediately or that the case be returned to the stage of investigation or that an investigation be opened if none was conducted before.

(4) The court shall order that the execution of the judgment shall be postponed or interrupted if, having regard to the evidence filed, the court considers that:

1) The convicted person may be given a sentence in the retrial as a result of which, allowing for the part of the sentence already served, he or she would have to be released;

2) He or she may be acquitted of the charge; or

3) The charge against him or her may be rejected.

(5) When a ruling granting the reopening of criminal proceedings becomes final, the enforcement of punishment shall be stayed. However, if grounds provided for in Article 281 paragraph 1 of the present Code exist, the court shall order detention on remand.

Article 447

(1) New proceedings, held on the basis of a ruling which grants the reopening of criminal proceedings, shall be conducted in accordance with the provisions applying to the original proceedings. In the new proceedings, the court shall not be bound by the rulings rendered in the original proceedings.

(2) If new proceedings are terminated prior to the opening of the main trial, the earlier judgment shall be annulled by a ruling on termination.

(3) In rendering a new judgment, the court shall either annul the earlier judgment or a part thereof or affirm the earlier judgment. In the punishment imposed by the new judgment, the court shall give credit for a sentence already served and if reopening was granted only for some of the acts of which the accused was convicted or acquitted, it shall impose a new aggregate punishment in accordance with the provisions of criminal law.

(4) In new proceedings, the prohibition under Article 417 of the present Code shall be binding on the court.

2. EXTRAORDINARY MITIGATION OF PUNISHMENT

Article 448

An extraordinary mitigation of a finally imposed punishment is permissible where, after the judgment has become final, circumstances occur which did not exist when the judgment was rendered or, although they existed, were unknown to the court at that time, and such circumstances obviously would have led to a less severe punishment.

Article 449

(1) An extraordinary mitigation of punishment may be requested by the public prosecutor, if proceedings were initiated at his or her request, by the convicted person or by his or her defence counsel.

(2) A request for an extraordinary mitigation of punishment shall not stay the execution of the punishment.

Article 450

(1) A request for an extraordinary mitigation of punishment shall be decided by the Supreme Court of Kosovo.

(2) A request for an extraordinary mitigation of punishment shall be filed at the court which pronounced the judgment in first instance.

(3) The presiding judge of the court of first instance shall dismiss requests filed by persons not entitled thereto.

(4) The court of first instance shall examine whether there are grounds for an extraordinary mitigation of punishment and, after hearing the opinion of the public prosecutor, if proceedings were conducted at his or her request, and the convicted person or his or her defence counsel, it shall refer the files together with its reasoned recommendation to the Supreme Court of Kosovo.

(5) If the criminal offence involved was prosecuted on request of the public prosecutor, the Supreme Court of Kosovo shall, before deciding on a request for an extraordinary mitigation of punishment, send the files to the Public Prosecutor for Kosovo who may file a written motion to the court. The defence shall have access to those files.

(6) The Supreme Court of Kosovo shall reject the request if it finds that there are no legal grounds for an extraordinary mitigation of punishment. When approving the request, the court shall modify by a ruling the final judgment in respect of the decision on punishment.

3. REQUEST FOR PROTECTION OF LEGALITY

Article 451

(1) A request for protection of legality against a final judicial decision or against judicial proceedings which preceded the rendering of that decision may, after the proceedings have been completed in a final form, be filed in the following instances:

1) On the ground of a violation of the criminal law;

2) On the ground of a substantial violation of the provisions of criminal procedure provided for in Article 403 paragraph 1 of the present Code; or

3) On the ground of another violation of the provisions of criminal procedure if such violation affected the lawfulness of a judicial decision.

(2) A request for protection of legality may not be filed on the ground of an erroneous or incomplete determination of the factual situation, nor against a decision of the Supreme Court of Kosovo in which a request for the protection of legality was decided upon.

(3) Notwithstanding the provisions under paragraph 1 of the present article, the Public Prosecutor for Kosovo may file a request for protection of legality on the grounds of any violation of law.

(4) Notwithstanding the provisions under paragraph 1 of the present article, a request for protection of legality may be filed during criminal proceedings which have not been completed in a final form only against final decisions ordering or extending detention on remand.

Article 452

(1) A request for protection of legality may be filed by the Public Prosecutor for Kosovo, the defendant or his or her defence counsel. Upon the death of the defendant, such request may be filed on behalf of the defendant by the persons listed in the final sentence of Article 443, paragraph 1 of the present Code.

(2) The Public Prosecutor for Kosovo may file a request for protection of legality either to the disadvantage or in favour of the defendant.

(3) The defendant and his or her defence counsel and the persons listed in the final sentence of Article 443 paragraph 1 of the present Code may file a request for protection of legality within three months of the service of the final judicial decision on the defendant. If no appeal has been filed against the decision of the court of first instance, the time shall be counted from the day when that decision becomes final.

(4) If a decision of the European Court of Human Rights establishes that a final judicial decision against the defendant violates human rights, the prescribed period of time for filing the request for protection of legality shall be counted from the day the decision of the European Court of Human Rights was served on the defendant.

(5) Notwithstanding the provision under Article 451 paragraph 2 of the present Code, a request for protection of legality based on a decision under paragraph 4 of the present article shall also be possible against a decision of the Supreme Court of Kosovo.

Article 453

(1) A request for protection of legality shall be filed with the court which rendered the decision in the first instance.

(2) The presiding judge of the court of first instance shall dismiss a request for protection of legality by a ruling if:

1) The request was filed against a decision of the Supreme Court of Kosovo (Article 451 paragraph 2 of the present Code), except in cases referred to in Article 452 paragraph 5 of the present Code;

2) The request was filed by a person not entitled thereto (Article 452 paragraph 1 of the present Code); or

3) The request is belated (Article 452 paragraph 3 of the present Code).

(3) This ruling may be appealed in the court of second instance.

(4) Depending on the content of the request, the court of first instance may order that the enforcement of the final judicial decision be postponed or terminated.

Article 454

(1) A request for protection of legality shall be considered by the Supreme Court of Kosovo in a session of the panel.

(2) The Supreme Court of Kosovo shall dismiss a request for protection of legality by a ruling if the request is prohibited or belated (Article 453 paragraph 2 of the present Code), otherwise it shall send a copy of the request to the opposing party who may reply thereto within fifteen days of receipt of the request.

(3) Before a decision is taken on the request, the reporting judge may, if necessary, provide a report on the alleged violations of law.

(4) Depending on the content of the request, the Supreme Court of Kosovo may order that the enforcement of the final judicial decision be postponed or terminated.

Article 455

(1) When deciding on a request for protection of legality the Supreme Court of Kosovo shall confine itself to examining those violations of law which the requesting party alleges in his or her request.

(2) If the Supreme Court of Kosovo finds that reasons for deciding in favour of the defendant also exist in respect of another co-accused for whom a request for protection of legality has not been filed, it shall proceed *ex officio* as if such request has also been filed by that person.

(3) In deciding on a request for protection of legality filed in favour of the defendant, the Supreme Court of Kosovo shall be bound by the prohibition under Article 417 of the present Code.

Article 456

The Supreme Court of Kosovo shall, by a judgment, reject a request for protection of legality as unfounded if it determines that the violation of law alleged by the requesting party does not exist or that a request for protection of legality is filed on grounds of an erroneous or incomplete determination of the factual situation (Article 405 and Article 451 paragraph 2 of the present Code).

Article 457

(1) If the Supreme Court of Kosovo determines that a request for protection of legality is well-founded it shall render a judgment by which, depending on the nature of the violation, it shall:

1) Modify the final decision;

2) Annul in whole or in part the decision of both the court of first instance and the higher court or the decision of the higher court only, and return the case for a new decision or retrial to the court of first instance or the higher court; or

3) Confine itself only to establishing the existence of a violation of law.

(2) If the Supreme Court of Kosovo finds that a request for protection of legality filed to the disadvantage of the defendant is well-founded, it shall only determine that the law was violated but shall not interfere in the final decision.

(3) If the court of second instance was not entitled under the present Code to annul a violation of law committed in a decision at first instance or in judicial proceedings which preceded it and the Supreme Court of Kosovo finds that the request filed in favour of the accused is well-founded and that the annulment of the committed violation requires that the decision at first instance be annulled or altered, the Supreme Court of Kosovo shall annul or alter the decision of the court of second instance as well, even though the law has not thereby been violated.

Article 458

If in proceedings on a request for protection of legality considerable doubt arises as to the accuracy of the factual determination in a decision challenged by the request, the Supreme Court of Kosovo shall in its judgment on the request for protection of legality annul that decision and order a new main trial to be held before the same or another competent court of first instance.

Article 459

(1) If a final judgment is annulled and the case returned for retrial, proceedings shall be based on the earlier indictment or the part thereof which relates to the annulled part of the judgment.

(2) The court shall be bound to undertake all procedural actions and determine all issues to which it has been alerted by the Supreme Court of Kosovo.

(3) The parties shall be entitled to present new facts and evidence before the court of first or second instance.

(4) In rendering a new decision, the court shall be bound by the prohibition under Article 417 of the present Code.

(5) If the decision of the higher court is annulled as well as the decision of the lower court, the case shall be returned to the lower court through the higher court.

Article 460

A request for an extraordinary legal remedy under the present Chapter may be filed on the basis of a decision of the European Court of Human Rights in accordance with procedures to be provided for by law.

PART SIX: SUMMARY PROCEEDINGS, ISSUANCE OF A PUNITIVE ORDER, AND RENDERING OF A JUDICIAL ADMONITION

CHAPTER XL: SUMMARY PROCEEDINGS

Article 461

The provisions of Articles 462 through 474 of the present Code shall apply to proceedings before the municipal court, for criminal offences for which the principal punishment is a fine or imprisonment of up to three years. Other provisions of the present Code shall apply *mutatis mutandis* in relation to issues not specially provided for in these provisions.

Article 462

(1) Criminal proceedings shall be initiated on the basis of a summary indictment of the public prosecutor or the subsidiary prosecutor or on the basis of a private charge.

(2) The public prosecutor may file a summary indictment on the basis of a criminal report alone.

(3) The summary indictment and the private charge shall be filed in as many copies as are needed by the court and the defendant.

(4) There will be no proceedings on the confirmation of the indictment in summary proceedings.

(5) Article 307 of the present Code shall apply *mutatis mutandis*.

Article 463

(1) Detention on remand may exceptionally be ordered against a person if Article 281 paragraph 1 subparagraph 3 of the present Code applies and there is a grounded suspicion that he or she has committed a criminal offence and:

1) If he or she is in hiding or his or her identity cannot be established or if other circumstances indicate that there is a danger of flight; or

2) If there are grounds for detention on remand under Article 281 paragraph 1 subparagraph 2 points (ii) and (iii) of the present Code and the act involved is

   (i) A criminal offence against public order and legal transactions under Chapter XXVIII of the Provisional Criminal Code or against sexual integrity under Chapter XIX of the Provisional Criminal Code;

   (ii) A criminal offence with elements of violence punishable by two years or more of imprisonment; or

(iii) A criminal offence for which a punishment of imprisonment of three years may be imposed.

(2) Detention on remand before the filing of the summary indictment may last as long as required by the circumstances, but not beyond a period of fifteen days. Appeals against the ruling on detention on remand shall be determined by the three-judge panel.

(3) The provisions of Article 287 of the present Code shall apply *mutatis mutandis* to detention on remand from the service of the summary indictment until the end of the main trial. The judge shall be bound to verify each month whether there are still grounds for detention on remand.

(4) If the defendant is held in detention on remand, the court shall proceed with special urgency.

Article 464

If the criminal report is filed by the injured party and within a period of one month from the receipt of the report by the public prosecutor the latter fails to present a summary indictment or to notify the injured party that he or she has dismissed the report, the injured party shall be entitled to assume prosecution by filing the summary indictment with the court.

Article 465

(1) The summary indictment or the private charge shall contain: the name and surname of the defendant with his or her personal data if known, a description of the criminal offence, the court before which the main trial is to be held, a motion as to which evidence should be taken in the main trial and a motion that the defendant be found guilty and sentenced in accordance with law.

(2) If the defendant is in detention on remand or was in detention on remand during the conduct of investigative actions, the summary indictment shall contain an indication of how long he or she has been in detention on remand.

Article 466

(1) When the court receives the summary indictment or private charge, a single judge shall first examine whether the court has jurisdiction in the matter and whether there are conditions for the dismissal of the summary indictment or private charge.

(2) If none of the rulings from the preceding paragraph are rendered the judge shall order that the summary indictment or the private charge be served on the defendant and shall schedule the main trial immediately.

(3) The judge who conducts the main trial in the summary proceedings has the same powers as those of a presiding judge under the present Code.

(4) Article 319 paragraph 3 of the present Code shall apply *mutatis mutandis*.

Article 467

(1) If the judge finds that the case falls within the territorial jurisdiction of another court, he or she shall refer the case to that court after the ruling has become final. If he or she finds that the case falls within the jurisdiction of a higher court, he or she shall refer the case to the competent public prosecutor who acts before the higher court for further proceedings. If the public prosecutor considers that the competent court is the court which had sent him or her the case, he or she shall request that the matter be decided by the three-judge panel of the court before which he or she acts.

(2) After the main trial has been scheduled, the court may not *ex officio* declare itself as having no territorial jurisdiction over the case.

Article 468

(1) The judge shall dismiss the summary indictment or the private charge, if he or she finds that there are grounds to terminate proceedings under Article 316 paragraph 1 subparagraphs 1 through 4 of the present Code or to suspend proceedings under Article 316 paragraph 2 of the present Code.

(2) The ruling with a brief explanation shall be served on the prosecutor and the accused.

Article 469

(1) The judge shall summon to the main trial the accused and his or her defence counsel, the prosecutor, the injured party and his or her legal representatives and authorized representatives, witnesses, expert witnesses and the interpreter. He or she may, if necessary, secure objects to be used as evidence in the main trial.

(2) The accused shall be instructed in the summons that he or she may bring to the main trial evidence for his or her defence or inform the court of such evidence in a timely manner so that it can be secured for the main trial. He or she shall likewise be informed that the main trial may be held in his or her absence if the legal conditions for this are fulfilled (Article 472 paragraph 1 of the present Code), as well as that he or she shall be deemed to have waived his or her right to appeal if he or she fails to announce an appeal within at most eight days from the day that the judgment was announced. Together with the summons the accused shall be served with the copy of the summary indictment or the private charge if these were not served on him or her immediately after they were examined (Article 466 paragraph 2 of the present Code). He or she shall also be instructed in the summons that he or she is entitled to engage defence counsel and that, unless defence counsel is mandatory, the main trial shall not be adjourned if defence counsel fails to appear or if the accused decides to engage counsel only at the main trial itself.

(3) The summons shall be served on the accused so that between the service of the summons and the day of the main trial there remains sufficient time for the preparation of a defence, and at least three days. This period of time may be shortened subject to the consent of the accused.

Article 470

The main trial shall be held at the place where the court has its seat. In urgent cases, particularly where a site inspection is required or the hearing of evidence is thereby facilitated, the main trial may be conducted, subject to permission of the president of the court, at the place of commission of the criminal offence or the place where the site inspection is to be made, provided such place is within the territorial jurisdiction of the court.

Article 471

The objection of lack of territorial competence may only be submitted prior to the opening of the main trial.

Article 472

(1) If the accused fails to appear at the main trial although he or she was duly summoned, the judge may decide that the main trial be conducted in his or her absence, provided that his or her presence is not necessary and that he or she has already been examined and that his or her defence counsel is present.

(2) If the duly summoned defence counsel fails to appear at the main trial and does not notify the court of the reasons for this, or if he or she leaves the main trial without permission, or if by reason of his or her disturbing order the judge denies him or her the further conduct of defence in a case where defence is not mandatory, the main trial shall take place without defence counsel unless the accused engages one immediately.

Article 473

(1) The main trial shall commence with the reading of the essential content of the summary indictment or the private charge. Once opened, the main trial shall proceed without interruption whenever possible.

(2) After the end of the main trial, the judge shall render and announce the judgment immediately, setting forth the essential reasons. The judgment must be written within fifteen days of the announcement.

(3) An appeal against the judgment may be filed within eight days of the service of a copy thereof.

(4) Article 393 of the present Code shall apply *mutatis mutandis* to the cancellation of detention on remand after the judgment has been rendered.

(5) If the punishment of imprisonment has been imposed, the judge may order that the accused be detained on remand or that he or she remain in detention on remand provided grounds under Article 463 paragraph 1 of the present Code obtain. In such instance, the detention on remand may last until the judgment becomes final but not beyond the expiry of the punishment imposed by the court of first instance.

(6) If in the course of or after the main trial the judge finds that the case tried falls within the subject matter jurisdiction of the district court or that grounds under Article 384 paragraph 1 of the present Code exist, he or she shall dismiss the summary indictment by a ruling.

Article 474

(1) Before scheduling the main trial for a criminal offence falling within the jurisdiction of a single judge and prosecuted pursuant to a private charge the single judge may summon the private prosecutor and the accused to appear in court on a specific day to clarify the issue if he or she considers that this would be conducive to an early termination of proceedings. Together with the summons, the accused shall be served with a copy of the private charge.

(2) If the parties fail to reach a settlement and the private charge is not withdrawn, the judge shall take down the statements of the parties, and ask them to make motions for evidence to be secured.

(3) If the single judge does not find that the conditions exist for the dismissal of the private charge, he or she shall determine which evidence should be taken at the main trial and, as a rule, shall schedule the main trial immediately and notify the parties thereof.

(4) If the single judge holds that evidence need not be collected and that there are no other reasons for scheduling the main trial separately, he or she may open the main trial immediately and, after taking evidence which is before the court, take a decision in regard to the private charge. The private prosecutor and the accused shall in particular be warned of this when the summons is served.

(5) Where the private prosecutor fails to appear after being summoned as provided for in paragraph 1 of the present article, the provisions of Article 60 of the present Code shall apply.

Article 475

When the court of second instance hears an appeal against a judgment passed in summary proceedings by a court of first instance, both parties shall be notified of the session of the panel of the court of second instance, if the punishment of imprisonment has been imposed in the first instance judgment and if the parties have requested that they be informed of the session or if the president of the panel or the panel of the second instance court believes that the presence of the parties or one of them would be useful for the resolution of the matter.

CHAPTER XLI: PROCEEDINGS FOR THE ISSUANCE OF A PUNITIVE ORDER

Article 476

(1) For criminal offences which come to the knowledge of the public prosecutor on the basis of a credible criminal report and are punishable by imprisonment of up to three years or a fine, the public prosecutor may request in a summary indictment that the court issue a punitive order imposing by it a certain punishment on the accused without holding a main trial.

(2) The public prosecutor may request the imposition of one or more of the following measures: a fine, prohibition on driving a motor-vehicle, an order to publish a judgment, the confiscation of an object, a judicial admonition or the confiscation of the material benefit acquired by the commission of a criminal offence.

Article 477

(1) A single judge shall dismiss a request to issue a punitive order in a case under Article 468 of the present Code if it concerns a criminal offence for which such request may not be filed or if the public prosecutor requests the imposition of a punishment which is not permitted under the law. The three-judge panel shall decide within a prescribed period of forty-eight hours on the public prosecutor's appeal from a ruling on dismissal.

(2) If the single judge considers that the information in the summary indictment does not offer sufficient grounds to issue a punitive order or that according to such information the imposition of some other punishment than the one requested by the public prosecutor can be expected, he or she shall, upon receipt of a summary indictment, schedule a main trial and summon to it persons in accordance with the provisions of Article 469 of the present Code. In such case, along with a summons, only a copy of the summary indictment shall be served on the defendant without the public prosecutor's request that a punitive order be issued.

Article 478

(1) If the single judge agrees with the request, he or she shall issue a punitive order by a judgment.

(2) The punitive order shall state that the public prosecutor's request is satisfied and that the punishment in the request shall be imposed on the defendant whose personal data shall be clearly indicated. The enacting clause of the judgment on a punitive order shall contain the necessary information under Article 391 paragraph 1 of the present Code, including the decision on a property claim, if a motion for its realization was filed. A statement of grounds shall state the evidence which justifies the issuance of the punitive order.

(3) The punitive order shall contain an instruction to the defendant in accordance with the provisions under Article 479 paragraph 2 of the present Code and stating that after the expiry of the term for submitting an objection, if no objection is submitted, the punitive order shall become final and the punishment imposed on the defendant shall be enforced.

Article 479

(1) The punitive order shall be served on the defendant and his or her defence counsel, if he or she has one, and the public prosecutor.

(2) The defendant or his or her defence counsel may, within a term of eight days of receipt, submit an objection against the punitive order in writing or orally on the record with the court. The objection need not contain a statement of reasons; it may propose evidence for the benefit of the defence. The defendant may waive his or her right to submit an objection, but he or she may not withdraw the submitted objection after the main trial has been scheduled. Payment of a fine before the expiry of the term for submitting an objection shall not be deemed to be a waiver of the right to an objection.

(3) The judge shall grant a return to the *status quo ante* to the defendant who, for justifiable reasons, fails within the prescribed period of time to submit an objection. The provisions of Articles 96 and 97 of the present Code shall apply when deciding on a petition for a return to the *status quo ante*.

(4) If the single judge does not dismiss the objection as belated or because it is submitted by an unauthorized person, he or she shall schedule the main trial on the public prosecutor's summary indictment and further proceed according to the provisions of Articles 469 through 473 of the present Code.

(5) A three-judge panel shall decide on an appeal from the ruling on the dismissal of the objection against the punitive order.

Article 480

When rendering a judgment following an objection, a single judge is not bound by the public prosecutor’s request under Article 476 paragraph 2 of the present Code, nor by the prohibition under Article 417 of the present Code.

CHAPTER XLII: RENDERING OF A JUDICIAL ADMONITION

Article 481

(1) A judicial admonition shall be rendered by a judgment.

(2) Unless otherwise provided for in the present Chapter, the provisions of the present Code relating to the judgment by which an accused is declared guilty shall apply *mutatis mutandis* to a judgment on judicial admonition.

Article 482

(1) The judgment on judicial admonition shall be announced immediately upon the conclusion of the main trial, together with the essential reasons. Article 400 paragraph 3 of the present Code shall apply *mutatis mutandis*.

(2) The enacting clause of the judgment on judicial admonition shall contain the personal data of the accused, an indication that the judicial admonition against the accused has been rendered for the act alleged in the summary indictment and the legal name of the criminal offence. The enacting clause of the judgment on judicial admonition shall also contain the necessary data under Article 391 paragraph 1 subparagraphs 4 and 6 of the present Code.

(3) In the statement of grounds for the judgment, the court shall state the reasons which guided it in rendering the judicial admonition.

Article 483

(1) The judgment on judicial admonition may be appealed on grounds provided for in Article 402 paragraph 1 subparagraph 1, 2 or 3 of the present Code and on the ground that circumstances warranting the rendering of a judicial admonition do not exist.

(2) Where a judgment on judicial admonition contains a decision on a measure of mandatory rehabilitation treatment, confiscation of the material benefit acquired by the commission of a criminal offence, costs of criminal proceedings or a property claim, such judgment may be challenged on the ground that the court has not applied correctly the measures of mandatory rehabilitation treatment or the confiscation of the material benefit acquired by the commission of a criminal offence or that its decision on the costs of criminal proceedings or on the property claim was rendered contrary to legal provisions.

Article 484

Aside from the issues referred to in Article 404 paragraphs 1 through 4 of the present Code, in a case in which a judicial admonition is rendered, there shall also be a violation of criminal law where the court exceeds the powers legally vested in it by its decision on a judicial admonition, a measure of mandatory rehabilitation treatment or the confiscation of the material benefit acquired by the commission of a criminal offence.

Article 485

(1) Where a judgment on judicial admonition is appealed by the prosecutor to the detriment of the accused, the court of second instance may render a judgment by which the accused is found guilty and is punished or by which an alternative punishment (Article 41 of the Provisional Criminal Code) is imposed on him or her, if it finds that the court of first instance has determined the material facts correctly but that correct application of the law requires that a punishment be imposed.

(2) On the occasion of any appeal against a judgment on judicial admonition, the court of second instance may render a judgment dismissing the summary indictment or the private charge or acquitting the accused of the charge, if it finds that the court of first instance has determined the material facts correctly but that correct application of the law warrants the rendering of one of the aforesaid judgments.

(3) When grounds specified in Article 423 of the present Code exist, the court of second instance shall render a judgment by which it rejects the appeal as unfounded and affirms the judgment on judicial admonition rendered by the court of first instance.

PART SEVEN: SPECIAL PROCEEDINGS

CHAPTER XLIII: PROCEEDINGS REGARDING PERSONS WHO HAVE COMMITTED CRIMINAL OFFENCES UNDER THE INFLUENCE OF ALCOHOL AND DRUG ADDICTION

Article 486

(1) The court may impose a measure of mandatory rehabilitation treatment of perpetrators addicted to alcohol or drugs on the perpetrator who has committed a criminal offence under the influence of alcohol or drug addiction, by a judgment of conviction, in accordance with Articles 77 and 49 of the Provisional Criminal Code.

(2) The measure under paragraph 1 of the present article may be imposed by the court, regardless of the sanction imposed on the accused and its execution takes place regardless of whether the accused is at liberty or serving a punishment of imprisonment.

(3) The court shall decide upon the application of a measure under paragraph 1 of the present article after obtaining an expert analysis and hearing the public prosecutor and the defence. The expert analysis should explain the possibilities for the treatment of the defendant.

(4) The time spent in a medical institution for a measure of mandatory rehabilitation treatment shall be included in the duration of the punishment of imprisonment.

Article 487

(1) The court which imposed the measure of mandatory rehabilitation treatment in a health care institution shall, *ex officio* or on the motion of the heath care institution and on the basis of the opinion of psychiatric experts, take all further decisions in respect of the duration and modification of the measure referred to in Article 77 of the Provisional Criminal Code.

(2) The decisions under the previous paragraph shall be taken by a three-judge panel after a hearing. Notification of the hearing shall be sent to the public prosecutor and defence counsel. Before taking the decision the court shall hear the opinions of an expert witness and of the perpetrator if his health condition permits this.

(3) In proceedings to reconsider the duration or modification of a measure of mandatory rehabilitation treatment the perpetrator must have defence counsel.

(4) Every two months the court shall in accordance with paragraph 2 of the present Article *ex officio* determine whether conditions for the measure of mandatory rehabilitation treatment in a health care institution still exist. An expert witness who is not working at the heath care institution where the perpetrator is receiving mandatory rehabilitation treatment, shall conduct an expert analysis and shall submit his or her findings in writing and, if necessary, he or she shall give testimony at the court.

(5) The court shall discontinue the implementation of the measure under the first paragraph of the present article if treatment or rehabilitation is not necessary any more or the period of time prescribed in Article 77 paragraph 3 of the Provisional Criminal Code has expired.

Article 488

Unless otherwise provided for by the present Chapter, other provisions of the present Code shall apply *mutatis mutandis* to persons who have committed a criminal offence under the influence of alcohol and drug addiction.

CHAPTER XLIV: PROCEEDINGS FOR CONFISCATION

Article 489

(1) Objects which in accordance with the Provisional Criminal Code have to be confiscated shall be confiscated even when criminal proceedings do not end in a judgment in which the accused is declared guilty if there is a danger that they might be used for a criminal offence or where so required by the interests of public safety or by moral considerations.

(2) A separate ruling thereon shall be rendered at the time when proceedings have been completed or were terminated by the competent authority before which proceedings are conducted.

(3) The court shall render the ruling on the confiscation of objects under paragraph 1 of the present article also where a decision to that effect is not contained in the judgment by which the accused is declared guilty.

(4) A certified copy of the decision on the confiscation of objects shall be served on the owner if his or her identity is known.

(5) The owner of the objects shall be entitled to appeal against the decision under paragraphs 2 and 3 of the present article if he or she considers that there are no legal grounds for confiscation. If the ruling under paragraph 2 of the present article was not rendered by a court, the appeal shall be heard by the three-judge panel of the court which would have had the jurisdiction to adjudicate at first instance.

Article 490

(1) The material benefit acquired by the commission of a criminal offence or as a result thereof, shall be determined in criminal proceedings *ex officio*.

(2) The court and other agencies conducting the proceedings shall be bound to collect evidence and inquire into circumstances which are important for the determination of the material benefit.

(3) If the injured party has filed a property claim to recover the objects acquired through the commission of a criminal offence or to receive the monetary equivalent thereof, the material benefit shall be determined only for that part which exceeds the property claim.

Article 491

(1) Where the confiscation of material benefit acquired by the commission of a criminal offence is at issue (Articles 82 and 83 of the Provisional Criminal Code), the person to whom the material benefit has been transferred, including the representative of a business organization or legal person, shall be summoned for examination in preliminary proceedings and at the main trial. He or she shall be informed that proceedings may be conducted in his or her absence.

(2) The representative of a business organization or legal person shall be examined at the main trial after the accused. The same shall apply in respect of a recipient of the material benefit, if he or she was not summoned as a witness.

(3) The recipient of the material benefit and the representative of a business organization or legal person shall, in connection with determination of the material benefit, be entitled to move for evidence to be taken and, with the permission of the presiding judge, to put questions to the accused, witnesses and expert witnesses.

(4) The exclusion of the public from the main trial shall not apply in respect of the recipient of the material benefit, including the representative of a business organization or a legal person.

(5) If the court finds only in the course of the main trial that the issue of confiscation of the material benefit acquired by the commission of a criminal offence is at issue, it shall recess the main trial and summon the person to whom the material benefit has been transferred or the representative of a business organization or a legal person.

Article 492

The court shall determine the amount of the material benefit by a free evaluation if an accurate determination would entail undue difficulties or the proceedings would thereby be unduly protracted.

Article 493

Where confiscation of the material benefit acquired by the commission of a criminal offence is warranted, the court shall *ex officio* or upon the application of the public prosecutor order the temporary securing of the claim in accordance with the provisions that apply to enforcement proceedings. Article 116 paragraphs 2 and 3 of the present Code shall apply *mutatis mutandis*.

Article 494

(1) Confiscation of the material benefit acquired by the commission of a criminal offence may be imposed in a judgment in which the accused is declared guilty or a judicial admonition is imposed, as well as in a ruling on a measure of mandatory rehabilitation treatment of perpetrators addicted to alcohol or drugs.

(2) In the enacting clause of the judgment or ruling the court shall specify the object or sum of money to be confiscated. Where there are justifiable grounds, the court shall permit the payment of the material benefit in installments fixing the time limit and the amounts thereof.

(3) A certified copy of the judgment or ruling shall be served on the person to whom the material benefit has been transferred as well as on the representative of a business organization or a legal person, if the court has imposed the confiscation of material benefit acquired by the commission of a criminal offence on that person, business organization or legal person.

Article 495

The persons, business organizations or legal persons referred to in Article 491 of the present Code may request the reopening of criminal proceedings in regard to the decision on the confiscation of the material benefit acquired by the commission of a criminal offence.

Article 496

Article 400 paragraphs 2 and 3 and Articles 408 and 412 of the present Code, shall apply *mutatis mutandis* to an appeal against the decision on confiscation of the material benefit acquired by the commission of a criminal offence.

Article 497

(1) The court which ordered the storage of confiscated items or of property serving as temporary security for a request for the confiscation of the material benefit acquired by the commission of a criminal offence or of property equivalent to the value of the material benefit acquired by the commission of a criminal offence, shall be obliged in such instances to proceed particularly quickly and to operate economically, rationally and as a good manager with the confiscated items and property serving as temporary security for the request.

(2) The procedure for managing confiscated items and property provided for in paragraph 1 of the present article shall be prescribed by the competent public entity in the field of judicial affairs.

Article 498

(1) In cases in which criminal proceedings are not concluded with a judgment in which the accused is pronounced guilty, objects originating from a criminal offence under Article 272 of the Provisional Criminal Code and unlawfully given or accepted rewards, gifts or benefits as provided for in Articles 250, 251, 343, 344 and 345 of the Provisional Criminal Code shall also be confiscated:

1) If the legal elements of a criminal offence under Article 272 of the Provisional Criminal Code are established and it is also established that certain objects originate from a criminal offence under Article 272 of the Provisional Criminal Code; or

2) If the legal elements of a criminal offence under Article 250, 251, 343, 344 or 345 of the Provisional Criminal Code are established and it is also established that a reward, gift or benefit was given or accepted.

(2) Upon the reasoned application of a public prosecutor, the panel shall render a separate ruling on confiscation under paragraph 1 of the present article. The public prosecutor shall submit in the application all data and circumstances of importance for the determination of the proceeds of crime, the objects originating from the criminal offence or the unlawfully given or received reward, gift or benefit.

(3) A certified copy of the ruling under paragraph 2 of the present article shall be served on the owner of the confiscated money or property, if he or she is known. If the owner is unknown, the ruling shall be displayed on the bulletin-board of the court and, after eight days, the service on the unknown owner shall be deemed to have been performed.

(4) Owners of confiscated money or property shall have the right to appeal against the ruling under paragraph 2 of the present article, if they consider that there were no legal grounds for confiscation.

Article 499

(1) Unless otherwise provided for by the present Chapter, other provisions of the present Code shall apply *mutatis mutandis* to proceedings for confiscation of the material benefit acquired by the commission of a criminal offence, and for confiscation pursuant to Article 498.

(2) The provisions of Articles 490 through 498 of the present Code shall apply *mutatis mutandis* to the confiscation of property of a value which matches the material benefit acquired by the commission of a criminal offence (Articles 83 and 85 of the Provisional Criminal Code) and the money, property, rewards, gifts or benefits referred to in Article 498 of the present Code.

(3) The provisions of Article 490 paragraph 1 of the present Code shall apply *mutatis mutandis* to the pre-trial proceedings; in addition to the bodies before which the criminal proceedings are conducted, other bodies provided for by this law shall also participate in the collection of data and the investigation of the circumstances of importance for the determination of the proceeds of crime.

CHAPTER XLV: PROCEEDINGS FOR THE REVOCATION OF ALTERNATIVE PUNISHMENTS

Article 500

(1) Where a suspended sentence (Article 41 of the Provisional Criminal Code) is conditioned on the performance of one of the obligations provided for in Article 43 paragraph 3 of the Provisional Criminal Code and the accused fails to perform that obligation within the period of time determined by the court, the court which adjudicated in first instance shall initiate proceedings to revoke the suspended sentence upon the motion of the authorized prosecutor or the injured party or *ex officio*.

(2) The judge assigned to the case shall examine the convicted person if he or she can be reached and shall conduct the necessary inquiries to determine facts and collect evidence material to adjudication, whereupon he or she shall send the files to the panel.

(3) The presiding judge shall schedule a session of the panel, of which he or she shall notify the public prosecutor, the convicted person and the injured party. The panel shall hold a session, whether the duly summoned parties and the injured party appear or fail to comply with the summons.

(4) If the court establishes that the convicted person has failed to comply with the obligation imposed on him or her by the judgment, it shall render a judgment in accordance with Article 47 of the Provisional Criminal Code.

CHAPTER XLVI: PROCEEDINGS FOR RENDERING A DECISION ON THE EXPUNGEMENT OF CONVICTION

Article 501

(1) Where the law provides for a conviction to be expunged after the expiry of a specific period of time provided that the offender does not commit a new criminal offence within that time (Article 87 of the Provisional Criminal Code), the competent public entity in the field of judicial affairs shall render a ruling expunging the conviction *ex officio*.

(2) Prior to rendering the ruling, the necessary inquiries shall be made and, in particular, information shall be gathered as to whether criminal proceedings are in progress against the convicted person for a criminal offence committed before the expiry of the period of time prescribed for the expungement of the sentence.

Article 502

(1) If the competent public entity in the field of judicial affairs fails to render the ruling, the convicted person may request a determination that the expungement of the sentence has accrued by force of law.

(2) If the competent public entity in the field of judicial affairs fails to render the ruling expunging the sentence within thirty days of the request being filed, the convicted person

may request that a ruling expunging the sentence be rendered by the court which passed the judgment in first instance.

(3) Such request shall be decided by the court after hearing the public prosecutor, if proceedings were initiated upon his or her request.

Article 503

If an alternative punishment is not revoked one year after the expiry of the verification period the court which adjudicated in the first instance shall render a ruling expunging the sentence. The ruling shall be served on the convicted person, the public prosecutor, if proceedings were conducted upon his or her request, as well as the competent public entity in the field of judicial affairs.

Article 504

(1) Proceedings to expunge a punishment on the basis of a judicial decision (Article 88 of the Provisional Criminal Code) shall be initiated upon the petition of the convicted person.

(2) The petition shall be filed with the court which adjudicated in first instance.

(3) The judge assigned to the case shall first establish whether the necessary period of time according to the law has elapsed, and then he or she shall make the necessary inquiries to determine the facts alleged by the petitioner and collect evidence on all circumstances relevant for the decision.

(4) The court may request a report on the conduct of the petitioner from the police in whose territory he or she has resided after serving his or her punishment and may request a similar report from the administration of the institution in which he or she served the punishment.

(5) After completing the inquiries and upon hearing the public prosecutor if proceedings were conducted upon his or her request, the judge shall send the files together with a motion supported by reasoning to the panel of the court which judged the case at first instance.

(6) The decision of the court on expunging the punishment may be appealed by the petitioner or the public prosecutor.

(7) If the court rejects the petition on the ground that the conduct of the petitioner does not warrant the expunging of the punishment, the petitioner may renew the petition two years after the day the ruling rejecting the petition became final.

Article 505

An expunged punishment may not be mentioned in certificates issued on the basis of criminal records for the exercise of rights of individuals.

CHAPTER XLVII: PROCEDURES FOR INTERNATIONAL LEGAL ASSISTANCE AND THE EXECUTION OF INTERNATIONAL AGREEMENTS IN MATTERS OF CRIMINAL LAW

Article 506

International legal assistance in criminal matters shall be administered in accordance with the provisions of the present Code unless otherwise provided for by international agreements. The procedures for international legal assistance and the execution of international agreements in criminal matters shall be exercised in accordance with sections 8.1(i), 8.1(m) and 8.1(o) of the Constitutional Framework.

Article 507

(1) A petition of a domestic court for legal assistance in criminal matters shall be transmitted to foreign agencies through diplomatic channels. A foreign petition for legal assistance from domestic courts shall be transmitted in the same manner.

(2) In emergency cases and on the basis of reciprocity, petitions for legal assistance may be sent through the competent public entity in the field of internal affairs, or in instances of criminal offences of laundering proceeds of crime or criminal offences connected to the criminal offence of laundering proceeds of crime, also through the competent public entity responsible for the prevention of laundering of proceeds of crime.

(3) On the basis of reciprocity or if so determined by an international agreement, international legal assistance in criminal matters may be exchanged directly between an organ of Kosovo and a foreign organ which participates in preliminary proceedings and in criminal proceedings, wherein modern technical assets, in particular computer networks and aids for the transmission of pictures, speech and electronic impulses may be used.

Article 508

(1) The competent authority shall send a petition for legal assistance received from foreign agencies to the competent public entity in the field of judicial affairs, which shall forward it for proceedings to the district court in whose territory the person who should be served with a document, or examined, or confronted is currently resident, or in whose territory an investigative action should be undertaken.

(2) In instances provided for in Article 507 paragraph 2 of the present Code, the competent public entity in the field of internal affairs shall transmit petitions to the court through the competent public entity in the field of judicial affairs.

(3) The permissibility and the manner of performance of an action which is the subject of a petition of a foreign authority shall be decided by the district court in accordance with the applicable law.

(4) If a petition relates to a criminal offence for which no transfer to a foreign jurisdiction is provided for by domestic provisions, the court shall consult the competent public entity in the field of judicial affairs as to whether to grant the petition or not.

Article 509

(1) A domestic court may grant a petition of a foreign authority to execute a judgment of conviction of a resident of Kosovo passed by a foreign court, if so provided by international agreement or on the basis of reciprocity.

(2) A petition for execution shall be accompanied by the original or certified copy of the judgment of conviction whose enforcement is requested and other necessary documents.

(3) In an instance under paragraph 1 of the present article, the domestic court shall execute the sanction imposed by the final judgment of a foreign court by rendering a judgment to impose a sanction in accordance with the applicable law of Kosovo.

Article 510

(1) If the foreign authority has filed a petition under Article 509 paragraph 1 of the present Code, the convicted person may be arrested if the criminal offence is one for which detention on remand is warranted under the present Code and specific circumstances indicate that there is a danger of flight.

(2) If the foreign authority announces its intention to file a petition under Article 509 paragraph 1 of the present Code, the convicted person may, on application by the foreign authority, be arrested, provided that the conditions set forth in paragraph 1 of the present article are met. Such application shall state the criminal offence which led to the judgment of conviction and the time and place of its perpetration and contain as accurate a description as possible of the convicted person. It shall also contain a brief statement of the facts on which the judgment was based.

(3) The convicted person shall be held in detention on remand in accordance with the provisions of the present Code. Provisions on the extension of detention on remand, the right to defence counsel and right to appeal of persons in detention on remand shall apply *mutatis mutandis*.

(4) The person in detention on remand shall in any event be released

1) After the expiry of a period equal to the period of deprivation of liberty imposed in the judgment of conviction; or

2) If he or she was arrested under paragraph 2 of the present article and the petition for execution together with the documents specified in Article 509 paragraph 2 of the present Code was not received within 18 days from the date of arrest.

Article 511

(1) The court shall render a judgment in a three-judge panel to execute the sanction imposed by the foreign court.

(2) Before the court renders a judgment, the convicted person shall be given an opportunity to present his or her views. Upon application, he or she shall be heard by the court in person. A hearing in person must be granted following his or her express petition to that effect. The public prosecutor, the convicted person and the defence counsel shall be informed about the session of the panel.

(3) The competent court shall be the district court within whose territory the convicted person last had permanent residence in Kosovo. If the convicted person had no permanent residence in Kosovo, territorial jurisdiction shall be determined according to his or her place of birth. If a convicted person neither had permanent residence nor was born in Kosovo, the Supreme Court of Kosovo shall assign the conduct of proceedings to one of the district courts having subject matter jurisdiction.

(4) In the enacting clause of the judgment, the court shall state in full the enacting clause of the judgment of the foreign court and the name of the foreign court and shall impose the sanction. In the statement of grounds the court shall state the grounds for the sanction which it has imposed.

(5) The court shall substitute the sanction imposed by the foreign court with a sanction prescribed by the applicable law of Kosovo for the same criminal offence. This sanction may be of a nature or duration other than that imposed by the foreign court, so long as it is not more severe. If the sanction imposed by the foreign court is less than the minimum which may be imposed under the applicable law of Kosovo, the court shall impose a corresponding sanction, irrespective of such minimum.

(6) Any part of the sanction imposed by the foreign court and any term of detention on remand served by the convicted person after the conviction in the foreign jurisdiction or in Kosovo shall be deducted in full.

(7) An appeal may be filed against the judgment by the public prosecutor, the convicted person and his or her defence counsel.

Article 512

If a foreign national convicted by a domestic court or a person authorized under an international agreement files with the court of first instance a petition for the convicted person to serve the punishment in his or her country, the court shall be entitled to grant the petition if so provided by international agreement or on the basis of reciprocity.

Article 513

In the case of criminal offences of counterfeiting money and putting it into circulation, illicit production, processing and sale of narcotics and poisons, trafficking in persons, production and dissemination of pornographic material or some other criminal offence for which centralization of data has been provided under international agreements, the authority which conducts criminal proceedings shall be bound immediately to send to the competent public entity in the field of internal affairs data about the criminal offence and its perpetrator, and the court of first instance shall in addition send the final judgment. Whenever the criminal offence of laundering proceeds of crime, or criminal offences connected to laundering proceeds of crime are involved, the data shall be sent without delay to the body responsible for the prevention of laundering proceeds of crime.

Article 514

(1) If a foreign national who permanently resides in a foreign country commits a criminal offence on the territory of Kosovo, all files for criminal prosecution and adjudication may, beside the conditions under Article 517 of the present Code, be surrendered to the foreign country for the purpose of criminal prosecution and adjudication, if it agrees to receive them.

(2) The decision to surrender files in the criminal proceedings is rendered during the pre-trial proceedings by the three-judge panel upon the motion of the public prosecutor.

(3) The surrender of criminal files may be allowed where criminal offences punishable by imprisonment of up to ten years are involved, as well as in the case of a criminal offence against the security of public traffic.

(4) The surrender of criminal files shall not be allowed if the injured party is a resident of Kosovo and he or she opposes it, except if his or her property claim has been secured.

(5) If the accused is in detention on remand, the foreign country shall be requested by the fastest means to report within thirty days whether it will undertake prosecution.

Article 515

(1) The request of a foreign country for Kosovo to prosecute a resident of Kosovo for a criminal offence committed abroad shall be transmitted, together with the files, to the competent public prosecutor in whose territory that person has permanent residence.

(2) A property claim filed with the competent authority of a foreign country shall be treated as if it has been filed with the competent court.

(3) Information about the refusal to undertake criminal prosecution and the final decision rendered in criminal proceedings shall be sent to the foreign country which requested that Kosovo assume prosecution.

CHAPTER XLVIII: PROCEDURES FOR THE TRANSFER OF DEFENDANTS AND CONVICTED PERSONS TO AND FROM FOREIGN JURISDICTIONS

Article 516

(1) Unless otherwise provided by applicable law in Kosovo or in international agreements, the transfer of defendants and convicted persons shall be requested and carried out in accordance with the provisions of the present Code. The procedures for the transfer of defendants and convicted persons to and from foreign jurisdictions shall be exercised in accordance with sections 8.1(i), 8.1(m) and 8.1(o) of the Constitutional Framework.

(2) The procedures regarding the co-operation with the International Criminal Court, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and other such Violations committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 and other international tribunals lie outside the scope of the present Code and are governed by separate legal arrangements.

Article 517

The prerequisites for the transfer of a person to a foreign jurisdiction are:

1) That the person whose transfer to a foreign jurisdiction is requested is a foreign national;

2) That the act which prompted the request for the transfer was not committed on the territory of Kosovo or against a resident of Kosovo;

3) That the act which prompted the request for the transfer constitutes a criminal offence under the applicable law in Kosovo and under the law of the jurisdiction where it was committed;

4) That under the applicable law in Kosovo criminal prosecution or the execution of punishment was not barred by the period of statutory limitation before the foreign national was detained on remand or examined as a defendant;

5) That the foreign national whose transfer is requested has not already been finally acquitted or convicted by a domestic court of the criminal offence for which his or her transfer is sought, that criminal proceedings are not being conducted in Kosovo against him or her for a criminal offence set forth in Article 100 of the Provisional Criminal Code and, in the event that criminal proceedings have been initiated for an act committed against a resident of Kosovo, that the property claim of the injured party has been secured;

6) That the identity of the person whose transfer is requested has been established;

7) That there is sufficient evidence to support a well-grounded suspicion that the foreign national whose transfer is requested has committed the particular criminal offence, or that a final judgment exists thereon;

8) That the transfer is not sought for a crime for which capital punishment is prescribed unless the state seeking the transfer provides guarantees that the capital punishment shall not be imposed or carried out;

9) That there is not a real risk that the person whose transfer is sought will face inhuman or degrading treatment or punishment;

10) That there are no grounds for suspicion that a petition has been made for the purpose of prosecuting or punishing the person whose transfer is sought on account of his or her race, gender, national or ethnic origin, religion, political opinion or membership of a particular social group;

11) That the person whose transfer is sought does not enjoy the protections accorded to refugees in Kosovo;

12) That the petition for transfer is not made in respect of a political act, where such act shall not be considered to include a criminal offence under Articles 116 through 145 of the Provisional Criminal Code; and

13) That transfer is not contrary to international law or international human rights standards for any reason.

Article 518

(1) Proceedings for the transfer to a foreign jurisdiction of a foreign national who is a defendant or a convicted person shall be initiated upon the petition of a foreign country.

(2) The petition shall be filed through diplomatic channels.

(3) The petition for transfer shall enclose:

1) The means for identifying the defendant or convicted person (accurate description, photographs, fingerprints and similar);

2) A certificate or other data on the citizenship of the foreign national;

3) The indictment, or judgment, or ruling on detention or another equivalent document, in the original or a certified copy. These papers shall contain: the name and surname of the person whose transfer is requested and other data necessary to establish his or her identity, the description of the act, the legal qualification of the criminal offence and the evidence on which the suspicion rests; and

4) An extract from the criminal law of the foreign country to be applied, or which was applied, against the defendant in regard to the act which prompted the petition

for transfer; if the act was committed in a third country, an extract from the criminal law of that country.

(4) If the petition and annexes are written in a foreign language, a certified copy of a translation in accordance with Article 15 paragraph 1 of the present Code shall be enclosed.

Article 519

(1) The competent authority shall transmit the petition for the transfer of a foreign national through the competent public entity in the field of judicial affairs to the pre-trial judge of the district court in whose territory the foreign national currently resides or in whose territory he or she is to be found.

(2) If the permanent or current residence of the foreign national whose transfer is requested is not known, his or her whereabouts shall first be established through the police.

(3) If the petition complies with the conditions under Article 518 of the present Code, and if there are grounds for detention on remand under Article 281 of the present Code, the pre-trial judge shall order that the foreign national be detained on remand or shall take other steps to secure his or her presence, unless it is clear from the petition itself that the transfer is impermissible.

(4) The pre-trial judge shall immediately upon establishing the identity of the foreign national inform him or her why and on what grounds his or her transfer is requested and shall instruct him or her that he or she may engage a lawyer or shall appoint one for him or her *ex officio* in accordance with Articles 73 and 74 of the present Code or if detention on remand against the foreign national has been ordered. The pre-trial judge shall then invite the foreign national to make statements in his or her defence.

(5) The examination and the statement of the foreign national shall be entered in the record.

Article 520

(1) In urgent cases where there is a danger that the foreign national might flee or go into hiding, the police shall be allowed to arrest the foreign national upon a petition by a competent foreign authority, irrespective of the manner in which the petition was sent. The petition should contain necessary data for establishing the identity of the foreign national, the nature and name of the criminal offence, the number of the decision together with the date, the place and address of the foreign authority which ordered detention on remand and the statement that transfer to a foreign jurisdiction shall be requested through the regular channels.

(2) The police shall without any delay bring the arrested foreign national before a pre-trial judge of the competent court who shall conduct a hearing in accordance with Article 282 of the present Code. If the pre-trial judge orders detention on remand against the foreign national, the pre-trial judge shall inform the competent public entity in the field of internal affairs.

(3) The pre-trial judge shall release the foreign national if the grounds for detention on remand cease to exist or if the petition for his or her transfer to a foreign jurisdiction is not filed within the period of time determined by him or her. The period of time shall be determined taking into consideration the distance of the requesting country from Kosovo and shall not exceed three months from the day the foreign national was detained. The foreign country shall be notified of this period of time. Upon a petition by the foreign country, a three-judge panel of the competent court may extend this period by a maximum of two months.

(4) If the petition is filed within the determined period of time, the pre-trial judge shall proceed as provided for by Article 519 paragraphs 3 and 4 of the present Code.

Article 521

(1) After hearing the public prosecutor and defence counsel, the pre-trial judge shall undertake, if necessary, other investigative actions to determine whether there are grounds to transfer the foreign national or to deliver objects upon which or by means of which the criminal offence was committed, provided such objects were confiscated from the foreign national.

(2) Upon completion of inquiries, the pre-trial judge shall send the files to the three-judge panel of the district court, together with his or her opinion on the matter.

(3) If criminal proceedings for the same or another criminal offence are in progress before a domestic court against the foreign national whose transfer is requested, the pre-trial judge shall put a note thereon in the files.

Article 522

(1) If the three-judge panel of the district court finds that the legal prerequisites for transfer have not been fulfilled, it shall render a ruling rejecting the petition for transfer. The court shall forward *ex officio* the ruling to the Supreme Court of Kosovo which, after hearing the public prosecutor, may affirm, annul or modify the ruling.

(2) If the foreign national is in detention on remand, the three-judge panel of the court of first instance may decide that he or she remain in detention on remand until the ruling rejecting the petition for transfer becomes final.

(3) The final ruling by which transfer is rejected shall be transmitted via the competent public entity in the field of judicial affairs to the competent authority who shall notify the foreign country thereof.

Article 523

If the three-judge panel of the district court finds that the legal prerequisites for transfer (Article 517 of the present Code) have been fulfilled, it shall confirm this in a ruling. The foreign national has a right to appeal the ruling to the Supreme Court of Kosovo.

Article 524

If the Supreme Court of Kosovo finds upon appeal that the legal prerequisites for the transfer of the foreign national have been fulfilled, or no appeal against the ruling of the court of first instance to that effect has been filed, the matter shall be referred to the competent authority who shall decide on the transfer.

Article 525

(1) The competent authority shall render a ruling whereby the transfer is either granted or rejected. He or she may decide that the transfer be postponed because proceedings for another criminal offence are pending before a domestic court against the foreign national whose transfer is requested or because the foreign national is serving his or her punishment in Kosovo.

(2) The competent authority shall not allow the transfer of a foreign national if any of the preconditions for transfer set forth in paragraphs 1-6 and 8-13 of Article 517 of the present Code are not met. In addition, the competent authority may refuse the petition for transfer, if it is made in respect of a criminal offence which is punishable by up to three years of imprisonment or for which a foreign court had imposed a punishment of up to one year of imprisonment.

Article 526

(1) In the ruling by which he or she grants the transfer of a foreign national the competent authority shall state that:

1) The foreign national may not be prosecuted for another criminal offence committed prior to the transfer;

2) He or she may not be punished for another criminal offence committed prior to his or her transfer;

3) A more severe punishment than the one by which he or she was punished may not be imposed upon him or her; and

4) He or she may not be surrendered to a third country for prosecution for a criminal offence which he or she had committed before his or her transfer was granted.

(2) In addition to these conditions the competent authority may order also other conditions for transfer.

Article 527

(1) The ruling regarding transfer shall be communicated to the foreign country through diplomatic channels.

(2) The ruling by which transfer is granted shall be forwarded to the competent public entity in the field of internal affairs which shall order that the foreign national be transported to an appointed place where he or she shall be surrendered to the authorities of the foreign country which had requested transfer.

Article 528

(1) Where several countries request the transfer of the same person for the same criminal offence, priority shall be given to the country of which the person is a citizen. If that country does not request transfer, priority shall be given to the country in whose territory the criminal offence has been committed. If the act has been committed in the territories of several countries or the site of commission is not known, priority shall be given to the country which requested transfer first.

(2) Where several countries request transfer of the same person for several criminal offences, priority shall be given to the country of which the person is a citizen. If that country does not request transfer, priority shall be given to the country in whose territory the gravest criminal offence was committed. If the criminal offences are of equal gravity, priority shall be given to the country which requested transfer first.

Article 529

(1) If criminal proceedings are pending in Kosovo against a person who resides in a foreign country, or if that person has been punished by a domestic court, the competent authority may file a petition for his or her transfer to Kosovo.

(2) The petition shall be sent to a foreign country through diplomatic channels, together with the documents and data under Article 518 of the present Code.

Article 530

(1) If there is a danger that the person whose transfer to Kosovo is requested might flee or go into hiding, the competent authority may request, before taking action under Article 529 of the present Code, that the necessary measures be taken for his or her detention on remand.

(2) In a petition for provisional detention on remand the requesting party shall provide data on the identity of the person sought, the nature and name of the criminal offence, the number and date of the decision, the place and name of the authority which ordered detention on remand or information about the binding force of the judgment, and a statement that transfer shall be requested through regular channels.

Article 531

(1) If the person sought is transferred to Kosovo, he or she may be prosecuted or punished only for the criminal offence for which the transfer was granted.

(2) If such person was convicted in a final form by a domestic court of other criminal offences committed prior to the transfer, for which transfer was not granted, the provisions of Article 439 of the present Code shall apply *mutatis mutandis*.

(3) If the transfer was granted and accepted subject to specific conditions regarding the type and severity of punishment, the court shall be bound by these conditions in imposing the punishment. If the enforcement of an already imposed punishment is involved, the court which adjudicated in the last instance shall modify the judgment and bring the punishment imposed into line with the conditions of the transfer.

(4) If the transferred person was in detention on remand in a foreign country for the criminal offence for which he or she was transferred, the time spent in detention on remand shall be counted in the punishment.

Article 532

(1) If a foreign country requests extradition from another foreign country and the person to be extradited is to be escorted through the territory of Kosovo, the competent authority may upon petition of the country concerned grant the escort, provided that the person is a foreign national, that the extradition does not take place for a political act, that such act shall not be considered to include a criminal offence under Articles 116 through 145 of the Provisional Criminal Code, and that the extradition is not for any reason contrary to international law or international human rights standards.

(2) The petition to escort through the territory of Kosovo shall contain all data specified in Article 518 of the present Code.

(3) On the basis of reciprocity, the costs of escorting such person through the territory of Kosovo shall be charged to the budget.

Article 533

Notwithstanding Article 517 subparagraph 1 of the present Code, a resident of Kosovo may be transferred to a foreign jurisdiction if:

1) His or her transfer is permitted by an international agreement; and

2) All the prerequisites for transfer set forth in Article 517 of the present Code, except for subparagraph 1, are met.

In such case the provisions of the present chapter shall apply *mutatis mutandis*.

CHAPTER XLIX: PROCEEDINGS FOR COMPENSATION, REHABILITATION AND THE EXERCISE OF OTHER RIGHTS OF PERSONS WHO HAVE BEEN CONVICTED OR ARRESTED WITHOUT JUSTIFICATION

1. PROCEEDINGS FOR COMPENSATION OF PERSONS WHO HAVE BEEN CONVICTED OR ARRESTED WITHOUT JUSTIFICATION

Article 534

(1) A person shall be entitled to compensation for damages caused by an unjustified conviction if a criminal sanction has been imposed in a final form on him or her or if he or she has been found guilty and punishment was waived, but later on the basis of an extraordinary legal remedy, the reopened proceedings were dismissed in a final form or he or she was acquitted of the charge by a final judgment or the charge against him or her was rejected, except in the following instances:

1) Where the proceedings were terminated or a judgment rejecting the charge was rendered because in the new proceedings, the subsidiary prosecutor or the private prosecutor withdrew from prosecution or the injured party withdrew the motion and the act of withdrawal was effected in agreement with the defendant; or

2) Where in the reopened proceedings the charge was rejected by a ruling because the court did not have competence and the authorized prosecutor initiated prosecution before the competent court.

(2) The convicted person shall not be entitled to compensation for damages caused if, by a false confession or in some other way, he or she deliberately brought about his or her conviction, except where he or she was compelled to do so.

(3) In the case of conviction for concurrent criminal offences, the right to compensation for damages may also refer to individual criminal offences in respect of which conditions for recognition of compensation have been fulfilled.

Article 535

(1) The right to compensation for damages shall expire three years from the entry into force of the judgment in the first instance acquitting the accused of the charge or rejecting the charge, or three years from the entry into force of the first instance ruling dismissing the charge or terminating the proceedings. If the appeal was decided by a higher court, the right to seek compensation for damages shall expire three years from the receipt of the decision of that court.

(2) Before filing the claim for compensation for damages with the court, the injured party shall address a petition to the competent public entity in the field of judicial affairs to try and reach agreement on the existence of the damages and the type and extent of compensation.

(3) In the instance referred to in subparagraph 2, paragraph 1 of the preceding Article the request may only be processed if the authorized prosecutor fails to initiate prosecution at the competent court within three months of receipt of the final ruling. If the authorized

prosecutor starts prosecution at the competent court after the expiry of that prescribed period of time, proceedings for compensation for damages shall be suspended until criminal proceedings have been concluded.

Article 536

(1) If the petition for compensation for damages is not granted or the competent public entity in the field of judicial affairs and the injured party do not reach agreement within three months from the day of the filing of the petition, the injured party may file a claim for compensation for damages with the competent court. If agreement was reached regarding only a part of the petition, the injured party may bring a claim for the outstanding part.

(2) The limitation period under Article 535 paragraph 1 of the present Code, shall not apply for as long as the proceedings under the first paragraph of the present article are pending.

(3) The claim for compensation for damages shall be filed against the competent public entity in the field of judicial affairs.

Article 537

(1) Heirs shall inherit the right of the injured party to recover compensation only for material damage. If the injured party has already filed the petition, the heirs may continue proceedings only within the limits of the petition already submitted for compensation for material damage.

(2) After the death of the injured party, his or her heirs may continue proceedings for compensation for damages, or may initiate proceedings if the injured party had died before the expiry of the period of statutory limitation without waiving the right to file a petition.

Article 538

(1) The right to compensation shall also be enjoyed by:

1) A person who was held in detention on remand and criminal proceedings against him or her were not initiated or the proceedings were dismissed by a final ruling or proceedings were terminated or he or she was acquitted of the charge by a final judgment or the charge was rejected;

2) A person who served a punishment of deprivation of liberty, if, by reason of the reopening of criminal proceedings or a request for protection of legality, he or she was sentenced to a punishment of the deprivation of liberty shorter than the one he or she has already served or to a criminal sanction not involving deprivation of liberty, or if he or she was found guilty but punishment was waived;

3) A person who by reason of an error or unlawful act of an authority was arrested without any grounds or held for some time in detention on remand or in an institution for serving a punishment or a measure; and

4) A person who was held in detention on remand for longer than the term of imprisonment imposed on him or her.

(2) A person who without legal justification was arrested under Article 211 or Article 212 of the present Code shall be entitled to compensation if detention on remand was not ordered against him or her or the time he or she spent under arrest was not counted in the punishment imposed on him or her for a criminal offence or a minor offence.

(3) The right to compensation shall not be enjoyed by a person whose arrest was caused by his or her own reprehensible conduct. In instances under paragraph 1 subparagraphs 1 and 2 of the present article, the right to compensation shall be precluded if circumstances exist as provided for in Article 534 paragraph 1 subparagraphs 1 and 2 of the present Code.

(4) In proceedings for compensation under paragraphs 1 and 2 of the present article, the provisions of the present Chapter shall apply *mutatis mutandis*.

2. REHABILITATION

Article 539

(1) If a case of an unjustified conviction or a groundless arrest of a person was presented in the media and the reputation of that person was thereby harmed, the court shall, upon request of that person, announce in a newspaper or some other media a report on the decision clarifying that the conviction was unjustified or the arrest was groundless. If the case was not announced in the media the court shall upon request of that person send such report to his or her employer. After the death of the convicted person the right to file such request shall be held by his or her spouse, or his or her extramarital partner, and by his or her children, parents, brothers and sisters.

(2) The request under paragraph 1 of the present article may be submitted even if compensation for damages is not sought.

(3) Aside from the conditions provided for in Article 534 of the present Code, a request under paragraph 1 of the present article shall also be filed when in connection with an extraordinary legal remedy the legal qualification of the act was changed, if the reputation of the convicted person was seriously harmed due to the legal qualification in the previous judgment.

(4) A request under paragraph 1, 2 or 3 of the present article shall be filed within six months (Article 535 paragraph 1 of the present Code) with the court which adjudicated in criminal proceedings in the first instance. The request shall be determined by the three-judge panel of the district court. In determining the request, Article 534 paragraphs 2 and 3 and Article 538 paragraph 3 of the present Code shall apply *mutatis mutandis*.

Article 540

The court which adjudicated in criminal proceedings in the first instance shall render a ruling *ex officio* annulling the entry of an unjustified conviction in criminal records. The ruling shall be sent to the competent public entity in the field of judicial affairs. Data from the annulled entry must not be communicated to anybody.

Article 541

A person who is authorized to inspect and copy the files relating to an unjustified conviction or groundless arrest of a person may not use data from these files in a manner which would prejudice the rehabilitation of the person against whom criminal proceedings were conducted. The president of the court shall be bound to warn such person thereof, and a note to that effect shall be written on the file and signed by that person.

3. PROCEEDINGS FOR THE REALISATION OF OTHER RIGHTS

Article 542

(1) A person who by virtue of an unjustified conviction or groundless arrest has lost employment or status as an insured person under the social security system shall be entitled to have the length of work service or the period of time as an insured person lost in that way counted as if he or she were employed during the time lost through the unjustified conviction or groundless arrest. The time of unemployment resulting from an unjustified conviction or groundless arrest which did not occur through the fault of that person shall also be counted in the period of service.

(2) In every decision on a right affected by the length of work service or of insurance contribution, the competent body shall take into account the length of time recognized in accordance with paragraph 1 of the present article.

(3) If the competent body under paragraph 2 of the present article disregards the length of time recognized under paragraph 1 of the present article, the injured party may request that the court referred to in Article 536 paragraph 1 of the present Code confirm that the recognition of this time is carried out in accordance with the law. The claim shall be filed against the competent body which disputes the period of service and the competent public entity in the field of judicial affairs.

(4) On request of the body where the right under paragraph 2 of the present article is exercised, the contribution prescribed for the period recognized under paragraph 1 of the present article shall be paid out of budgetary resources.

(5) The length of time of insurance coverage recognized under paragraph 1 of the present article shall be included entirely as pensionable employment.

CHAPTER L: PROCEEDINGS FOR ISSUING WANTED NOTICES AND PUBLIC ANNOUNCEMENTS

Article 543

If the permanent or current residence of a defendant is not known, the court shall, whenever so required by the provisions of the present Code, request the police to locate the defendant and inform the court of his or her address.

Article 544

(1) The issuance of a wanted notice may be ordered when the defendant against whom proceedings have been initiated for a criminal offence prosecuted *ex officio* and punishable by imprisonment of at least two years is in flight and when an order for his or her arrest or a ruling on the determination of his or her detention on remand has been issued.

(2) The issuance of a wanted notice shall be ordered by the court conducting criminal proceedings. During the pre-trial proceedings such notice shall be ordered by the pre-trial judge on the motion of the public prosecutor.

(3) The issuance of a wanted notice shall also be ordered where a defendant has escaped from the institution in which he or she is serving his or her punishment, irrespective of the amount of punishment, or when he or she escapes from the institution in which he or she is serving an institutional measure connected with the deprivation of liberty. In this case the order shall be issued by the director of the institution.

(4) The order of the court or the director of the institution to issue a wanted notice shall be sent to the police for execution.

(5) Police shall keep records of issued wanted notices. Data about the persons against whom a wanted notice is issued shall be deleted from the records as soon as the competent authority has revoked the wanted notice.

Article 545

(1) Where information is needed about particular objects connected with a criminal offence or where it is necessary to find such objects and, in particular, where that is necessary for establishing the identity of an unidentified body, the competent authority conducting the proceedings shall order the issuance of an announcement with a request that information and reports be delivered to the competent authority conducting the proceedings.

(2) The police may publish photographs of bodies and missing persons if there are grounds to suspect that the death or disappearance of these persons has been caused by the commission of a criminal offence.

Article 546

The authority which has ordered the issuance of a wanted notice or an announcement shall revoke it as soon as the person or the object sought is found, when the period of statutory limitation expires for criminal prosecution or the execution of a punishment, or when for other reasons the wanted notice or the announcement are no longer necessary.

Article 547

(1) The wanted notice and public announcement shall be distributed by the competent public entity in the field of internal affairs.

(2) The news media may also be used to inform the public of the wanted notice or announcement.

(3) Where it is probable that the wanted person is abroad, the competent authority may also distribute an international wanted notice.

(4) Upon the request of a foreign authority, the competent public entity in the field of internal affairs may distribute a wanted notice for a person suspected of being in Kosovo, provided the foreign authority states in the request that it will request the transfer of such person if he or she is found.

(5) The provisions of the present article shall apply *mutatis mutandis* to cases when police announce the search for persons or objects.

PART EIGHT: TRANSITIONAL AND FINAL PROVISIONS

CHAPTER LI: TRANSITIONAL AND FINAL PROVISIONS

Article 548

After the present Code enters into force, when it is impossible to form a panel provided for in Article 22 paragraph 3 of the present Code in a municipal court, because of a lack of judges, matters under their jurisdiction shall be conducted by a three-judge panel of the directly superior court.

Article 549

Investigations initiated before the date of entry into force of the present Code but which have not been completed by this date shall be continued and finished according to the provisions of the previous applicable law.

Article 550

Criminal proceedings at first instance in which the indictment, summary indictment or private charge was filed before the date of entry into force of the present Code but which have not been completed by this date shall be continued according to the provisions of the previous applicable law until

1) The criminal proceedings are dismissed in a final form by a ruling; or

2) The judgment rendered at the main trial becomes final.

Article 551

(1) Proceedings on requests for extraordinary review of final judgment and for protection of legality which were filed before the date of entry into force of the present Code but were not completed by this date, shall be continued and finished according to the provisions of the previous applicable law.

(2) The convicted person and his or her defence counsel can file a request for protection of legality only against judgments which became final after the present Code enters into force.

Article 552

(1) Criminal matters which are still proceeding in the courts in Kosovo at the time that the present Code enters into force and in which there is a change of legal qualification of the criminal offence, or a change of subject-matter jurisdiction, shall be finished by these courts.

(2) If a higher court annuls the decision of a lower court after the present Code enters into force, the matter shall be sent to the court, which is competent according to the present Code.

Article 553

(1) Upon the entry into force of the present Code, if any prescribed period of time is running, such period shall be counted pursuant to the provisions of the present Code, except if the previous period of time was longer or the provisions of the present Chapter provide otherwise.

(2) For criminal offences for which the perpetrator is prosecuted pursuant to the provisions of the present Code on the motion of an injured party, the prescribed period of time under paragraph 1 of Article 54 of the present Code shall begin to run from the day of entry into force of the present Code.

(3) The criminal proceedings for criminal offences which were prosecuted *ex officio* or on a private charge before the entry into force of the present Code and after its entry into force on a motion, shall be conducted according to the provisions which were in force before the entry into force of the present Code, if the indictment or the private charge were filed before the entry into force of the present Code.

(4) After the entry into force of the present Code, if on the occasion of an appeal or an extraordinary legal remedy the judgment is annulled in proceedings for a criminal offence which according to the new provisions is prosecuted on a private charge or on a motion, the private charge in the proceedings which have been conducted according to the previous provisions shall be considered as a motion, and if a criminal offence which was prosecuted *ex officio* is concerned, the time for the submission of the motion shall run from the day when the injured party was informed about the annulment of the judgment of first instance or about the reopening of criminal proceedings.

Article 554

(1) Provisions in UNMIK Regulations and Administrative Directions covering matters addressed in the present Code shall cease to have effect upon the entry into force of the present Code, unless otherwise expressly determined in the present Code or in an UNMIK Regulation.

(2) Provisions in the applicable Law on Criminal Procedure shall cease to have effect upon the entry into force of the present Code, unless otherwise expressly determined in the present Code.

Article 555

The Special Representative of the Secretary-General may issue Administrative Directions for the implementation of the present Code.

Article 556

The English, Albanian and Serbian language versions of the present Code are equally authentic. In case of conflict, the English language version shall prevail.

Article 557

The present Code shall enter into force on 6 April 2004.