CODE NO. 08/L-032

CRIMINAL PROCEDURE CODE

The Assembly of the Republic of Kosovo;

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Adopts:

CRIMINAL PROCEDURE CODE

PART ONE
GENERAL PROVISIONS

CHAPTER I
FUNDAMENTAL PRINCIPLES AND DEFINITIONS

Article 1
Purpose and Scope

1. The purpose of this Code is to determine the rules of criminal procedure which are mandatory for the work of courts, state prosecution and other participants in criminal proceedings provided by this Code.

2. This 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 offense under the conditions provided for by the Criminal Code and other laws of Kosovo which provide for criminal offenses and on the basis of a procedure conducted lawfully and fairly before the competent court.

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

4. This Code is in accordance with:

4.1. Council Framework Decision on the fight against organised crime (Decision 2008/841/JHA);

4.2. Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (Decision 2008/913/JHA);

4.3. Directive of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings (Directive 2010/64/EU);

4.4. Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography (Directive 2011/93/EU);

4.5. Directive of the European Parliament and of the Council on the right to information in criminal proceedings (Directive 2012/13/EU);

4.6. Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime (Directive 2012/29/EU);

4.7. Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (Directive 2013/48/EU);

4.8. Directive of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (Directive 2014/42/EU);

4.9. Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law (Directive 2014/62/EU);

4.10. Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (Directive 2016/343);

4.11. Directive of the European Parliament and of the Council on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (Directive 2016/1919);

4.12. Directive of the European Parliament and of the Council on combating terrorism (Directive 2017/541).

Article 2
Criminal Sanctions are Imposed by Independent and Impartial Competent Court

A sentence or other criminal sanction may be imposed on a person who has committed a criminal offense only by a competent, independent and impartial court established by law, in proceedings initiated and conducted in accordance with this Code.

Article 3
Presumption of Innocence of Defendant and In Dubio Pro Reo

1. Any person suspected or charged with a criminal offense shall be deemed innocent until his 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 favor of the defendant and his rights under the present Code and the Constitution of the Republic of Kosovo.

Article 4
Ne Bis in Idem

1. No one may be prosecuted and convicted of a criminal offense for which he has been acquitted or for which he has been convicted by a final court decision, respectively if the criminal proceedings against him have been terminated by a final decision of a court or the indictment has been rejected by a final court decision.

2. A final decision of a court may be reversed through extraordinary legal remedies, except when otherwise provided by this Code.

3. Articles 1 and 2 of the Criminal Code shall be applied mutatis mutandis.

Article 5
Right to Fair and Impartial Trial within a Reasonable Time

1. Any suspected or accused person shall be guaranteed a fair and impartial trial.

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.

4. Anyone who is deprived of liberty by arrest shall be promptly informed, in a language he understands, of the reasons for the deprivation of liberty. Everyone who is deprived of liberty without a court order shall be brought before a judge of the Basic Court in the jurisdiction of arrest within forty-eight (48) hours. That judge shall decide on his detention in accordance with Chapter X of this Code.

Article 6
Initial Actions and Initiation of Criminal Proceedings

1. Initial actions of the police may be initiated by a police officer pursuant to Articles 70-78 and 82-83 of this Code.

2. Criminal proceedings shall only be initiated upon the decision of a state prosecutor when reasonable suspicion exists that a criminal offense has been committed or when a direct indictment has been filed under the provisions of this Code.

3. A state prosecutor may initiate a criminal proceeding in accordance with paragraph 2. of this Article upon receiving information from the police, the other public institution, private institution, member of the public, media, from information obtained from another criminal proceeding, upon the filing of complaint or motion of an injured party or victim.

Article 7
General Duty to Establish a Full and Accurate Facts

1. The court, the state prosecutor and the police participating in criminal proceedings are obligated to truthfully and completely establish the facts which are important for rendering a lawful decision.

2. Subject to the provisions contained in this Code, the court, the state 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 favor, and to make available to the defense all the facts and pieces of evidence, which are in favor of the defendant, before the beginning of and during the proceedings.

Article 8
Principle of Judicial Independence

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

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

Article 9
Equality of Parties

1. The defendant and the state prosecutor shall have the status of equal parties in criminal

proceedings, unless otherwise provided for by this Code.

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

3. The injured party or victim has the right and shall be allowed to make a statement on all the facts and evidences, he has the right to examine witnesses, expert and to request the state prosecutor to summon witnesses.

4. If the state prosecutor determines that sufficient evidence was collected during the investigation to support well-grounded suspicion to proceed to the main trial, the state prosecutor shall draft the indictment and shall present the facts on which he bases the indictment, and shall provide evidence of these facts.

Article 10
Notification on the Reasons for the Charges, the Privilege against Self-incrimination and Prohibition against Forced Confession

1. At his arrest and during the first examination, first appearance or first notification that he is a defendant in the criminal proceedings, the defendant shall be promptly informed in a language that he understands and, in detail, of the nature and reasons for the charge against him.

2. At his arrest and during the first examination, first appearance or first notification that he is a defendant in the criminal proceedings or anytime during the criminal proceedings, the defendant shall not be obliged to plead his case or to answer any questions and, if he pleads his case, he shall not be obliged to incriminate himself or his next of kin nor to confess guilt. This right is not implicated when a defendant has voluntarily entered into an agreement to cooperate with the state prosecutor.

3. The defendant or any other participant in the proceedings shall be prohibited and punished according to the law in force to impose a confession of guilt or any other statement by the use of torture, force, threat or under the influence of drugs, or other similar measures.

Article 11
Adequacy of Defense

1. The defendant shall have the right to have adequate time and facilities for the preparation of his defense.

2. The defendant shall have the right to defend himself in person or through legal assistance by a member of the Kosovo Bar Association of his own choice.

3. Subject to the provisions of this Code, if the defendant does not engage a defense counsel in order to provide for his defense and if defense is mandatory, an independent defense counsel having the experience and competence commensurate with the nature of the offense, shall be appointed for the defendant.

4. Under the conditions provided by this Code, if the defendant has insufficient means to pay for legal assistance and for this reason cannot engage a defense counsel, an independent defense counsel having the experience and competence commensurate with the nature of the offense, shall be appointed for the defendant on his request and paid from budgetary resources if required by the interests of justice.

5. At the first examination, first appearance or first notification that he is a defendant in the criminal proceedings, the court or other competent authority conducting criminal proceedings

shall inform the defendant of his right to a defense counsel, as provided for by this Code.

6. In accordance with the provisions of this Code, any person deprived of liberty shall have the right to the services of a defense counsel from the moment of arrest.

Article 12
Legality of Deprivation of Liberty and Expedited Proceedings

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

2. Any person deprived of his liberty by arrest or detention shall be entitled under the procedures provided by this Code to challenge the lawfulness of his arrest or detention which shall be decided speedily by a court and order his release if the detention is not lawful.

Article 13
Rights of Persons Deprived of Liberty

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

1.1. the reasons for his or her arrest;

1.2. the right to legal assistance of his own choice; and

1.3. the right to notify or to have notified a family member or another appropriate person of his choice about the arrest.

2. A person deprived of liberty under the suspicion of having committed a criminal offense shall be brought before a judge promptly and at the latest within forty-eight (48) 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 this Article throughout the time of the deprivation of liberty. These rights can only be waived if waiver is made in writing after having been informed about his rights 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 was notified about these rights.

Article 14
Languages and Writing

1. The languages and scripts which may be used in criminal proceedings shall be Albanian and Serbian, unless otherwise provided by law.

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

3. A defendant who does not speak or understand the language of the proceedings shall have the right to interpretation of quality sufficient to ensure the safeguard the fairness of the proceedings and especially to ensure that he has knowledge of the case against him and is able to exercise his right of defense.

4. A defendant who does not speak or understand the language of the proceedings shall have the right to interpretation for communication with his defense counsel, if he does not speak or understand the language of the defendant:

4.1. when the defendant is being examined;

4.2. during any court hearing; or

4.3. when filing written submissions or an appeal.

5. A person referred to in paragraphs 2., 3. and 4. of this Article shall be informed of his right to interpretation. He may waive this right if he knows the language in which the proceedings are conducted. If the person is a defendant, such waiver shall be obtained after he has obtained prior legal advice or has otherwise obtained full knowledge of the consequences of such a waiver and that the waiver was unequivocal and given voluntarily. The notification on this right and the statement of the participant or defendant shall be entered in the record.

6. A person referred to in paragraphs 2., 3. and 4. of this Article has the right to request the competent judge or other body conducting the criminal proceedings for new interpretation if the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

7. Pleadings, appeals and other submissions may be served on the court in Albanian or Serbian, unless otherwise provided by law.

8. The defendant and a person serving a sentence who does not understand the language of the proceedings shall be provided, within a reasonable period of time, a translation of the summonses, decisions and submissions, in whole or in part, depending on whether they are relevant for the purposes of enabling a defendant or person serving a sentence to have knowledge of the case against him, in the language which he uses in the proceedings or other documents which are essential to ensure that he is able to exercise his right of defense and to safeguard the fairness of the proceedings. Essential documents shall include any decision depriving a person of his liberty, any charge of indictment and any judgment.

9. An oral translation or oral summary of the essential documents listed in paragraph 8. of this Article may be provided instead of a written translation if such oral translation or summary does not prejudice the fairness of the proceedings.

10. A defendant shall have the right to appeal the decision denying interpretation or translation.

11. A foreign national in detention on remand may serve on the court submissions in a language that he understands before, during and after the main.

Article 15
Right of Rehabilitation and Compensation

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 16
Duty of Court to Inform Parties

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 this 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 rights for the same reason.

Article 17
Commencement and Timing of Consequences that Limit Rights

When it is provided that the initiation of criminal proceedings has the consequence of limiting

certain rights, and the criminal proceedings are carried out for a criminal offense punishable by more than three (3) years, such consequence shall take effect, if it is not determined otherwise by law, upon the confirmation of the indictment. If the criminal proceeding is for a criminal offense punishable by a fine or imprisonment of up to three (3) years, the consequence shall take effect from the day when the rendered judgment of conviction becomes final, unless otherwise provided by law.

Article 18
Preliminary Issues

1. If the application of criminal law depends on a prior ruling by a court in another ongoing proceeding or another public entity, the court competent for the criminal case may render a ruling on such case 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 case of this nature, such decision shall not be binding on the court adjudicating on the criminal case in deciding whether a criminal offense has been committed.

Article 19
Definitions

1. Terms used in this Code shall have the following meanings:

1.1. Authorized Police Officer - a police officer or any member of the Kosovo Police or other service authorized to conduct a criminal investigation or to execute a decision of the state prosecutor or the court.

1.2. Complex Case - any case involving, inter alia, more than ten defendants, organized criminal activity, corruption, or the investigation of which would require extensive forensic evidence, accounting analysis, or international cooperation.

1.3. Suspect - a person whom the police or state prosecutor suspects to have committed a criminal offense, but against whom an investigation has not been initiated.

1.4. Defendant - a person against whom criminal proceedings are conducted. The term “defendant” is also used in this Code as a general term for a “defendant,” “accused” and “convicted person”.

1.5. Accused - a person against whom an indictment has been submitted and the main trial has been scheduled.

1.6. Convicted Person - a person who is found guilty of the commission of a criminal offense by a final judgment of a court.

1.7. Injured party or victim - a person who has suffered harm, including physical, mental or emotional harm or economic loss which was caused by a criminal offense, and family members of a person whose death was directly caused by a criminal offense and who have suffered harm as a result of that person’s death.

1.8. Reasonable Suspicion - knowledge of information which would satisfy an objective observer that a criminal offense has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned may or may have committed the offense. What may be regarded as “reasonable” will depend on all the circumstances.

1.9. Grounded Suspicion - knowledge of information which would satisfy an objective observer that a criminal offense has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned is more likely than not to have

committed the offense. Grounded suspicion must be based upon articulable evidence.

1.10. Grounded Cause - knowledge of information which would satisfy an objective observer that a criminal offense has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned is substantially likely to have committed the offense. Grounded cause must be based upon articulable evidence.

1.11. Sound Probability - the basis for an order to search or otherwise justify a government intrusion into a person's privacy. Possession of admissible evidence which would satisfy an objective observer that a criminal offense has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned is substantially likely to have committed the offense.

1.12. Well Grounded Suspicion - means the ground for filing an indictment. Possession of admissible evidence that would satisfy an objective observer that a criminal offense has occurred and the defendant has committed the offense.

1.13. Restitution - the repayment of damages by a convicted person. At the end of a criminal proceeding, the Court shall order a defendant found guilty of a criminal offense to repay the injured party or parties for any damages that directly or indirectly result from a criminal offense.

1.14. Damages - harm that directly or indirectly results from a criminal action, including loss of property, loss of profits, loss of liberty, physical harm, psychological harm, or the loss of life of a spouse or member of an immediate family member. The amount of damages shall be proven by the victim advocate or victim's representative or the state prosecutor. A court may order the payment of damages based on a reasonable estimate of the monetary value of the harm directly or indirectly caused by a criminal offense.

1.15. Party to the Proceedings - the state prosecutor, the defendant and injured party or victim. The defendant is not considered a party according to Article 384 of the Criminal Code of Kosovo.

1.16. Child - in accordance with the Juvenile Justice Code, a person who is under the age of eighteen (18) years.

1.17. Minor - in accordance with the Juvenile Justice Code, a person who is between the ages of fourteen (14) and eighteen (18) years.

1.18. Public Entity - an entity of the Republic of Kosovo or an entity equally authorized to act under the Law on Police or Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

1.19. Intimate Search - a search which consists of the physical examination of a person's bodily orifices other than the mouth.

1.20. Competent Judge - the judge who, under this Code, has responsibility for the matter in question. In most circumstances, this will be the judge overseeing the stage of the criminal proceedings.

1.21. Review Panel - a panel of three-judges drawn from the same department or Basic Court to review and rule on an objection or an appeal from an order or a ruling of the pretrial judge.

1.22. Trial Panel - a panel of a presiding trial judge and two (2) professional judges who hear the evidence and adjudicate during the main trial.

1.23. Pretrial Judge - a judge assigned to the investigative stage.

1.24. Presiding Trial Judge - a judge in the Serious Crimes Department of the basic court who receives the indictment, rules on all preliminary and evidentiary motions at the initial hearing, and presides over the trial panel that adjudicates the main trial.

1.25. Single Trial Judge - a judge in the General Department of the Basic Court who receives the indictment, rules on all preliminary and evidentiary motions at the initial hearing, and presides over and adjudicates the main trial.

1.26. Crime Victim Compensation Program - a program established by Law on Crime Victim Compensation with the purpose of compensating victims of violent crimes if they meet the eligibility criteria set in the Law.

1.27. Victim advocate or victim's representative - an authorized representative of the injured party or victim representing the interests of the injured party or victim before, during and after the criminal proceeding, and when necessary also in other related proceedings.

1.28. Summary, transcript, recording - three (3) types of record. A summary is an accurate description of what a person said. A transcript is a verbatim record of what a person said. A transcript is a literal record of what a person has said. A recording is either an audio or video-recording through electronic means which is capable of repeating the exact words that a person said.

1.29. Lead Counsel - when a party is represented by more than one attorney, one and only one attorney shall represent the party before the court or during criminal proceedings.

1.30. Intrinsically Unreliable - evidence or information is intrinsically unreliable if the origin of the evidence or information is unknown, it is based upon a rumor, or on its face the evidence or information is impossible or inconceivable.

1.31. Articulable - when information or evidence must be articulable, the party offering the information or evidence must specify in detail the information or evidence being relied upon.

1.32. Notice of Corroboration of Evidence - a document filed by a party in support of testimony or evidence that is not directly obtainable at the main trial. The notice of corroboration would list other admissible evidence that corroborates the testimony or evidence in question. A notice of corroboration is intended to show that the evidence in question would not be the sole or decisive evidence supporting a judgment that the defendant is guilty.

1.33. Direct Indictment - indictment filed without conducting investigations as defined under Article 99 paragraph 2. in conjunction with Article 234 paragraph 1. of this Code.

1.34. Temporary Sequestration - the legal status of evidence or specified property which have been seized by the police and which is in their control or custody, based either upon a search or pursuant to a temporary restraint order issued by a state prosecutor pursuant to Article 260, paragraph 4. of this Code.

1.35. Confiscation - the permanent forfeiture of property, ordered by a final decision of the competent court in accordance with this Code.

1.36. Specified Property - an instrumentality, material benefit, tainted gift, or property that may be subject to an application by the state prosecutor pursuant to Article 273 or Article 275 of this Code.

1.37. Property - anything of value of any description, whether corporeal or incorporeal,

movable or immovable, including but not limited to:

1.37.1. property, land, buildings, apartments, houses, currency, jewelry, precious metals, bank accounts, vehicles of any description, aircraft, stocks, shares, securities, bonds, debts, intellectual property in any form; monetary instruments including currency, cash, travelers' cheques, personal cheques, bank credits, bank cheques, payment orders, money orders, cashier's cheques of any description, letters of credit, and/or investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery, any interest, dividends or other income on or value accruing from or generated by such property;

1.37.2. legal instruments evidencing interest in any property, including but not limited to title, ownership, deed, mortgage, servitudes, or interest in a property, and rights of use of socially owned, publicly-owned and state-owned property.

1.38. Instrumentality of a criminal offense - means:

1.38.1. Property used to perform any act in furtherance of the criminal offense, including property used to travel to or from the place in which any element of the offense was committed, whether or not the means of transport was adapted to facilitate the commission of the offense;

1.38.2. Property that provided shelter to perform an act in furtherance of the criminal offense, including, but not exclusively, any property objects used to shelter trafficked people, narcotics, or other illegal substances;

1.38.3. Property used, in whole in in part, to fund an act or acts in furtherance of the criminal offense; or

1.38.4. Property, in whole or in part, that was necessary to facilitate an act in furtherance of the criminal offense.

1.39. Material benefit of a criminal offense - means:

1.39.1. Property directly obtained due to the acts constituting the criminal offense;

1.39.2. Money directly obtained due to the acts constituting the criminal offense;

1.39.3. Indirect benefits: any asset that has been transformed or converted, fully or in part, into other property, including the subsequent reinvestment or transformation of direct proceeds. It also includes the income or other benefits derived from proceeds of crime, or from property into or with which such proceeds have been transformed, converted or intermingled;

1.39.4. Money indirectly obtained due to the acts constituting the criminal offense, including, but not exclusively, interest, or an increase due to the rate of monetary exchange, and the indirectly obtained funds would not have been created without money described in sub-paragraph 1.39.2 of this Article;

1.39.5. Property purchased by money that were indirectly obtained in accordance with sub-paragraph 1.39.4 of this Article;

1.39.6. Any pecuniary advantage as a result of, or in connection with a criminal offense of which the defendant is convicted; or

1.39.7. If money which is a material benefit of a criminal offense are commingled with money that is not a material benefit of a criminal offense, any amount which is available for confiscation and which is equal to or less than the amount of the

material benefit shall be considered material benefit of the criminal offense.

1.40. Tainted Gift - means:

1.40.1. Property transferred to a third party, that is an instrumentality or material benefit of a criminal offense, at any time after the commission of a criminal offense for which the defendant has been convicted, for a consideration the value of which was not significantly lower than the market value at the time of the transfer. Irrespective of the price paid, a person has received a tainted gift if he or she knew or ought to have suspected that the property was an instrumentality or material benefit of a criminal offense or if a third party knew or ought to have suspected that the purpose of the transfer or acquisition was to avoid confiscation;

1.40.2. If an offense has been committed over a period, the date referred to in sub-paragraph 1.40.1 of this Article shall be the earliest day that the offense began to be committed.

1.41. The third party can be both a natural and a legal person.

CHAPTER II
JURISDICTION OF COURTS

SUB- CHAPTER I
SUBJECT MATTER JURISDICTION AND THE COMPOSITION OF THE COURT

Article 20
Jurisdiction of Courts

1. The subject matter and territorial jurisdiction of the Basic Court for criminal proceedings is determined in the applicable Law on Courts.

2. The subject matter of the Court of Appeals for criminal proceedings is determined in the applicable Law on Courts.

3. The subject matter of the Supreme Court for criminal proceedings is determined in the applicable Law on Courts.

Article 21
Allocation of Cases within Courts

1. Criminal proceedings shall be conducted and the case shall be adjudicated in the first instance in the General Department, Serious Crimes Department or any Division or Department established under the applicable Law on Courts which has jurisdiction over criminal offenses.

2. When a child is a defendant in a criminal case, that case shall be severed from any other case and heard exclusively by the Department for Minors within the Basic Court, governed by the Juvenile Justice Code in force or successor law.

3. The General Department of the Basic Court shall conduct and adjudicate the case in all criminal proceedings that are not within the jurisdiction of the Serious Crimes Department, the Department for Minors, or any Division or Department established under the applicable Law on Courts which has jurisdiction over criminal offenses.

4. The Serious Crimes Department of the Basic Court shall conduct and adjudicate the case in any criminal proceeding where the State Prosecutor alleges or has filed charges for one or more criminal offenses which provide a punishment of imprisonment of more than ten (10) years and criminal offenses that are considered serious crimes according to Article 22 of this Code.

5. The Special Department of the Basic Court in Pristina shall conduct and adjudicate the case in any criminal proceeding under the jurisdiction of the Special Prosecution of the Republic of Kosovo pursuant to the provisions of the applicable Law on Courts.

Article 22
Offenses Considered as Serious Crimes for the Purpose of this Code

1. For the purpose of this Code, Serious Crimes shall be considered:

1.1. criminal offenses punishable by over ten (10) years imprisonment; or

1.2. the following criminal offenses:

1.2.1. assault on constitutional order of the Republic of Kosovo, in accordance with Article 114 of the Criminal Code;

1.2.2. armed rebellion, in accordance with Article 115 of the Criminal Code;

1.2.3. acceptance of capitulation and occupation, in accordance with Article 116 of the Criminal Code;

1.2.4. treason against state, in accordance with Article 117 of the Criminal Code;

1.2.5. endangering the territorial integrity of the Republic of Kosovo, in accordance with Article 118 of the Criminal Code;

1.2.6. murder of high representatives of the Republic of Kosovo, in accordance with Article 119 of the Criminal Code;

1.2.7. abduction of the high representatives of the Republic of Kosovo, in accordance with Article 120 of the Criminal Code;

1.2.8. violence against the high representatives of the Republic of Kosovo, in accordance with Article 121 of the Criminal Code;

1.2.9. endangering the constitutional order by destroying or damaging public installations and facilities, in accordance with Article 122 of the Criminal Code;

1.2.10. sabotage, in accordance with Article 123 of the Criminal Code;

1.2.11. espionage, in accordance with Article 124 of the Criminal Code;

1.2.12. disclosure of classified information and failure to protect classified information, in accordance with Article 125 of the Criminal Code;

1.2.13. aggravated offenses against the constitutional order or security of the Republic of Kosovo, in accordance with Article 126 of the Criminal Code;

1.2.14. alliance for anti-constitutional actions, in accordance with Article 127 of the Criminal Code;

1.2.15. commission of the offense of terrorism, in accordance with Article 129 of the Criminal Code;

1.2.16. assistance in the commission of terrorism, in accordance with Article 130 of the Criminal Code;

1.2.17. facilitation and financing of the commission of terrorism, in accordance with Article 131 of the Criminal Code;

1.2.18. recruitment for terrorism, in accordance with Article 132 of the Criminal Code;

1.2.19. training for terrorism, in accordance with Article 133 of the Criminal Code;

1.2.20. incitement to commit a terrorist offense, in accordance with Article 134 of the Criminal Code;

1.2.21. concealment or failure to report terrorists and terrorist groups, in accordance with Article 135 of the Criminal Code;

1.2.22. organization and participation in a terrorist group, in accordance with Article 136 of the Criminal Code;

1.2.23. traveling for the purpose of terrorism, in accordance with Article 137 of the Criminal Code;

1.2.24. preparation of terrorist offenses or criminal offenses against the constitutional order and security of the Republic of Kosovo, in accordance with Article 138 of the Criminal Code;

1.2.25. genocide, in accordance with Article 142 of the Criminal Code;

1.2.26. crimes against humanity, in accordance with Article 143 of the Criminal Code;

1.2.27. war crimes in grave violation of the Geneva conventions, in accordance with Article 144 of the Criminal Code;

1.2.28. war crimes in serious violation of laws and customs applicable in international armed conflict, in accordance with Article 145 of the Criminal Code;

1.2.29. war crimes in serious violation of Article 3 common to the Geneva conventions, in accordance with Article 146 of the Criminal Code;

1.2.30. war crimes in serious violation of laws and customs applicable in armed conflict not of an international character, in accordance with Article 147 of the Criminal Code;

1.2.31. attacks in armed conflicts not of an international character against installations containing dangerous forces, in accordance with Article 148 of the Criminal Code;

1.2.32. conscription or enlisting of children in armed conflict, in accordance with Article 149 of the Criminal Code;

1.2.33. employment of prohibited means or methods of warfare, in accordance with Article 150 of the Criminal Code;

1.2.34. unjustified delay in repatriating prisoners of war or civilians, in accordance with Article 151 of the Criminal Code;

1.2.35. unlawful appropriation of objects from the killed or wounded on the battlefield, in accordance with Article 152 of the Criminal Code;

1.2.36. endangering negotiators, in accordance with Article 153 of the Criminal Code;

1.2.37. organization of groups to commit genocide, crimes against humanity and war crimes, in accordance with Article 154 of the Criminal Code;

1.2.38. instigating war of aggression or armed conflict, in accordance with Article 156 of the Criminal Code;

1.2.39. misuse of international emblems, in accordance with Article 157 of the Criminal Code;

1.2.40. hijacking aircraft, in accordance with Article 158 of the Criminal Code;

1.2.41. endangering civil aviation safety, in accordance with Article 159 of the Criminal Code;

1.2.42. endangering maritime navigation safety, in accordance with Article 160 of the Criminal Code;

1.2.43. endangering the safety of fixed platforms located on the continental shelf, in accordance with Article 161 of the Criminal Code;

1.2.44. piracy, in accordance with Article 162 of the Criminal Code;

1.2.45. slavery, slavery-like conditions and forced labor, in accordance with Article 163 of the Criminal Code;

1.2.46. smuggling of migrants, in accordance with Article 164 of the Criminal Code;

1.2.47. trafficking in persons, in accordance with Article 165 of the Criminal Code;

1.2.48. sexual services of a victim of trafficking, in accordance with Article 228 of the Criminal Code;

1.2.49. endangering internationally protected persons, in accordance with Article 167 of the Criminal Code;

1.2.50. endangering United Nations Organization and associated personnel, in accordance with Article 168 of the Criminal Code;

1.2.51. hostage-taking, in accordance with Article 169 of the Criminal Code;

1.2.52. unauthorized appropriation, reception, use, production, possession, transfer, alteration, disposal, dispersion or damage of nuclear or radioactive material in accordance with Article 170 of the Criminal Code;

1.2.53. threats to use or commit theft or robbery of nuclear or radioactive material, in accordance with article 171 of the Criminal Code;

1.2.54. aggravated murder, in accordance with Article 173 of the Criminal Code;

1.2.55. kidnapping, in accordance with Article 191 of the Criminal Code;

1.2.56. torture, in accordance with Article 196 of the Criminal Code;

1.2.57. violation of the right to be a candidate, in accordance with Article 207 of the Criminal Code;

1.2.58. threat to the candidate, in accordance with Article 208 of the Criminal Code;

1.2.59. preventing exercise of the right to vote, in accordance with Article 209 of the Criminal Code;

1.2.60. violating the free decision of voters, in accordance with Article 210 of the Criminal Code;

1.2.61. abuse of official duty during elections, in accordance with Article 211 of the Criminal Code;

1.2.62. giving or receiving a bribe in relation to voting, in accordance with Article 212 of the Criminal Code;

1.2.63. falsification of voting results, in accordance with Article 216 of the Criminal Code;

1.2.64. destroying voting documents, in accordance with Article 217 of the Criminal Code;

1.2.65. rape, in accordance with Article 227 of the Criminal Code;

1.2.66. unauthorized purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analogues, in accordance with Article 267 of the Criminal Code;

1.2.67. unauthorized production and processing of narcotic drugs, psychotropic substances and analogues, in accordance with article 268 of the Criminal Code;

1.2.68. cultivation of opium poppy, coca bush or cannabis plants, in accordance with Article 272 of the Criminal Code;

1.2.69. organizing, managing or financing trafficking in narcotic drugs or psychotropic substances, in accordance with Article 273 of the Criminal Code;

1.2.70. counterfeit money, in accordance with Article 296 of the Criminal Code;

1.2.71. counterfeit securities and payment instruments, in accordance with Article 287 of the Criminal Code;

1.2.72. participation in or organization of an organized criminal group, in accordance with Article 277 of the Criminal Code;

1.2.73. intimidation during criminal proceedings, in accordance with Article 387 of the Criminal Code;

1.2.74. abusing official position or authority, in accordance with Article 414 of the Criminal Code;

1.2.75. abuse and fraud in public procurement, in accordance with Article 415 of the Criminal Code;

1.2.76. misusing official information, in accordance with Article 416 of the Criminal Code;

1.2.77. conflict of interest, in accordance with Article 417 of the Criminal Code;

1.2.78. misappropriation in office, in accordance with Article 418 of the Criminal Code;

1.2.79. fraud in office, in accordance with Article 419 of the Criminal Code;

1.2.80. unauthorized use of property, in accordance with Article 420 of the Criminal Code;

1.2.81. accepting bribes, in accordance with Article 421 of the Criminal Code;

1.2.82. giving bribes, in accordance with Article 422 of the Criminal Code;

1.2.83. giving bribes to foreign official person or foreign public official, in accordance with Article 423 of the Criminal Code;

1.2.84. trading in influence, in accordance with Article 424 of the Criminal Code;

1.2.85. issuing unlawful judicial decisions, in accordance with Article 425 of the Criminal Code;

1.2.86. disclosing official secrets, in accordance with Article 426 of the Criminal Code;

1.2.87. falsifying official document, in accordance with Article 427 of the Criminal Code;

1.2.88. unlawful collection and disbursement, in accordance with Article 428 of the Criminal Code;

1.2.89. unlawful appropriation of property during a search or execution of a court decision, in accordance with Article 429 of the Criminal Code.

Article 23
The Pretrial Judge

1. The Basic Court shall oversee criminal investigations by assigning based on an objective and transparent case allocation system a judge from the relevant department to serve as a pretrial judge.

2. The pretrial judge shall oversee a criminal proceeding during the investigation stage. At the filing of an indictment, the pretrial judge no longer has authority over the defendants named in the indictment.

3. The pretrial judge shall be competent to receive requests from the state prosecutor, defendant, victim advocate or victim's representative and injured party or victim and to render decisions and orders based upon those requests, in accordance with this Code.

4. The pretrial judge shall be competent to independently determine if the imposition or continuation of the deprivation of a defendant's liberty is procedurally or constitutionally valid. The pretrial judge has the duty to order the release of a defendant whose deprivation of liberty is not procedurally or constitutionally valid.

Article 24
Orders and Rulings by the Pretrial Judge

1. A pretrial judge in the General Department or Serious Crimes Department shall be competent to issue rulings or orders as foreseen by this Code.

2. Orders of a pretrial judge in the General Department or Serious Crimes Department may be reviewed upon a party's objection by a review panel from the same Department of that court. If there are insufficient judges, the President of the Court may assign judges from another Department to serve on the review panel.

3. A ruling by a pretrial judge may be reviewed upon an appeal by the Court of Appeals.

4. Any order by the pretrial judge that affects the rights of the injured party or victim may be reviewed by the review panel of the Basic Court under paragraph 2. of this Article within forty-eight (48) hours from the objection being filed. The state prosecutor, victim advocate or victim's representative may request the review of the pretrial judge's order on behalf of the injured party or victim or by the injured party or victim himself or herself.

5. The deadline for objections to orders by a pretrial judge is forty-eight (48) hours from the receipt of the order by the party, in accordance with Article 378 of this Code.

6.The deadline for appeals from rulings and orders by a pretrial judge is five (5) days from the receipt of the ruling or order by the party, in accordance with Article 378 of this Code, unless otherwise provided for by this Code.

Article 25
The Single Trial Judge, Presiding Trial Judge and Trial Panel

1. Upon the filing of an indictment by the state prosecutor in the Basic Court, a single trial judge or a trial panel with a presiding trial judge from the appropriate department shall be assigned to try the case based on an objective and transparent case allocation system.

2. For criminal proceedings within the General Department in the Basic Court, the case shall be adjudicated by a judge serving as the single trial judge.

3. For criminal proceedings within the Serious Crimes Department in the Basic Court, the case shall be adjudicated by a trial panel composed of three (3) judges, assigned in that department, one of whom shall serve as the presiding trial judge.

4. For criminal proceedings within the Special Department of the Basic Court, the case shall be adjudicated by a trial panel composed of three (3) judges, assigned in that department, one of whom shall serve as the presiding trial judge.

Article 26
Decisions prior to the Main Trial

1. Upon the filing of an indictment by the state prosecutor in the Basic Court, prior to the main trial, the single trial judge or presiding trial judge issues decisions in compliance with the relevant provisions of this Code.

2. The main trial shall be tried by a single trial judge or by the trial panel, as appropriate under this Code.

Article 27
Procedure for Minors

The procedure when the perpetrators are minors, or when minors are victims or witnesses shall be governed by the relevant Juvenile Justice Code or the relevant law.

Article 28
Judicial Panels during Appeals

1. The Court of Appeals shall decide appeals in a panel of three (3) judges.

2. The Supreme Court shall decide on appeals in a panel of three (3) judges.

SUB-CHAPTER II
TERRITORIAL JURISDICTION

Article 29
Territorial Jurisdiction

1. Territorial jurisdiction shall as a rule be vested in the Basic Court within whose territory any action of a criminal offense has been committed or attempted, or where its consequence occurred.

2. If a criminal offense 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 initiated proceedings in response to the petition of a state 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.

3. If a department of a Basic Court has been established by law and has national jurisdiction for the investigation and trial of specific criminal offenses, the jurisdiction for all criminal proceedings for such criminal offenses shall be vested in that department.

Article 30
Territorial Jurisdiction for Criminal Offenses Committed on an Aircraft

If a criminal offense has been committed on an aircraft that is registered in the Republic of Kosovo or on an aircraft that is not registered in the Republic of Kosovo and according to the agreement on international legal cooperation the criminal matter has been transferred, the Basic Court in Pristina shall have jurisdiction.

Article 31
Secondary Criteria of Jurisdiction

1. If the territory described in Article 29, paragraph 1. of this 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 offense has become known.

3. If neither the place of commission of a criminal offense 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 32
Jurisdiction of Transborder Criminal Offenses

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

Article 33
Territorial Jurisdiction as Designated by the Supreme Court

If, according to the provisions of this 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.

SUB-CHAPTER III
JOINDER OF PROCEEDINGS

Article 34
Territorial Jurisdiction on Joint Proceedings

1. If the same person has been charged with the commission of several criminal offenses of the same severity, 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 initiation of the investigation has been sent first shall have jurisdiction.

2. Joint proceedings shall also be conducted in a case in which the injured party or victim has at the same time committed a criminal offense 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 offense shall, as a rule, also have competence over the accomplices and accessories following the commission of the criminal offence, 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 this 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 offenses, provided that the acts are interconnected and the evidence is common.

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.

9. Until the indictment is filed, the competent state prosecutor has the authority to join the criminal proceedings.

Article 35
Severance of Proceedings

1. Until the conclusion of the main trial, the court which has jurisdiction under this Code may, for important reasons or for reasons of efficiency, order the severance of proceedings conducted for several criminal offenses 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 defense counsel.

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

4. Until the indictment is filed, the competent state prosecutor has the authority to sever the criminal proceedings.

SUB – CHAPTER IV
TRANSFER OF TERRITORIAL AND SUBJECT MATTER JURISDICTION

Article 36
Delegated Competence and Conflict of Competence

1. A Basic Court is bound to examine its jurisdiction and, as soon as it determines a lack thereof, it shall declare itself without jurisdiction and, after the decision becomes final, it shall refer the case to the court which has jurisdiction.

2. If a competent Basic Court is prevented from conducting proceedings for legal or factual reasons after hearing the parties, the President of the Basic Court may transfer the proceedings to another Branch within the competent Basic Court.

3. If the transfer within paragraph 2. of this Article is not feasible, the President of the competent Basic Court must consult with another Basic Court with subject matter jurisdiction and agree to transfer the proceedings.

4. If the two (2) Basic Courts cannot satisfy paragraph 3. of this Article within ten (10) days, either Basic Court shall notify the Court of Appeals. A panel of the Court of Appeals shall designate one of the courts to conduct the proceedings.

5. Before rendering a ruling in a jurisdictional conflict, the court shall ask the opinion of the state prosecutor who is competent to act before that court, the injured party, the victim, the victim's advocate or the victim's representative, and of either the defendant or his defense counsel.

6. The conflict of subject matter competence between two departments of a court is decided by the President of that court.

7. Criminal offenses allegedly committed by members of the judiciary and the state prosecutor's office, civilian staff of prosecutors or courts in Kosovo or a close family member of a judge and prosecutor are investigated, prosecuted and tried by the prosecutor's office and the court exercising jurisdiction and jurisdiction in the region other than one where a judge, prosecutor or civilian staff usually exercises their functions. The prosecutor's office and the court that has territorial jurisdiction are appointed by rotation system according to the following criteria:

7.1. if the alleged criminal offense occurred in the region of Peja, Mitrovica, or Ferizaj, the competent prosecution office and court shall be in Prishtina;

7.2. if the alleged criminal offense occurred in the region of Prishtina or Gjilan, the competent prosecution office and court shall be in Prizren;

7.3. if the alleged criminal offense occurred in the region of Prizren or Gjakova, the competent prosecution office and court shall be in Gjilan.

8. In cases where there are circumstances for exemption from sub-paragraph 7.1. through sub-paragraph 7.3. of this Article, the office of the Chief State Prosecutor shall decide on the charge, while the Supreme Court of the Republic of Kosovo shall decide on judicial cases.

9. No appeal shall be permitted against a ruling under this Article.

10. For the purposes of this Article, the expression "close family member" has the following meaning:

10.1. close family member - the spouse, the extramarital spouse, the parent, the adoptive parent and the child, the adopted child.

SUB – CHAPTER V
CONSEQUENCES OF LACK OF JURISDICTION

Article 37
The Obligations of a Court Lacking Jurisdiction and the Confirmation of the Indictment

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

2. After the indictment is confirmed, the court cannot declare that it does not have territorial jurisdiction, nor can the parties raise the objection of lack of territorial jurisdiction.

CHAPTER III
DISQUALIFICATION

SUB – CHAPTER I
DISQUALIFICATION OF JUDGES

Article 38
Basis for Disqualification of Judges

1. A judge shall be excluded from a particular case if:

1.1. he/she is a party or if he has been injured by the criminal offense which is the subject of a particular judicial case;

1.2. if he or she is the spouse, the extramarital partner, ex-spouse 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 defense counsel, the state prosecutor, the injured party or victim, the victim's advocate or the victim's representative;

1.3. if he or she is a legal guardian, under legal guardianship, adopted child, adoptive parent, foster parent or foster child of the defendant, the defense counsel, the state prosecutor or the injured party or victim;

1.4. if, in the same criminal case, he or she has taken part in the proceedings as a prosecutor, a defense counsel, a victim's defense counsel or victim's representative, or if he or she has been examined as a witness or as an expert witness;

1.5. if there exists a conflict of interest as defined by relevant legislation.

2. A judge shall be excluded as the single trial judge, presiding trial judge, a member of the trial panel, a member of the appellate panel or Supreme Court panel if he or she has participated in previous proceedings in the same criminal case. However, a judge shall not be excluded where he or she has only been involved in previous proceedings in the same criminal case as a member of a review panel.

3. A 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 this Article, circumstances that render his or her impartiality doubtful are presented.

Article 39
Procedure for Disqualification

1. As soon as the judge discovers a ground for disqualification under Article 38, paragraphs 1. or 2. of this Code, a 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 Court of Appeals to appoint a substitute. Until the substitute judge is appointed, the judge making the decision on disqualification pursuant to Article 41 of this Code shall have the jurisdiction to conduct actions that are absolutely necessary to protect the integrity of the proceedings or the rights of the parties.

2. If a judge considers that there are other circumstances which would justify his or her disqualification under Article 38, paragraph 3. of this Code, he or she shall inform the President of the court about such circumstances. Until a decision on disqualification is rendered, the judge may only conduct actions that are absolutely necessary to protect the integrity of the proceedings or the rights of the parties.

Article 40
Requests for Disqualification

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

2. A party may be bound to request disqualification of a judge on the grounds set forth in Article 38, paragraphs 1. and 2. of this Code 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.

3. In the case of disqualification on the grounds set forth in Article 38, paragraph 3. of this Code, the motion should be made by the party before the commencement of the main trial but can be made during the main trial and prior to conclusion of the main trial, if the party proves they could not have raised the grounds for disqualification before the commencement of the main trial.

4. A party may address a petition for the disqualification of a judge of the Court of Appeal or Supreme Court in an appeal or in response to an appeal.

5. A party may seek disqualification only of a judge who acts in a case.

6. The party shall be bound to state in the petition the circumstances supporting his 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 41
Decisions on Requests for Disqualification

1. Requests for disqualifications under Article 40 of this Code shall be decided immediately, and no later than seven (7) days from the date of filing of the petition, unless this Code provides otherwise, by:

1.1. the president Judge of the Basic Court shall decide on a petition for disqualification of judges in the Basic Court;

1.2. the president Judge of the Court of Appeals shall decide on a petition for disqualification of the President Judge of the Basic Court alone or a petition for disqualification of the President Judge of the Basic Court and another judge of the same court;

1.3. the president Judge of the Court of Appeals shall decide on a petition for disqualification of a judge on the Court of Appeals;

1.4. the president of the Supreme Court of Kosovo shall decide on a petition for the disqualification of the President Judge of the Court of Appeals, a petition for disqualification of the President Judge of the Court of Appeals and another judge of the same court, or a petition for the disqualification of a judge of the Supreme Court of Kosovo. A Panel chaired by the Deputy President of the Supreme Court of Kosovo shall decide on any petition for the disqualification of the President of the Supreme Court of Kosovo or a petition for the disqualification of the President of the Supreme Court of Kosovo and other judges of the same court.

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

3. 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.

4. In case of the absence of the judge designated in sub-paragraphs 1.1. to 1.4. of this Article, the decision shall be taken by the judge designated for him or her.

Article 42
Ceasing all Actions following the Request for the Disqualification of a Judge

When a 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 38, paragraph 3. of this 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.

SUB – CHAPTER II
DISQUALIFICATION OF STATE PROSECUTORS

Article 43
Bases for Disqualification of State Prosecutors

1. A state prosecutor shall be disqualified from a particular case:

1.1. is a party itself or if he has been injured by the criminal offense which is the subject of the particular judicial case;

1.2. is the spouse, the extramarital partner, ex- spouse, 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 defense counsel, the injured party or victim, the victim's advocate, or the victim's representative;

1.3. is a legal guardian, under legal guardianship, adopted child, adoptive parent, foster parent or foster child of the defendant, the defense counsel or the injured party or victim;

1.4. if, in the same criminal case, he has taken part in the proceedings as a judge, a defense counsel, a victim advocate or victim's representative or if he has been examined as a witness or as an expert witness; or

1.5. if a conflict of interest exists as defined by relevant legislation.

2. The state prosecutor has the continuing duty to disqualify himself or herself upon his or her discovery of grounds for disqualification.

3. A party in any phase may be bound to request disqualification of a state prosecutor as soon as he learns of the existence of grounds for disqualification.

4. The provisions of this Code for disqualification of a judge shall be applied mutatis mutandis for the disqualification procedure of the prosecutor.

SUB- CHAPTER III
DISQUALIFICATION OF OTHER PARTICIPANTS

Article 44
Bases for Disqualification of Other Participants in Criminal Proceedings

1. A victim advocate or victim's representative, recording clerk, interpreter, specialist and expert witness shall be disqualified when:

1.1. is a party himself has been injured by the criminal offense;

1.2. if he 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 defense counsel, the state prosecutor, the injured party or the victim;

1.3. is a legal guardian, under legal guardianship, adopted child, adoptive parent, foster parent or foster child of the defendant, the defense counsel, the prosecutor, the injured party or the victim;

1.4. if, in the same criminal case, he has taken part in the proceedings as a judge, a prosecutor, a defense counsel, or if he has been examined as a witness or as an expert witness; or

1.5. if there exists a conflict of interest as defined by relevant legislation.

2. The grounds for disqualification referred to in the paragraph 1. of this Article shall apply to victim's representative except in cases referred to in sub-paragraphs 1.1. to 1.3. of this Article regarding his relationship to the injured party or victim.

3. A presiding trial judge, single trial judge, pretrial judge or presiding judge of a review panel or appeal panel shall decide on the disqualification of a recording clerk, interpreter, specialist, expert witness and victim advocate or victim's representative.

4. When an authorized police officer conducts investigative actions on the basis of this Code, the state 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 disqualification.

CHAPTER IV
THE STATE PROSECUTOR

Article 45
Jurisdiction and Structure of State Prosecution Offices

The jurisdiction and structure of the Basic Prosecution Offices, Special Prosecution Office, Appellate Prosecution Office and the Office of the Chief State Prosecutor to investigate and prosecute criminal cases is determined in the relevant Law on State Prosecutor and the relevant Law on Special Prosecution Office of the Republic of Kosovo.

Article 46
Independence of State Prosecutors

Public entities shall not formally or informally influence or direct the actions of the state prosecutor

when dealing with individual criminal cases or investigations.

Article 47
Duty of State Prosecutor towards Defendant

The state prosecutor has a duty to consider inculpatory as well as exculpatory evidence and facts during the investigation of criminal offenses and to ensure that the investigation is carried out with full respect for the rights of the defendant and that evidence is collected in compliance with the provisions of this Code.

Article 48
Duties and Competencies of State Prosecutors

1. The basic duties and competencies of the state prosecutor are described in the relevant Law on State Prosecutor and the relevant Law on Special Prosecution Office of the Republic of Kosovo. In addition to those basic duties and competencies the state prosecutor shall have the following duties and competencies:

1.1. the state prosecutor is empowered to represent the public interest before the courts of the Republic of Kosovo and to request the courts to order measures in accordance with this Code;

1.2. with respect to criminal offenses which are prosecuted ex officio or on the motion of an injured party, the state prosecutor shall have the power to negotiate and accept a voluntary agreement with the defendant to cooperate or plead guilty;

1.3. the state prosecutor shall present to the court relevant information and data that may have an impact on the type and severity of the sentence.

Article 49
Territorial Jurisdiction of State Prosecutors

The state prosecutor shall have jurisdiction to act before the appropriate court in accordance with the relevant Law on the State Prosecutor and the relevant Law on Special Prosecution Office of the Republic of Kosovo.

Article 50
Jurisdiction of State Prosecutors in Urgent Matters

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

Article 51
Withdrawal from Prosecution

The state prosecutor may withdraw from prosecution up until the conclusion of the main trial before a Basic Court and, in proceedings before a court of higher instance, he may withdraw from prosecution only in cases provided for by this Code.

CHAPTER V
DEFENSE COUNSEL

Article 52
Defendant's Right to Defense Counsel

1. The suspect and the defendant have the right to be assisted by a defense counsel during all

stages of the criminal proceedings.

2. Before every examination of the suspect or the defendant, the police or other competent authority, the state prosecutor, the pretrial judge, the single trial judge or the presiding trial judge shall instruct the suspect or the defendant that he has the right to engage a defense counsel and that a defense counsel can be present during the examination.

3. Where there is no mandatory defense, the right to the assistance of a defense counsel may be waived, if such waiver is made following clear and complete information on his right to the defense being provided. 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 eighteen (18) may not waive the right to the assistance of defense counsel.

5. Persons who display signs of mental disorder or disability may not waive their right to the assistance of defense counsel.

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

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

Article 53
Qualification as Defense Counsel

1. Only a member of the Kosovo Bar Association may be engaged as defense counsel.

2. The defense counsel shall submit the written power of attorney to the police, state prosecutor or the court before which proceedings are being conducted. The suspect and the defendant may give the defense counsel a verbal power of attorney, which shall be entered in the record of the police, state prosecutor or the court before which proceedings are being conducted.

Article 54
Limits of Representation by Defense Counsel

1. In criminal proceedings a defense counsel is not allowed to represent two or more defendants in the same case, regardless of whether the case has been severed or the stage of the proceedings. A defense counsel may not represent a legal person and a natural person in the same case, unless the natural person is the only person who owns, manages and is employed by the legal person.

2. A defendant may have up to three (3) defense counsel, and it shall be considered that the right to defense shall be considered satisfied if one of the defense counsel is participating in the proceedings.

3. If a defendant has more than one defense counsel, one defense counsel shall be nominated the lead counsel by the defendant. If the defendant fails to do so, the lead counsel will be the first one to submit his power of attorney. Service upon the lead counsel of documents, including indictments, requests, replies, appeals and the documents required to be disclosed to defendants shall constitute service upon all attorneys representing the party. Only the submissions filed by the lead counsel shall be considered by the court. However, if the lead counsel is unavailable to file a submission, another defense counsel may file a submission with the consent of the defendant.

Article 55
Disqualification of Defense Counsel

1. The defense counsel may not be the injured party or victim, the spouse or extramarital partner of the injured party or victim or person related 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, to the injured party, victim or to the prosecutor.

2. Any person who has been summoned as a witness may not be a defense counsel unless under the present Code he has been relieved of the duty to testify as a witness and has declared that he will not testify as a witness or unless defense counsel has been examined as a witness in a case under Article 123, paragraph 1., sub-paragraph 1.2. of this Code.

3. Any person who has acted as a judge, as a state prosecutor or authorized official in the same case may not be a defense counsel.

Article 56
Mandatory Defense

1. The defendant must have a defense counsel in the following cases of mandatory defense:

1.1. from the first examination, until the conclusion of the criminal proceedings with a final decision, when the defendant is mute, deaf, or displays signs of mental disorder or disability and is therefore incapable of effectively defending himself;

1.2. at arrest, hearings on detention on remand and throughout the time when he is in detention on remand;

1.3. from the moment of the first examination for a criminal offense punishable by imprisonment of at least five (5) years;

1.4. for proceedings under extraordinary legal remedies when the defendant is mute, deaf, or displays signs of mental disorder or disability or a punishment of life long imprisonment has been imposed;

1.5. in all cases when a defendant seeks to enter an agreement to plead guilty; or

1.6. in all cases where the defendant is tried in absentia pursuant to Article 303 of this Code.

2. In a case of mandatory defense, if the defendant does not engage a defense counsel and no one engages a defense counsel on his behalf under Article 52, paragraph 7. of this Code, the competent judge or other competent authority conducting the proceedings, shall appoint ex officio a defense counsel at public expense. If a defense counsel is appointed ex officio from the moment of the first examination, the defendant shall be informed of this at the same time as the indictment is served.

3. In a case of mandatory defense, if the defendant remains without a defense counsel in the course of the proceedings and if he fails to obtain another defense counsel, the competent judge or other competent authority conducting the proceedings shall appoint ex officio a new defense counsel at public expense.

4. A legal person is not entitled to a defense counsel appointed at public expense.

5. In cases of mandatory defense, the right to a defense counsel may be waived in accordance with Article 52, paragraph 3. of this Code. In such cases, the counsel assigned ex officio shall be held to act as “standby counsel” with the sole responsibility of being present and to advise the suspect or the defendant throughout the proceedings. If the suspect or the defendant withdraws

the waiver, the standby counsel shall become the defense counsel.

Article 57
Defense Counsel at Public Expense When There is Not Mandatory Defense

1. If the conditions are not met for mandatory defense, a defense counsel shall be appointed at public expense for the defendant at his request, only if:

1.1. he is financially unable to pay the cost of his defense; and

1.2. one of the following conditions is met:

1.2.1. the criminal proceedings are being conducted for a criminal offense punishable by imprisonment of three (3) or more years; or

1.2.2. it is in the interest of justice independently from the punishment foreseen.

2. The defendant shall be instructed by the competent judge or other competent authority conducting the proceedings on the right to defense counsel at public expense under the paragraph 1. of this Article before the first examination.

3. The request for the appointment of a defense counsel at public expense under paragraph 1. of this Article may be filed throughout the course of the criminal proceedings. The competent judge or other competent authority conducting the proceedings shall decide on the request on whether to appoint a defense counsel in a written reasoned ruling. If the police or the state prosecutor refuses the request of the defendant for the appointment of a defense counsel at public expense, the defendant may appeal to the pretrial judge.

4. Prior to the appointment of a defense counsel at public expense under the present Article, the defendant shall submit an affidavit listing his assets and declaring that he cannot afford defense counsel.

5. In conformity with Article 11, paragraph 4. of this Code, a defense counsel having the experience and competence commensurate with the nature of the offense shall be appointed for the defendant.

Article 58
Termination of the Rights and Duties of Defense Counsel

1. The defense counsel shall cease the exercise of his or her rights and duties in the event of revocation or withdrawal, or dismissal.

2. Paragraph 1. of this Article does not prevent the re-engagement of the defense counsel by the same party in case there is no legal reason or obstacle for his exclusion.

Article 59
Reasons for Dismissal of the Defense Counsel

1. The chosen defense counsel shall be dismissed:

1.1. in case of existence of one of reasons listed in Article 55 of this Code;

1.2. when criminal proceedings have been initiated against the defense counsel in the same case for criminal offenses of obstruction of evidence or official proceedings, or for facilitating the escape of a person deprived of liberty in a case related to the defendant that he represents; or

1.3. when the previously revoked or annulled authorization is granted again by the

defendant in the same case with the direct intentions to delay criminal proceedings.

2. Except for the reasons provided for in paragraph 1. of this Article, the defense counsel assigned ex officio shall be dismissed:

2.1. if the defendant or the person referred to in Article 52, paragraph 7. of this Code, hires another defense counsel;

2.2. if he fails to properly exercise the duty of the defense counsel;

2.3. due to changes in the financial situation of the defendant and when the reasons for the defense counsel at public expense cease to exist, when the defense is not mandatory under Article 57 of this Code.

Article 60
Decision for Dismissal of Defense Counsel

1. The dismissal of the defense counsel shall be decided ex officio by the pretrial judge, presiding trial judge, trial panel or the single trial judge.

2. Prior to issuing a ruling, the court shall hear the opinion of the defendant and the defense counsel.

3. Special appeal shall be permitted against the ruling on the dismissal of the defense counsel.

4. The president of the court shall inform the Kosovo Bar Association of the dismissal of the defense counsel.

5. In cases of the ruling to dismiss the defense counsel the provision of Article 297, paragraph 3. of this Code, to engage another defense counsel is applied mutatis mutandis.

Article 61
Rights of Defense Counsel as Representative of Defendant

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

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

3. The defense counsel has the right to be notified in advance of the venue and time for undertaking any investigative actions, to participate in them and to inspect the records and evidence of the case in accordance with this Code.

Article 62
Withdrawal by Defense Counsel

1. A defense counsel who does not accept the task that has been entrusted to him or withdraws from it, shall immediately notify the authority conducting the proceedings and whoever has appointed him 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 and a defense counsel can only refuse appointment for justified reasons.

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

evidence.

4. Paragraph 3. of this Article shall also apply to the cases under Article 59, paragraph 2. of this Code.

CHAPTER VI
THE INJURED PARTY OR VICTIM

Article 63
Rights of the Injured Party or Victim

1. The injured party or victim shall have the following rights:

1.1. the injured party or victim shall be treated in a respectful, sensitive, tailored, professional and non-discriminatory manner by the police, state prosecutors, judges or other body conducting the criminal proceedings;

1.2. if an injured party or victim of a crime can be identified, the police and state prosecutor or other body conducting the criminal proceedings shall contact the injured party or victim in a reasonable manner and inform him that he is an injured party;

1.3. when identified, the injured party or victim has the right to receive information, without unnecessary delay, from his first contact with the police, state prosecutor or other competent body conducting the proceedings, depending on the personal characteristics of the victim, his specific needs, the type or nature of the criminal offence and the circumstances of the criminal offence:

1.3.1. the type of support he can obtain including, where relevant, basic information about access to medical support, psychological support, alternative accommodation and any specific provisions as provided for in this Code or the law following an individual assessment by the police, the state prosecutor, the judge or other body conducting the criminal proceedings. The individual assessment shall take into account the type or nature of the crime and the circumstances of the crime;

1.3.2. the procedures for filing a motion with regard to a criminal offence and his role in connection with such procedure;

1.3.3. how and under what conditions he can obtain protection, including protection measures;

1.3.4. how and under what conditions he can access legal advice, legal aid and any other sort of advice;

1.3.5. how and under what conditions he can access compensation;

1.3.6. how and under what conditions he is entitled to interpretation and translation;

1.3.7. if he is a foreign national, he has the right to notify or to have notified and to communicate with the embassy, liaison office or the diplomatic mission of the state of which he is a national or with the representative of a competent international organization, if he is a refugee or is otherwise under the protection of an international organization;

1.3.8. the available procedures for making complaints where his rights are not respected by the police, state prosecutor or other competent body conducting the proceedings;

1.3.9. the contact details for communication about his case;

1.3.10. the available restorative justice services; and

1.3.11. how and under what conditions expenses incurred as a result of his participation in the criminal proceedings can be reimbursed.

1.4. the injured party or victim who is a victim of terrorism, organized crime, human trafficking, gender-based violence, violence in a domestic relationship, sexual violence, exploitation or discrimination and victim who have suffered considerable harm due to the severity of the criminal offense as well as victims with disabilities and those who are particularly vulnerable, shall be duly considered;

1.5. the injured party or victim has the right to be assisted to understand and to be understood from the first contact with the police or other competent authority conducting the proceedings and during any further necessary interaction he has with the police or competent authority during the conduct of the criminal proceedings;

1.6. the injured party or victim may be accompanied by a person of his choice in the first contact with the police, state prosecutor or other body conducting the proceedings where, due to the impact of the crime, the victim requires assistance to understand or to be understood;

1.7. the injured party or victim has the status of a party to the criminal proceeding;

1.8. the injured party or victim may be heard by the police, the state prosecutor or other body conducting the criminal proceedings and provide evidence;

1.9. the injured party or victim shall have the right to receive information about the criminal proceedings with regard to a criminal offense in relation to: any decision not to proceed with or to end an investigation or not to prosecute the suspect or defendant with the reasons why so, except in cases where the reasons are confidential or, alternatively, the filing of an indictment against the defendant, the nature of the charges brought against the defendant, the time and place of the main trial and the judgment of a court. The police, the state prosecutor, the competent judge or other body conducting the criminal proceedings, or correctional service, shall inform the injured party or victim, without delay, when the person in detention on remand or serving a sentence for criminal offenses concerning the injured party or victim, is released from or has escaped detention;

1.10. the injured party or victim has the right to receive information and communicate with the police, state prosecutors, judges or other body conducting the criminal proceedings in a simple and accessible language, orally or in writing. Such communication shall take into account the personal characteristics of the injured party including any disability which may affect the ability to understand or to be understood;

1.11. the injured party or victim has the right to choose whether to receive information and communication or not, unless that information or communication must be provided due to the rights of the victim to participate in the criminal proceedings. The injured party or victim has the right to change his wish regarding the service of such information or communication;

1.12. the injured party or victim is entitled to the rights provided in Article 14 of this Code and, upon request, to the right of interpretation free of charge during any interviews or questioning of the injured party and during court hearings if the injured party participates in the criminal proceedings;

1.13. the injured party or victim, if he does not understand or speak the language of the

proceedings, is entitled to file a motion and complaint in a language that he understands or by receiving the necessary linguistic assistance;

1.14. the injured party or victims shall, if he does not understand or speak the language of the proceedings, receive translation, free of charge, of the written acknowledgment of his motion or complaint filed, if they so request, and of the information essential to the exercise of his rights in the criminal proceedings in a language that he understands. An oral translation may be provided instead of a written translation if it does not prejudice the fairness of the proceedings;

1.15. the injured party or victim has the right to legal representation and legal aid;

1.16. the injured party or victim has the right to compensation and reimbursement of expenses incurred as a result of his participation in the criminal proceedings;

1.17. the injured party or victim has the right to request protection, including protection measures as provided in this Code;

1.18. the injured party or victim has the right to access victim support services, including the Victim Protection and Assistance Office;

1.19. the injured party or victim has the right to a reasonable, court-ordered restitution from a defendant or defendants who have admitted to or been adjudged to be guilty for the financial, physical and emotional harm caused by the commission of a criminal offense for which the defendant or defendants have been adjudged guilty;

1.20. when court-ordered restitution from the defendant is not possible, the injured party or victim has the right to claim compensation from the Crime Victim Compensation Program;

1.21. a victim of gender based violence shall be enabled to avoid direct contact with the defendant anytime when that is possible during the proceedings in the police, prosecution or the court.

Article 64
Representatives of the Injured Party or of the victim

1. The injured party or victim may be represented by a representative who shall be a member of the bar of Kosovo.

2. The injured party or victim may be represented by a victim advocate.

3. The injured party or victim may represent himself or herself.

4. The injured party or victim shall not be represented simultaneously by both representatives under paragraphs 1. and 2. of this Article.

5. The victim advocate or victim's representative is empowered to inform the injured party or victim of his rights, represent the interests of the injured party or victim with the state prosecutor and the court, assist the injured party or victim in claiming restitution and/or compensation for damage and, when necessary, refer the injured party or victims to other service providers. The victim advocate or victim's representative acts on behalf of the injured party or victim when necessary and appropriate to stop the violation of the injured party's or victim's rights and to request action to guarantee his protection.

CHAPTER VII
OVERSIGHT OF THE CRIMINAL PROCEEDINGS

Article 65
Sanctions for Prolonging Criminal Proceedings

1. In the course of proceedings the court may impose a fine of up to one thousand (1000) EUR upon a defense counsel, an injured party or victim, a victim advocate or victim's representative if his actions are obviously aimed at prolonging criminal proceedings. The fine may be assessed for each occurrence of the actions aimed at prolonging the criminal proceedings under this paragraph.

2. The court shall inform the Kosovo Bar Association of the fining of a member of the Kosovo Bar Association.

3. If the state 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 court shall inform the Chief Prosecutor of that office about it.

Article 66
Notification of Criminal Offenses Committed in the Course of Criminal Proceedings

1. If a judge becomes aware that a violation of Articles 383-394 and Articles 397-399 of the Criminal Code has occurred during a criminal proceeding over which he presides, he may refer the person to the appropriate state prosecutor for investigation.

2. A judge who presides during a violation of Articles 383-394 and Articles 397-399 of the Criminal Code according to paragraph 1. of this Article, is excluded from any criminal proceedings resulting from the violation, but may continue to preside over the original criminal proceeding.

3. The provisions of this Article shall apply without prejudice to Article 299 of this Code.

CHAPTER VIII
DUTIES OF NON-PARTIES

Article 67
Obligation of Public Entities to Assist State Prosecutor

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

2. When the public entity does not comply with a request referred to in paragraph 1. of this Article, the state prosecutor, the court and other competent authorities conducting the criminal proceedings shall immediately notify a representative of that authority.

3. If within twenty-four (24) hours of the time when the notification referred to in paragraph 2. of this Article was received, the entity fails to comply with the request referred to in paragraph 1. of this Article, the state prosecutor, the court and other competent authorities participating in criminal proceedings shall request the institution to initiate disciplinary proceedings against the responsible person.

Article 68
Release of Confidential Data

1. At the request of the court, institutions and persons responsible for maintaining databases 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.

PART TWO
CRIMINAL PROCEEDINGS

CHAPTER IX
INITIATION OF INVESTIGATIONS AND CRIMINAL PROCEEDINGS

SUB-CHAPTER I
STAGES OF THE CRIMINAL PROCEEDINGS

Article 69
Stages of Criminal Proceedings

Criminal proceedings under this Code shall have four (4) distinct stages: the investigation stage, the indictment and plea stage, the main trial stage and the legal remedy stage. A criminal proceeding may be preceded by initial steps by the police or information gathering under Article 86 of this Code.

SUB – CHAPTER II
INITIAL STEPS BY THE POLICE

Article 70
Initial Actions by the Police

1. The police shall undertake acts described in Article 71 of this Code and shall report them to the state prosecutor as soon as possible, but no later than seventy-two (72) hours of undertaking the action.

2. The state prosecutor and the police shall cooperate during the initial steps in Article 71 of this Code.

3. Once a measure is authorized under Article 86 of this Code or a criminal proceeding is initiated under Article 100 of this Code, the state prosecutor directs and supervises the work of police and other or other body conducting the criminal investigation.

4. The state prosecutor shall have access to all relevant information in the possession of the police during the initial steps.

Article 71
Authorization of Police

1. After receiving information of a suspected criminal offense, the police shall undertake acts under this Article to determine whether a reasonable suspicion exists that a criminal offense prosecuted ex officio has been committed.

2. After receiving a motion for prosecution filed by an injured party, the police shall undertake acts under this Article to determine whether a reasonable suspicion exists that a criminal offense prosecuted by motion has been committed.

3. The police shall take all steps necessary to locate the perpetrator, to prevent the perpetrator or his accomplice from hiding or fleeing, to detect and preserve traces and other evidence of the criminal offense and objects which might serve as evidence, and to collect all information that

may be of use in criminal proceedings.

4. In order to perform the tasks under this Article the police shall have the power:

4.1. to gather information from persons;

4.2. to perform provisional inspection of vehicles, passengers and their luggage;

4.3. to restrict movement in a specific area for the time this action is urgently necessary;

4.4. to take the necessary steps to establish the identity of persons and objects;

4.5. to organize a search to locate an individual or an object being sought;

4.6. to search specific buildings and premises of public entities in the presence of a responsible person and to examine specific documentation belonging to them according to this Code;

4.7. to temporarily sequestrate evidence or specified property or execute temporary restraint order;

4.8. to provide for a physical examination of the injured party or victim, in accordance with Article 142 of this Code;

4.9. to detect, collect and preserve traces and evidence from the scene of the incident a suspected criminal offense and to order forensic testing of that evidence by the forensic laboratory in accordance with Article 72 of this Code;

4.10. to interview witnesses or possible suspects in accordance with Article 74 of this Code;

4.11. to take steps necessary to prevent an emergent danger to the public;

4.12. to take all steps necessary to locate the perpetrator and to prevent the perpetrator or his accomplice from hiding or fleeing; and

4.13. to undertake other necessary steps and actions provided for by the law.

5. The police shall make a record, photograph or official note of the actions they take and of the facts and circumstances which are established by their investigation.

6. As soon as the police receive a motion for prosecution by an injured party or are notified that a criminal offense prosecuted ex officio has been committed, attempted, is occurring, or will soon be committed, the police are required to notify the state prosecutor immediately and have a duty to provide a police report within seventy-two (72) hours.

Article 72
Collection of Evidence from Crime Scene

1. The police shall carefully collect evidence found at the scene of a suspected criminal offense and shall preserve it in the appropriate manner that permits the evidence to be tested by the competent laboratory.

2. For potential evidence subject to forensic testing which would be taken from an individual's body, excluding fingerprints, the police must either have the written consent of the individual for the evidence to be taken or a court order under Article 141, 142 or 143 of this Code that authorizes the evidence to be taken.

Article 73
Police Right to Briefly Detain

The police have the right to detain and gather information from persons found at the scene of the criminal offense 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 shall last no longer than necessary for names, addresses and other relevant information to be gathered, and in any case it shall not exceed six (6) hours. Such detention should only be used when no other means are available to gather the information. The police shall treat the person being briefly detained with dignity and shall not briefly detain the person in a detention center or with handcuffs.

Article 74
Interviews by Police

1. The police have the right to interview persons who may be witnesses to a criminal offense and to create a Police Report of the interview. The Report shall contain the exact questions and answers during the interview, shall identify the police officer interviewing the witness, the time, date and location of the interview, and shall identify the witness.

2. The police have the right to interview persons who may be suspects of committing a criminal offense but shall first inform the suspect on the offenses that he is suspected of having committed and of their rights under Article 122, paragraph 3. of this Code. The police shall prepare a Police Report of the interview. The Report shall contain the exact questions and answers during the interview, shall identify the police officer interviewing the suspect, the time, date and location of the interview, and shall identify the suspect.

3. During an interview under paragraph 2. of this Article, the suspect has the right to interpretation or translation of relevant documents without payment. When possible, the police shall audio or video record the interviews under this Article.

4.The police shall audio or audio and video record the interview under this Article.

Article 75
Prohibitions in Police Questioning

Article 251 of the Code shall apply to gathering information from persons under Articles 73-74 of this Code.

Article 76
Provisional Security Searches

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 for weapons or other dangerous objects 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 conducted 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 find 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 this Code.

Article 77
Measures to Identify a Suspect

1. The police may photograph a person and take his fingerprints, if there is a reasonable suspicion that he has committed a criminal offense.

2. The state prosecutor may authorize the police to release the photograph of the suspect 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 an object, 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 141, 142 or 143 of this Code from a suspect if it is urgent. The state 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 78
Collection of Information from Injured Party by Police

1. When gathering information from an injured party or victim, the police shall inform the injured party or victim of his rights under Article 63 of this Code and upon the request of the injured party or victim and, where the injured party or victim belongs to one of the categories referred to in Article 63, paragraph 1. of this Code, shall notify the Victim Advocacy Office or the victim's representative, if any.

2. A person against whom any of the measures provided for in Articles 70-78 of this Code has been taken is entitled to file an appeal with the competent state prosecutor within three (3) days from the taking of the measures.

3. The state prosecutor shall, without delay, verify the grounds for the appeal referred to in paragraph 2. of this 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 shall act in accordance with the law and shall inform the person who filed the appeal.

Article 79
Criminal Report by Public Entities

1. All public entities have a duty to report criminal offenses 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 this Article shall present evidence known to them and shall undertake steps to preserve traces of the criminal offense, objects upon which or with which the criminal offense was committed and other evidence.

Article 80
Criminal Report by Persons

1. Any person is entitled to report a criminal offense which is prosecuted ex officio and shall

have a duty to do so when the failure to report a criminal offense constitutes a criminal offense.

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 offense, and in particular of a criminal offense against sexual integrity, shall immediately report this.

3. When prosecution for a certain criminal offense depends on a motion for prosecution by the injured party or on the prior approval of the competent authority, the state prosecutor may not conduct an investigation or file an indictment without submitting proof that the motion has been submitted or the approval has been granted. In cases of urgency, the state prosecutor can proceed with an oral motion for prosecution which has to be confirmed in forty-eight (48) hours in writing. A criminal report signed by the injured party shall be sufficient under this paragraph.

Article 81
The Submission of Criminal Report

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

2. If a criminal offense 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 state prosecutor who is not competent shall be accepted and forwarded without delay to the competent state prosecutor.

Article 82
Police Criminal Report

1. On the basis of information and evidence 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 state 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 offense, they have a continuing duty to gather the necessary information and to submit immediately to the state prosecutor a report to that effect, as a supplement to the police criminal report. together with the new evidence.

4. If the evidence and the information gathered provide no basis for a police criminal report and there is no reasonable suspicion that a criminal offense has been committed, the police will nevertheless send a separate report to that effect to the state prosecutor within fifteen (15) days, following the last action undertaken by the police.

5. If there is a reasonable suspicion that a criminal offense has been committed, the police shall submit a criminal report within thirty (30) days following the last action undertaken by the police to the competent state prosecutor who shall decide whether to initiate criminal proceedings.

Article 83
Supplemental Information to Police Criminal Report

1. If from the criminal report itself the state 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 or if the state prosecutor has only heard a rumor that a criminal offense was committed, the state prosecutor, if he is unable to do so on his own, shall request that the police gather the necessary information. The police are bound to follow the state prosecutor's lawful requests.

2. The state prosecutor may also gather information on his own, or from other public entities, including by speaking to witnesses and injured parties, and their legal counsel. The state prosecutor may participate with the police in any examination of the defendant while he must respect the rights of suspects under this Code.

3. The police shall have a duty to report immediately to the state prosecutor on the measures they have undertaken under his instruction or, if the police is unable to undertake them, they shall immediately report to the state prosecutor the reasons for their inability to undertake such measures.

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

5. The police, state 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.

Article 84
Dismissal of Criminal Report

1. Following the receipt of the criminal report, the state prosecutor shall issue written ruling dismissing a criminal report within thirty (30) days or requests supplemental information pursuant to Article 83 of this Code. If the state prosecutor has required supplemental information, he shall issue the ruling dismissing the criminal report within six (6) months from the day of the filing of the initial criminal report.

2. The state prosecutor shall dismiss the criminal report only if it is evident from the report that:

2.1. there is no reasonable suspicion that the suspect has committed the criminal offense;

2.2. the act reported is not a criminal offense which is prosecuted ex officio, or upon motion;

2.3. the period of statutory limitation for criminal prosecution has expired or the criminal offense is covered by an amnesty, pardon, or the case has been adjudicated by a final decision, or there are other circumstances that preclude prosecution;

2.4. the suspect is protected by immunity and a waiver is not possible or not granted by the appropriate authority; or

2.5. there are circumstances that preclude criminal liability.

3. Before the dismissal of a criminal report, the state prosecutor shall consult with the chief prosecutor of the respective prosecution office and an official note shall be made.

4. Within eight (8) days from the dismissal of a criminal report, the state prosecutor shall submit the ruling with the reasons for the dismissal of the criminal report to the injured party or the victim, the person or the authority that submitted the criminal report. The ruling on the dismissal of the criminal report shall also be submitted to the person against whom the criminal report has been filed.

5. If the state prosecutor dismisses the criminal report, the victim, or the injured party may file a

complaint against the dismissal of the criminal report within eight (8) days of the receipt of the notification under paragraph 4. of this Article. The complaint shall be submitted with the Basic Prosecution Office to the Appellate Prosecution Office. The complaint shall contain the facts and the reasons for the complaint.

6. If the Appellate Prosecution Office determines that the complaint is grounded, it shall issue a ruling to that effect instructing the state prosecutor to undertake additional actions regarding the criminal report. The complainant shall be informed by the Appellate Prosecution Office that the complaint has been granted.

7. If the Appellate Prosecution Office determines that the complaint is unfounded, it shall refuse the complaint by a reasoned ruling that shall be served upon the complainant within fifteen (15) days from the filing of the complaint.

8. Following the expiration of a period of six (6) months from the filing of the criminal report or a decision provided for in paragraph 6. of this Article, the injured party or the victim may file a complaint directly to the Appellate Prosecution Office for failure of the state prosecutor to undertake actions. The procedure provided for in paragraphs 6. and 7. of this Article shall apply mutatis mutandis.

SUB – CHAPTER III
SPECIAL INVESTIGATIVE MEASURES

Article 85
Definitions of Special Investigative Measures

1. 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 police officer or a person who acts under the supervision of the authorized 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.

2. The term “covert monitoring of conversations” means the monitoring, recording, or transcribing of conversations by a duly authorized police officer or a person who acts under the supervision of the authorized police officer, by technical means without the knowledge or consent of at least one of the persons subject to the measure. Covert monitoring of conversations can also be carried out when one of the two people being monitored is ready to carry out and record the respective action, under the supervision of an authorized police officer.

3. The term “search of postal items” means the search by a duly authorized police officer of letters and other postal items which may include the use of X-ray equipment.

4. The term “interception of telecommunications and use of an International Mobile Service Identification “IMSI” Catcher” means the interception of voice communications, text communications or other communications through the fixed or mobile telephone networks. This shall include any similar technological device or system that carries information that is normally intended to be private.

5. The term “controlled delivery of postal items” means the delivery by a duly authorized police officer of letters and other postal materials.

6. The term “controlled delivery” means the technique of permitting unlawful or suspected shipments to or from or through the territory of one or more countries, with the knowledge and under the supervision of the competent persons of those authorities, with a view to investigating a criminal offense and identification of persons involved in the commission of a criminal offense.

7. The term “use of tracking or positioning devices” means the use by a duly authorized police

officer of devices, which identify the location of the person or object to whom the device is attached.

8. The term “simulated sale and purchase of items, services or objects” means an act of selling or buying from a person suspected of having committed a criminal offense, an item, service or object which may serve as evidence in criminal proceedings, or a person suspected to be a victim of the criminal offense of Trafficking in Persons, as defined in Article 165 of the Criminal Code. This action may be carried out by an authorized police officer or a person acting under the supervision of an authorized police officer.

9. The term “simulated giving and taking of bribe” means an act which is the same as a criminal offense related to corruption, except that it has been performed for the purpose of collecting information and evidence in a criminal investigation.

10. The term “simulated registration of legal entities or the use of existing legal entities for data collection” means the creation of legal entities for the purpose of providing simulated business services or the use of existing legal entities for data collection. Provision of simulated business services may be carried out by using special investigative measures related person’s identity, ownership of objects or property and legal entities.

11. The term “an undercover investigation” means the use of the undercover investigators and collaborators, respectively the planned interaction of a duly authorized police officer or collaborator who is not identifiable as a duly authorized police officer or of a person acting under the supervision of a duly authorized police officer with persons suspected of having committed a criminal offense.

12. The term “metering of telephone calls” means obtaining a record of telephone calls made from a given telephone number, including but not limited to the confirmation the identification of the specific number, verification of the telephone number, geographic location, device location, verification of the phone subscriber, or International Mobile Equipment Identity (IMEI).

13. The term “disclosure of financial data” means obtaining information from a bank or another financial institution on deposits, accounts or transactions.

Article 86
Purpose and Types of Special Investigative Measures

1. If there is a grounded suspicion that a criminal offense listed in Article 89 of this Code has been committed, is being committed or will soon be committed, if the information sought to be obtained would be likely to assist in the investigation and if the information would be unlikely to be obtained by any other investigation action without unreasonable difficulty or potential danger to others, the state prosecutor may authorize special investigative measures as following:

1.1. covert photographic or video surveillance in public places;

1.2. an undercover investigation;

1.3. covert monitoring of conversations in public places;

1.4. controlled delivery of postal items;

1.5. controlled delivery;

1.6. use of tracking or positioning devices;

1.7. a simulated sale and purchase of items, services or objects;

1.8. simulated registration of a legal entity or use of existing legal entities for collecting

data; and

1.9. metering of telephone-calls.

2. If there is a grounded suspicion that a criminal offense listed in Article 89 of this Code is being committed or will soon be committed, and if the investigation of the criminal offense cannot be carried out in any other way, or it will be very difficult to, the state prosecutor may request the pretrial judge to authorize covert investigative measures as following:

2.1. covert photographic or video surveillance in private places;

2.2. covert monitoring of conversations in private places;

2.3. interception of telecommunications and use of an International Mobile Service Identification “IMSI” Catcher;

2.4. interception of communications by a computer network;

2.5. search of postal items;

2.6. a simulation of giving and receiving of bribe; and

2.7. disclosure of financial data.

3. The state prosecutor or pretrial judge does not need to have a reasonable suspicion of the identity of the suspect or suspects who committed, are committing, or will soon commit the criminal offense in order to authorize special investigative measures in accordance with paragraphs 1. and 2. of this Article.

4. For the state prosecutor or pretrial judge to authorize special investigative measures referred to in paragraphs 1. and 2. of this Article it is not necessary to initiate criminal proceedings. However, a criminal proceeding shall be initiated as soon as the state prosecutor has a reasonable suspicion of the identity of the suspect or suspects who committed the criminal offense.

Article 87
Secrecy of Information Gathering

If the state prosecutor or pretrial judge authorizes special investigative measures in accordance with Article 86, paragraphs 1. or 2. of this Code, the file shall be kept confidential until its disclosure is required pursuant to this Code.

Article 88
Legal Conditions for Special Investigative Measures

1. Special investigative measures may be ordered against persons when there is grounded suspicion:

1.1. that a criminal offense under Article 89 of this Code has been committed, is being committed or will be soon committed; and

1.2. the information that could be obtained by the measure to be ordered would be likely to assist in the investigation of the criminal offense and would be unlikely to be obtained by any other investigative action without unreasonable difficulty or potential danger to others.

2. Special investigative measures of investigation may also be ordered against a person other than the suspect, where the criteria in paragraph 1. of this Article apply to a suspect and if there

is a grounded suspicion that:

2.1. such person receives or transmits communications originating from or intended for the suspect or participates in financial transactions of the suspect;

2.2. the suspect uses such person's telephone or has access to a computer system of such person;

2.3. there is suspicion that the telephone number, email address or financial account was used to commit the criminal offense;

2.4. the owner or user of the telephone number, electronic address, IP address, IMEI number or financial account is not known, is a legal person or there is a reasonable suspicion that the telephone number, email address or financial account is being used by someone other than the owner;

2.5. whose surveillance may lead to the discovery of a suspect's whereabouts or identity.

3. The result of special investigative measures is valid against all communicators.

Article 89
Offenses Justifying Orders under Article 88

1. An order under Article 88 of this Code shall only be used to investigate at least one of the following suspected criminal offenses:

1.1. a criminal offense for which a punishment of five (5) or more years of imprisonment may be imposed; or

1.2. one or more of the following criminal offenses:

1.2.1. violence against high representatives of the Republic of Kosovo,

1.2.2. endangering the constitutional order by destroying or damaging public installations and facilities;

1.2.3. sabotage;

1.2.4. espionage;

1.2.5. concealment or failure to report terrorists and terrorist groups;

1.2.6. preparation of terrorist offenses or criminal offenses against the constitutional order and security of the Republic of Kosovo;

1.2.7. endangering negotiators;

1.2.8. organization of groups to commit genocide, crimes against humanity and war crimes;

1.2.9. hijacking aircraft;

1.2.10. endangering civil aviation safety;

1.2.11. slavery, slavery-like conditions and forced labour;

1.2.12. smuggling of migrants;

1.2.13. trafficking in persons;

1.2.14. withholding identity papers of victims of slavery or trafficking in persons;

1.2.15. endangering internationally protected persons;

1.2.16. endangering united nations and associated personnel;

1.2.17. hostage-taking

1.2.18. threats to use of commit theft or robbery of nuclear material;

1.2.19. forced sterilization;

1.2.20. female genital mutilation;

1.2.21. sexual harassment;

1.2.22. kidnapping;

1.2.23. torture;

1.2.24. violation of the right to be a candidate;

1.2.25. threat to the candidate;

1.2.26. abuse of official duty during elections;

1.2.27. giving or receiving a bribe in relation to voting;

1.2.28. falsification of voting results;

1.2.29. destroying voting documents;

1.2.30. sexual services of a victim of trafficking;

1.2.31. facilitating or compelling prostitution;

1.2.32. unlawful transplantation and trafficking of human organs and tissues;

1.2.33. pollution of drinking water;

1.2.34. pollution of food products used by people or animals;

1.2.35. unauthorized purchase, possession, distribution and sale of narcotic drugs, psychotropic substances, analogues;

1.2.36. unauthorized production and processing of narcotic drugs, psychotropic substances, analogues or narcotic drug paraphernalia, equipment or materials;

1.2.37. organizing, managing or financing trafficking in narcotic drugs or psychotropic substances;

1.2.38. violating right of equality in exercising economic activity;

1.2.39. misuse of economic authorizations;

1.2.40. counterfeiting securities and payment instruments;

1.2.41. organizing pyramid schemes and unlawful gambling;

1.2.42. counterfeiting money;

1.2.43. production, supply, selling, possession or provision for use the means of counterfeiting;

1.2.44. money laundering;

1.2.45. agreements in restriction of competition upon invitation to tender;

1.2.46. fraud in trading with securities;

1.2.47. government securities collusion and fraud;

1.2.48. tax evasion;

1.2.49. accepting bribes in the private sector

1.2.50. giving bribes in the private sector;

1.2.51. smuggling of goods;

1.2.52. avoiding payment of mandatory customs fees or excise fees;

1.2.53. arson;

1.2.54. fraud;

1.2.55. subsidy fraud;

1.2.56. fraud related to receiving funds from International Community;

1.2.57. fixing of sport matches;

1.2.58. misuse of insurance;

1.2.59. intrusion into computer systems;

1.2.60. unlawful handling hazardous substances and waste;

1.2.61. unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials;

1.2.62. devastation of forest;

1.2.63. forest theft;

1.2.64. prohibited trade.

1.3. one or more of the following criminal offenses, if committed in the furtherance of terrorism, corruption or organized crime:

1.3.1. threat;

1.3.2. harassment;

1.3.3. assault;

1.3.4. grievous bodily injury;

1.3.5. coercion;

1.3.6. extortion;

1.3.7. blackmail;

1.3.8. causing general danger;

1.3.9. destroying, damaging or removing public installations;

1.3.10. destroying, damaging or removing safety equipment and endangering work place safety;

1.3.11. unlawful delivery or transportation of explosives or flammable materials;

1.3.12. use of weapon or dangerous instrument;

1.3.13. obstruction of evidence or official proceeding;

1.3.14. intimidation during criminal proceedings;

1.3.15. abusing official position or authority;

1.3.16. abuse and fraud in public procurement;

1.3.17. misusing official information;

1.3.18. conflict of interest;

1.3.19. misappropriation in office;

1.3.20. fraud in office;

1.3.21. accepting bribes;

1.3.22. giving bribes;

1.3.23. giving bribes to foreign official;

1.3.24. trading in influence;

1.3.25. disclosing official secrets.

2. Evidence lawfully obtained pursuant to an ordered measure under Article 88 of this Code shall be admissible at the main trial regardless of whether the indictment charges any of the criminal offenses listed in this Article.

Article 90
Orders for Special Investigative Measures

1. A pretrial judge may, upon a written request from the state prosecutor, order any of the measures provided for in Article 86, paragraph 2. of this Code. The request for an order for any of the special investigative measures shall be made in writing and shall include the information referred to in paragraph 3. of this Article.

2. Exceptionally, the state prosecutor may temporarily order one of the measures provided for in paragraph 2. of Article 86 of this Code, only if there is a risk of delay and if the state prosecutor has reason to believe that he will not be able to obtain an order of the pretrial judge on time, and he shall notify the court immediately, but no later than twenty-four (24) hours from the moment of issuance of the order. Such temporary order shall cease to have effect unless it is confirmed in writing by the pretrial judge within seventy-two (72) hours of its issuance. When confirming the temporary order of the state prosecutor, the pretrial judge shall ex officio make a written assessment of its legality. If the court accepts the order of the prosecutor, it shall then confirm the order for special investigative measure.

3. An order for a measure under this chapter shall be in writing and shall specify:

3.1. grounded suspicion that the criminal offense has been committed or may be committed;

3.2. the name and address of the subject or subjects of the order, if known their identity and personal data or the number of subjects affected by data;

3.3. the official designation of the measure and its exact legal bases;

3.4. in particular the current findings and the sound probability according to Article 19, sub-paragraph 1.11. of this Code;

3.5. measure and its exact starting and closing time, if applicable; and

3.6. the person authorized to implement the measure and the officer responsible for supervising such implementation.

4. With respect to an order issued for any measure, the authorized police officer shall submit a written report on the execution of the order to the state prosecutor within fifteen (15) days of the issuance of the order. The written report shall indicate: the time of commencement and completion of the measure; the number and identity of the persons involved with the measure and a brief description of the course and results from the implementation of the measure. The full documentation of the technical file shall be submitted to the state prosecutor, attached to the special report. The state prosecutor shall submit a separate report and full documentation to the pretrial judge regarding any special investigative measure ordered by the pretrial judge pursuant to Article 86, paragraph 2. of this Code.

5. An order for special investigative measures may also include authorization for the authorized police officer to enter private premises if the pretrial judge considers that such access is necessary to activate or disable the technical means for implementation of such measures. When authorized police officers enter private premises based on an order from this paragraph, their actions in private premises should be limited to actions necessary to activate or deactivate technical equipment.

6. 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 this Article, an order for the interception of telecommunications and use of an International Mobile Service Identification “IMSI” Catcher shall include all the elements for the identification of each telephone to be intercepted.

7. Upon the application of a state prosecutor, an order for the interception of telecommunications and use of an International Mobile Service Identification “IMSI” Catcher may include only a general description of the telephones which may be intercepted, where a pretrial judge of the competent basic court has determined that there is a grounded suspicion that:

7.1. the suspect is using various telephones so as to avoid surveillance by duly authorized

police officers; and

7.2. a telephone or telephones, as described in the order, are being used or are about to be used by the suspect.

8. If an order for the interception of telecommunications and use of an International Mobile Service Identification "IMSI" Catcher is issued by a pretrial judge of a Basic Court pursuant to paragraph 7. of this Article:

8.1. the duly authorized police officers after implementing the order in respect of to a particular telephone shall promptly inform the pretrial judge in writing of the relevant facts, including the number of the telephone; and

8.2. the order may not be used to intercept telecommunications of a person who is not the suspect.

9. 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.

10. An order for interception of telecommunications and use of an International Mobile Service Identification "IMSI" Catcher, 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 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 requested to assist in the implementation of the order.

11. The order for simulated registration of legal entities or the use of existing legal entities for data collection shall include establishment of business entities that may be established for the purpose of implementing simulated business services, may be carried out by applying the action of concealing the identity of a person, property and legal entities. In implementing the measure, police shall cooperate with other state administration bodies, legal entities, public authorities, other legal entities and persons' associations. Provision of simulated business services is carried out by covert investigators or persons under their supervision.

12. As provided by Article 86, paragraph 1. of this Code, the state prosecutor may issue an order authorizing an undercover investigator or police collaborator to gather evidence when such evidence cannot be collected by other means, or the collection of such evidence would be difficult.

13. The police collaborator is a trusted person who, on the basis of a state prosecutor's order, voluntarily carries out special investigative actions. Prior to the commencement of special actions, the police collaborator will sign a statement stating that he agrees to conduct special investigative actions as a collaborator, whereby all rights and obligations will be clarified.

14. The undercover investigation order shall contain details of persons and the group against whom it is being applied, the description of the potential criminal offenses, the manner, volume, place and duration of the order. The order may stipulate that the undercover investigator may use technical means for taking pictures, video recording or optical, electronic or sound recording. The engagement of the undercover investigator shall last as long as necessary to gather evidence, but not more than one (1) year. The state prosecutor, may extend the duration of the order for a maximum of six (6) months. The engagement of the undercover investigator is terminated when the reasons for the order implementation cease to exist.

15. During the execution of the order, the undercover investigator may use protective measures

or anonymity to cover the characteristics of a police officer. The undercover detective known by nickname or number shall be appointed by the responsible person of the Kosovo Police, namely the person authorized by them. The undercover investigator is, as a rule, the authorized police officer, or another person if required by special circumstances of the case, who may also be a foreign national. For the sake of protecting the identity of the undercover investigator, the competent authorities may change the data in the databases of the records and issue personal documents based on such changed data. It shall be prohibited and sanctioned for the undercover investigator to incite someone into commission of a criminal offense.

16. During the engagement, the undercover investigator shall report to his immediate supervisor. Upon completion of the undercover investigator's engagement, the supervisor shall send to the pretrial judge photographs, optical, electronic or sound recordings, collected documentation and all evidence and reports generated, which shall contain: the time of commencement and completion of the covert investigator's engagement; number or nickname of the undercover investigator; description of procedures and technical means applied; data for persons involved in the measure and description of outcome.

17. During the undercover investigation, the undercover investigator shall have the right to participate in conversations with persons who may be witnesses to or possible suspects of criminal offenses. During these conversations he may ask questions relating to the criminal offense. These conversations shall be recorded, if possible. If these conversations cannot be recorded, the undercover investigator shall accurately summarize the conversations and explain why the conversations were not recorded as soon as practicable in a police report.

18. The undercover investigator may also be heard as a witness in criminal proceedings regarding the content of conversations with suspects who were subject to measures ordered, only under number or nickname through video conference, by applying legal provisions for protective measures or anonymity. Examination will be conducted in such a way that the identity of the undercover investigator is not disclosed to defense counsels and parties. The undercover investigator shall be summoned through his superior officer who confirms the identity of the undercover investigator immediately before the examination, with the statement to the court. Identity data of the undercover investigator who is examined as witnesses shall represent confidential data.

Article 91
Implementation of Orders for Special Investigative Measures

1. A duly authorized police officer shall commence the implementation of a measure under this Chapter no later than fifteen days (15) 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, the duly authorized police officer shall suspend implementation of the order and shall notify in writing the judge. If the order was issued by a pretrial judge, the authorized police officer shall also notify the state prosecutor. On receiving the written notification, the state prosecutor or competent judge shall make a written determination as to whether the order shall be terminated.

4. The duly authorized 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 police officers who carried out each operation and the functions they performed. Such records shall be annexed to the report submitted to the state prosecutor or competent judge under Article 90 paragraph 4. of this Code.

5. With respect to the implementation of an order for interception of telecommunications and use of an International Mobile Service Identification "IMSI" Catcher, 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 police officer or a person acting under the supervision of a duly authorized police officer may perform a simulated purchase and sale of an item, service or object or simulated giving and taking of bribe.

8. With respect to the implementation of an order for an undercover investigation, a simulated purchase or sale of items, services or objects and simulated giving and taking of bribe:

8.1. a person implementing the order may not incite another person to commit a criminal offense which that person would not have committed but for the intervention of the person implementing the order; and

8.2. a person who, in accordance with the provisions of this chapter, implements order for undercover investigation, does not commit a criminal offense.

9. Criminal proceedings shall not be initiated in respect of a criminal offense which has been incited in breach of paragraph 8. of this Article.

10. With respect to the implementation of an order for the interception of telecommunications and use of an International Mobile Service Identification “IMSI” Catcher, 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 92
Deadlines, Extension and Renewal of the Order for Special Investigative Measures

1. The state prosecutor or pretrial judge may issue an order for special investigative measures for ninety (90) days from the day of the issuance of the order.

2. The state prosecutor or pretrial judge may not issue a further written order for the extension of an order under this Chapter, unless the preconditions for ordering a measure under this Chapter, as set forth in Article 88 of this Code, continue to apply and the extension is sought because of the need for further collection of evidence. An extension of the order issued under paragraph 1. of this Article may be granted for an additional ninety (90) days within the time period of three hundred and sixty-five (365) days.

3. An order for a simulated sale and purchase of items, services or objects or an order for a simulation of giving and receiving of bribe shall only authorize a single purchase of an item or a single simulation of a corruption offense. The pretrial judge may issue a further such order in respect of the same subject, if the preconditions for ordering a measure under this Chapter, as set forth in Article 88 of this 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.

4. The state prosecutor or pretrial judge may modify an order at any time, if they determine that such modification is necessary to ensure that the preconditions for ordering a measure under this Chapter, as set forth in Article 88 of this Code, still apply.

5. The state prosecutor or pretrial judge may terminate an order at any time if they determine

that the preconditions for ordering a measure, as set forth in Article 88 of this Code, cease to apply.

6. The extension of the order for special investigative measures ordered by the pretrial judge shall be made only upon a reasoned request of the state prosecutor which shall state the reasons why further collection of evidence is necessary.

7. The special investigative measures ordered by the state prosecutor or pretrial judge may be renewed if the order could not be executed for objective reasons. When an order is issued under the present paragraph, the deadlines set forth in paragraphs 1. and 2. of this Article shall apply. When the state prosecutor requests the renewal of the order for measures issued by the court, he shall justify in the request the objective reasons that prevented the execution of the order, whereas when the state prosecutor renews the order for special investigative measures under his authority, the order on renewal shall state the reasons that led to the non-execution of the order.

8. The deadlines provided for in paragraphs 1. and 2. of this Article shall not apply to the measure of an undercover investigation.

Article 93
Materials Obtained by Special Investigative Measure

1. On the completion of the implementation of a measure under this Chapter, the duly authorized police officers shall send all collected materials to the state prosecutor, which include documentary records, recordings, audio and video materials and other items relating to the order and its implementation. The collected police material shall be in two copies. A copy is kept in the Police Archive. The second copy, together with a special report, is submitted to the state prosecutor.

2. When the special investigative measures are ordered pursuant to paragraphs 1. and 2. of Article 86 of this Code, the entire technical audio or video material shall be submitted to the court along with the indictment to substantiate the evidence collected. Otherwise audio and video material obtained through this order that is not submitted to the court shall be deemed inadmissible evidence. This material shall remain under seal under further order of the court.

3. Materials may be closed and held confidential if the state prosecutor considers that making them public would corrupt subsequent investigations or create a risk to the victim, witnesses, investigators or other persons.

4. Postal items, which do not contain information that will assist in the investigation of a criminal offense, shall immediately be forwarded to the recipient.

Article 94
Notification of Special Investigative Measures

1. The person subject to the special investigative measure shall not be informed about its course or outcome until the measure is completed.

2. Upon the completion of the measure, the state prosecutor in cases referred to in Article 86, paragraph 1. of this Code and the pretrial judge in cases referred to in Article 86, paragraph 2. of this Code, shall notify the person subject to the special investigative measure, if during the implementation of the measure his identity was verified and if such notification does not pose a serious risk to the life and health of persons or if it does not jeopardize any ongoing investigation. In case of notification made pursuant to this paragraph, the person shall have the right to inspect the collected material.

3. The state prosecutor in cases referred to in Article 86, paragraph 1. of this Code or the pretrial judge in cases referred to in Article 86, paragraph 2. of this Code, shall issue a decision for

disposal of collected materials, including the copy of the material kept at the police and keep a record of the disposal process.

4. The material acquired by means of the special investigative measure which is no longer necessary for the purposes of criminal prosecution or a possible court review of the measure, shall be deleted without delay. The fact of the deletion shall be documented. Insofar as deletion of the data has been deferred merely for the purposes of a possible court review of the measure, the data shall not be used for any other purpose without the consent of persons concerned, and access to the data is to be restricted accordingly.

Article 95
Admissibility of Evidence Obtained through Orders for Special Investigative Measures

1. Evidence obtained by a measure under this Chapter shall be inadmissible if the order for the measure and its implementation are unlawful.

2. Evidence obtained by an order for special investigative measures in accordance with this Chapter are admissible evidence and may be used as evidence in criminal proceedings.

3. If the evidence obtained through the order for the special investigative measures include other criminal offenses or other suspects that have not been included in the issued order, that part of the records will be transcribed and submitted to the state prosecutor and such materials can be used as evidence in proceedings, only if it relates to a criminal offense for which an order for special investigative measures may be issued.

4. After the filing of the indictment, the single trial judge or presiding trial judge shall consider challenges by the defendant to the admissibility of the collected materials. The decision on a challenge under this paragraph may be appealed.

5. At any time prior to the final judgment, the single trial judge or presiding trial judge may review the admissibility of materials collected under Article 88 of this Code ex officio for violations of the defendant's constitutional rights if there is an indication that the materials were collected unlawfully.

6. When the ruling that an order or its implementation is unlawful becomes final, the single trial judge or presiding trial judge assigned to the proceedings shall remove all collected materials from the record and submit such materials through the President of the Basic Court to a Surveillance and Investigation Review Panel for a decision on compensation.

Article 96
Surveillance and Investigation Review Panel

1. A Surveillance and Investigation Review Panel shall:

1.1. adjudicate on a complaint submitted under paragraph 5. of this Article in respect of a measure or an order for a measure under this Chapter and decide on compensation where appropriate; or

1.2. decide on compensation for the subject or subjects of an order under this Chapter if a judge has made a final ruling that the order or its implementation is unlawful.

2. Surveillance and Investigation Review Panel shall be composed of three judges who shall be assigned by the President of the Basic Court to adjudicate on an individual complaint or to decide on compensation following an individual ruling under Article 95, paragraph 6. of this Code. None of the three members of the Surveillance and Investigation 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 95, paragraph 6. of this Code.

3. Authorized police officers and state prosecutors shall provide the Surveillance and Investigation Review Panel with such documents as this Panel shall require to perform its functions and shall, on request, provide oral testimony to this Panel.

4. When a ruling of a judge that an order for a measure under this Chapter or its implementation is unlawful becomes final, it is binding on the Surveillance and Investigation Review Panel.

5. If a person considers that he 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 may submit a complaint to President of the Basic Court who shall, if a violation of the law is alleged, appoint a Surveillance and Investigation Review Panel for adjudication.

6. If on adjudicating on a complaint the Surveillance and Investigation Review Panel finds that a measure under this Chapter is unlawful or an order for such measure is unlawful, it may decide to:

6.1. terminate the order, if it is still in force;

6.2. order the destruction of the collected materials; and

6.3. award compensation to the subject or subjects of the order.

Article 97
Assistance of other Authorities to Implement Measures

The 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 this Chapter.

Article 98
Surveillance and Investigation for Customs and Related Services

The provisions of this 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.

SUB – CHAPTER IV
INITIATION OF CRIMINAL PROCEEDINGS

A. INITIATION OF INVESTIGATIVE STAGE

Article 99
Initiation of Criminal Proceedings by Formal Investigative Stage or Filing of Indictment

1. If the police or other government agency reports to the state prosecutor a reasonable suspicion of a criminal offense the state prosecutor may initiate the investigatory stage of a criminal proceeding under Article 100 of this Code.

2. If the police or any other person reports to the state prosecutor a reasonable suspicion of a criminal offense or criminal offenses, for which the maximum punishment is no more than three (3) years of imprisonment, and the state prosecutor determines that a well-grounded suspicion exists to support an indictment, the state prosecutor may file an indictment under Article 235 of this Code.

3. At any time a suspect subject to this Article may plead guilty to an indictment in accordance with Article 230 of this Code.

Article 100
Initiation of Investigation

1. The state prosecutor may initiate an investigation on the basis of a police report or other sources, if there is a reasonable suspicion that a criminal offense has been committed, is being committed or is likely to be committed in the near future which is prosecuted ex officio or upon submission of a motion for prosecution by an injured party.

2. The investigation is initiated by a ruling by the state prosecutor under Article 102 of this Code.

Article 101
General Principles of Investigative Stage

1. During the investigative stage the state 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. During this stage, the state prosecutor shall also collect evidence that is relevant for a meritorious decision by the court on the type and severity of the criminal sanction.

2. 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.

3. Every person against whom the state prosecutor has a reasonable suspicion that he has committed a criminal offense shall be named as a defendant in the ruling on imitation of investigation. Every defendant named in the ruling shall be entitled to the rights of a defendant under this Code.

4. If the state prosecutor becomes aware of evidence of the commission of another criminal offense or another suspect during an investigation, the state prosecutor may initiate a new investigation of the new criminal offense or suspects, or may amend the ruling of or expand the existing investigation. The state prosecutor shall inform the pretrial judge about new or amended rulings.

5. During the investigative stage, unauthorized disclosure of collected information, materials, data or evidence shall be prohibited.

Article 102
Ruling on Initiation of Investigation

1. The investigation shall be initiated by a ruling of the state prosecutor. The ruling shall specify the person, if known, against whom an investigation will be conducted. This person can be identified by his personal information, or by alias, photo, physical or other distinctive characteristic, or other means of identification, that allows to specify the person. The ruling shall also contain the date and time of the initiation of the investigation, a description of the act which specifies the elements of the criminal offense, the legal name of the criminal offense, the circumstances and facts warranting the reasonable suspicion of a criminal offense, whether any special investigative measures had been authorized and the evidence and information already collected. A stamped copy of the ruling on the investigation shall be sent without delay to the pretrial judge.

2. The ruling of the state prosecutor on initiation of investigation may also be issued if the person or persons referred to in paragraph 1. of this Article are not known. Once the person or persons is identified the state prosecutor shall amend the ruling accordingly.

3. The result of initial steps by police or gathering of information shall be made part of the file on the investigation.

4. Once a ruling under this Article is issued, the investigation shall be conducted and supervised by the state prosecutor.

5. The state prosecutor may undertake investigative actions or authorize the police to undertake investigative actions relating to the collection of evidence.

6. The investigation shall be conducted only in relation to the criminal offense specified in the ruling or amended ruling on the initiation of the investigation. If the defendant is known and included in the ruling or amended ruling on initiation of investigation, the investigation shall be conducted only in relation to him.

7. A ruling under this Article may be accompanied by a request for a court order under Article 103 of this Code.

8. A ruling under this Article may be accompanied by a request for a restraint court order under Chapter XVIII of this Code.

B. SEARCH AND CONFISCATION

Article 103
Search and Temporary Sequestration of Evidence and Specified Property Detailed in the Court Order

1. All searches shall be conducted pursuant to a court order unless otherwise allowed under the laws of Kosovo.

2. Upon a court order of the pretrial judge, issued following a written application by the state prosecutor, the police may search a residence, person, or other property and temporarily sequester evidence or specified property.

3. The application by the state prosecutor for a search order must establish the sound probability:

3.1. that a criminal offense was committed; and

3.2. that the search will result in the arrest of a person or in the discovery and sequestration of evidence or specified property.

4. A search order shall contain:

4.1. an identification of the person and/or place detailed in the order;

4.2. a designation of the criminal offense in relation to which the order has been issued;

4.3. an explanation of the basis for the sound probability specified in paragraph 3. of this Article;

4.4. a description of the evidence, or specified property sought in the search; and

4.5. a separate description of the person, premises or property to be searched.

5. The provisions of this and other Articles that refer to the search of a person, residence, or other property shall also apply mutatis mutandis to searches of concealed spaces in vehicles and other means of transportation, as well as to any electronic device, including but not limited to computers, cameras, mobile telephones, mobile electronic devices or mobile electronic storage devices, which belong to or are in possession of the person, or which are located in the residence or in the property.

6. The police shall notify the state prosecutor of any evidence, or specified property temporarily sequestered by the police pursuant to a court search order within forty-eight (48) hours after the search is completed.

7. Within seven (7) days of the notification detailed in paragraph 6. of this Article, the state prosecutor shall apply to the court for a final restraint order under Article 261 of this Code for specified property detailed in the search order which has been temporarily sequestrated by the police.

8. Temporarily sequestrated evidence shall be dealt with in accordance with Article 110 of this Code.

Article 104
Time Limitations on Execution of Search Order

1. A search order shall be executed by the police within seventy-two (72) hours of the issuance of the order.

2. Upon application by the state prosecutor, the court may extend the time limit set forth in paragraph 1. of this Article up to a further seventy-two (72) hours, if the state prosecutor proves that one of the following conditions exist:

2.1. the criminal offense involves four or more defendants;

2.2. multiple injured parties have been identified;

2.3. the investigation relates to an organized criminal group; or

2.4. other extraordinary circumstances exist requiring an extension.

3. The police shall execute the search order between the hours of 06:00 and 22:00.

4. Notwithstanding paragraph 3. of this Article, a search order may be executed outside these hours if:

4.1. the search started to be executed within these hours and is not completed by 22:00;

4.2. a search is being conducted under Article 108 of this Code;

4.3. conditions of Article 105 paragraph 2. of this Code delay the beginning of the execution of the search;

4.4. a delay could lead to the escape of the person sought to be searched;

4.5. evidence or specified property would otherwise be lost, destroyed, or disposed of; or

4.6. if it concerns premises in which persons conduct their business activity mainly after the hours of 22:00 to 06:00.

Article 105
Procedure before the Initiation of Search and Rights of Persons

1. Before beginning the execution of the search order, the police shall provide the order to the person against whom the order is directed and such person shall be informed that he 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 execution of the search order, the police shall postpone execution of the search order until the arrival of the lawyer, but no longer

than two (2) hours after the lawyer has been informed about the search. In the meantime, the police may restrict the movement of the person concerned and other persons in the premises that are about to be searched. In order to protect the safety of persons and property or to prevent the disposition, destruction or loss of evidence or specified property, the police may begin the search even before the expiration of the time limit for the lawyer to arrive.

3. Before beginning the execution of the search order, the police shall ask the person to surrender voluntarily the person or the evidence or specified property sought.

4. The execution of the search order may start without the prior presentation of the order or the prior request for surrender of the person or evidence, or specified property 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 106
Procedure during the Search and Rights of Persons

1. During an execution of a search order of a residence or other property, the person whose residence or other property is being searched, or a representative of such person shall have the right to be present.

2.During an execution of a search order of a person, residence, or other property, two (2) 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 police officer and only female persons shall be witnesses.

4. 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 will dispose of, hide or destroy evidence, or specified property.

6. A locked residence or property may be opened forcibly only if the owner is not present or refuses to open the residence or the property voluntarily.

7. 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.

8. If a search is conducted on the premises of a public entity, a representative of the public entity thereof shall be invited to attend the search.

9. A record shall be compiled of each search of a person, residence, or other property. Such record shall be signed by the person who has been searched or whose residence or other property have been searched, his lawyer if present during the search and persons whose presence is obligatory under this Code and the applicable Laws. The evidence, or specified property temporarily sequestered 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 from whom evidence, or specified property has been temporarily sequestered.

10. Evidence, and specified property temporarily sequestered in the search shall be maintained

as provided for in Article 110 of this Code.

Article 107
Search and Temporary Sequestration of Evidence or Specified Property not Detailed in the Search Order

1. If during the execution of a search order of a person, residence or other property evidence, or specified property are found which are not set forth in the order for the search but which are otherwise evidence of this or another criminal offense or specified property, this evidence or specified property shall be described in the record and temporarily sequestered, and a receipt of temporary sequestration shall immediately be issued and maintained as set forth in Article 110 of this Code.

2. A notification thereof shall immediately be sent to the state prosecutor, no later than within forty-eight (48) hours after the search is completed.

3. With regard to evidence and specified property temporarily sequestrated under this Article, the state prosecutor shall, within seventy-two (72) hours from the execution of the search, apply to the court in order to obtain retroactive approval of the court for the search and temporary sequestration, in compliance with Constitutional provisions.

4. If the search and temporary sequestration are retroactively approved by the court:

4.1. temporarily sequestrated evidence shall be dealt with thereafter in accordance with Article 110 of this Code;

4.2. within seven (7) days of the retroactive approval by the court, temporarily sequestrated specified property shall be subject to an application by the state prosecutor for a final restraint order pursuant to Article 261 of this Code.

Article 108
Grounds for Searches and Temporary Sequestration without Court Order

1.The police may conduct a search of a person, residence or other property and temporarily sequestrate evidence of a criminal offense and any specified property without an order of the pretrial judge if:

1.1. the person subject to be searched or the person who is the owner or otherwise who has the authority to consent to a search of the residence or other property, knowingly and voluntarily consents to the search;

1.2. a person is calling for help;

1.3. a perpetrator caught in the act of committing a criminal offense is to be arrested after a pursuit;

1.4. to protect persons or property from serious risk or harm;

1.5. to prevent the imminent disposition, destruction or loss of evidence, or specified property; or

1.6. a person against whom an order for arrest has been issued by the court is to be found in the residence or other property.

2. If the police have conducted a search without a written court order, they shall send a report to that effect to the state prosecutor no later than forty-eight (48) hours after the execution of the search.

3. The state prosecutor shall, within seventy-two (72) hours after the execution of the search, apply to the court in order to obtain retroactive approval of the court for the search and temporary sequestration.

4. If the search and temporary sequestration are retroactively approved by the court:

4.1. temporarily sequestrated evidence shall be dealt with thereafter in accordance with Article 110 of this Code;

4.2. within seven (7) days of the retroactive approval by the court, temporarily sequestrated specified property shall be subject to an application by the state prosecutor for a final restraint order pursuant to Article 261 of this Code.

Article 109
Inadmissibility of Evidence from Search

Evidence obtained during a search shall be inadmissible if during the search was conducted serious violation of the provisions of this Chapter that resulted in an irreparable miscarriage of justice.

Article 110
Temporary Sequestration

1. Pursuant to a court order under Article 103 of this Code, or a search pursuant to Article 107 or 108 of this Code, the police may temporarily sequestrate evidence and specified property.

2. Specified property may also be temporarily sequestrated pursuant to a temporary restraint order issued by the state prosecutor under Article 260, paragraph 4. of this Code.

3. Temporarily sequestrated evidence shall be dealt with in accordance with this Article.

4. Temporarily sequestrated specified property shall be subject to an application by the state prosecutor for a final restraint order under Article 261 of this Code, or dealt with according to paragraph 13. and paragraph 18. of this Article.

5. When evidence, or specified property is temporarily sequestered, an indication shall be given of where they were found and they shall be described. If necessary, the verification of their identity shall be secured in some other way. A receipt shall be issued for the objects taken.

6. Evidence that is temporarily sequestrated shall be photographed and maintained in appropriate containers or transparent plastic bags and the authorized police and state prosecutor shall maintain the photographic record and a record of the chain of custody for each object or set of documents.

7. Weapons, automobiles, airplanes or other large objects that are temporarily sequestrated shall be photographed and maintained in appropriate secure areas and the authorized police and state prosecutor shall maintain the photographic record and a record of the chain of custody for each object or set of documents.

8. Buildings or immovable property that are temporarily sequestrated shall have notices placed on the building or immovable property that advise the public that the property is subject to temporary sequestration, that trespassing is not allowed, and that trespassers may be subject to arrest.

9. Monetary bills or coins that are temporarily sequestrated shall be photographed and maintained in a safe and the authorized police and state prosecutor shall both maintain the photographic record and a record of the chain of custody of the monetary bills or coins.

10. Money held in a bank account that is temporarily sequestrated shall be maintained in a bank account subject to the authority of the court.

11. Specified property that has been temporarily sequestered shall be appropriately maintained by the police to preserve its identification and value as set forth in this Article, until issuance of a court order of restraint.

12. Any evidence, subject to temporary sequestration, can be deemed to be specified property subject to confiscation by the state prosecutor identifying the item as such in the indictment or in the notification pursuant to Article 278, paragraph 5. of this Code.

13. Evidence and specified property that have not been so designated for confiscation by the state prosecutor in the indictment or in the notification pursuant to Article 278, paragraph 5. of this Code and is not otherwise an item set forth in Article 276 of this Code, will be returned to the owner at the conclusion of all proceedings or the expiration of the statute of limitations for any applicable criminal offenses, whichever is later.

14. If the owner cannot be identified, such evidence will be disposed of pursuant to Article 114 of this Code.

15. A state prosecutor can also identify specified property which has been designated to be confiscated in the indictment or in the notification pursuant to Article 278, paragraph 5. of this Code as evidence to be used in the criminal proceedings. The court shall admit such items when otherwise admissible, to be used in the criminal proceedings. The state prosecutor shall apply for a restraint order of such property. If the application for a final restraint order is granted, the Agency for the Management of Sequestrated and Confiscated Assets shall be responsible for managing this property in accordance with the Law on the Management of Sequestrated and Confiscated Assets. The temporary measures for securing this property provided for in sub-paragraphs 3.5. and 5.1. - 5.3. of Article 262 of this Code or other measures leading to losing possession of it can only be implemented if the evidentiary value of such property in trial may be maintained through, inter alia, preserving samples, taking photographs or producing certified copies.

16. Evidence, and specified property that are temporarily sequestered or subject to a temporary or final restraint order are under the supervision and control of the state prosecutor. The state prosecutor may delegate the custody and control of evidence to an authorized police officer to maintain pursuant to this Code and delegate the custody and control of specified property to the Agency for the Management of Sequestered and Confiscated Assets to maintain pursuant to the Law on the Management of Sequestered and Confiscated Assets.

17. If the person or entity who maintains supervision of the evidence, or specified property that is subject to an order by the court refuses to deliver the evidence, or specified property instrumentality, or material benefit to the authorized police officer responsible for executing the order, that person or entity shall be subject to prosecution for Obstruction of Evidence or Official Proceedings under Article 386 of the Criminal Code and may be fined by the pretrial judge of up to fifty percent (50%) of the value of the evidence, or specified property. The person or entity subject to such a fine may appeal the fine within seven (7) days from its imposition or may negate the fine by complying with the temporary restraint order immediately but no later than seven (7) days from the moment the decision to impose the fine becomes final.

18. Except for items identified in Article 276 of this Code, any temporarily sequestrated evidence, or specified property that is not the subject of a request for confiscation or a final restraint order, will be returned to the owner immediately but in no event later than the conclusion of all proceedings or the expiration of the statute of limitations for any applicable criminal offenses, whichever is later. If the owner cannot be identified, such evidence will be disposed of pursuant to Article 114 of this Code. Any items set forth in Article 276 of this Code are automatically confiscated without identifying the items in any request or indictment or by any action on the part of the prosecution.

Article 111
Items not Subject to Temporary Sequestration

1. The following items shall not be subject to temporary sequestration:

1.1. written communications between the defendant and persons who, according to the present Code, may not testify under Article 123 of this Code, or are exempted from the duty to testify and have refused to do so in accordance with Article 124 of this Code;

1.2. notes by persons under Article 123 of this Code concerning confidential information entrusted to them by the defendant; and

1.3. other items covered by the rights of the persons referred to in Articles 123 and 124 of this Code.

2. These restrictions shall apply only if these objects are in the custody of a person who cannot testify under Article 123 of this Code or is exempted from the duty to testify and has refused to do so under Article 124 of this Code. Objects covered by the rights of persons referred to in Article 124 paragraph 1., sub-paragraph 1.5. of this Code shall also not be subject to sequestration if they are in the custody of a hospital or other medical institution. The restrictions shall not apply to persons who may not testify under Article 123 of this Code or are exempted from the duty to testify and have refused to do so under Article 124 of this 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 offense or have been used or are intended for use in perpetrating a criminal offense or where they emanate from a criminal offense.

Article 112
Limitations on Disclosure of Documents

1. Public entities may request the pretrial judge to delay or reconsider an order to disclose files or documents if they consider that disclosure of their contents would harm the general interest. A pretrial judge must balance the harm to the general interest with the public interest in prompt adjudication of criminal proceedings, the human rights of the defendant or the rights of the injured party. There shall be a presumption in favor of disclosure of the files or documents of public entities. The public entity may object to a review panel the refusal of the pretrial judge to delay or reconsider his order. The review panel shall have the final decision.

2. Business organizations and legal persons may request that information concerning their business be not published if it is sensitive or contains the private information of third-parties.

Article 113
Return of Temporarily Sequestrated or Restrained Evidence or Specified Property

Except as provided in Article 276 of this Code, evidence or specified property that are temporarily sequestered or restrained during criminal proceedings shall be returned to the owner or possessor if the proceedings are terminated or if there are no grounds for them to be temporarily sequestered or confiscated.

Article 114
Procedure for property whose ownership is not known

1. If property is found pursuant to a search of a person, residence or other property and it is not known to whom it belongs, the state prosecutor shall describe that property 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 offense was committed. In the notice, the owner shall be summoned to come forward within a period of six (6) months from the day of first publication of the notice, otherwise the object will be sold upon the order of the state prosecutor by the

Agency for Management of the Sequestrated and Confiscated Assets. The money obtained by the sale shall become the property of the Republic of Kosovo and be transferred to the Victim Compensation Program.

2. If any of the property has a value in excess of five thousand (5000) EUR, the same notice set forth in paragraph 1. of this Article shall also be published in a daily newspaper.

3. If the property is perishable or if keeping it involves considerable expense, it can be sold pursuant to a court order according to which the proceeds shall be transferred to a bank account under control of the Agency for the Management of Sequestered and Confiscated Assets for safekeeping until further order of the court.

4. Paragraph 3. of this Article shall also apply to items belonging to a defendant who has fled or to an unknown criminal offender.

5. The owner shall have the right to seek the restitution of the property or proceeds of its sale in civil litigation within three (3) years of the expiry of the time limit referred to in paragraph 2. of this Article.

C. TAKING PRE-INDICTMENT EVIDENCE

Article 115
Taking of Evidence during Investigations

1. Once an investigation has been initiated, the state prosecutor shall interview and take pretrial testimony from witnesses, authorize the taking of expert testimony and reports, and shall collect other evidence as authorized by law.

2.If, during the investigation, a suspect or defendant cooperates with the state prosecutor, the state prosecutor may initiate a new investigation or expand the existing investigation based upon that cooperation.

3.During the investigation, the state prosecutor may order or request measures under Article 86 of this Code, which shall be applied mutatis mutandis.

4.During the investigation, the defendant or defense counsel may request the state prosecutor to take or preserve evidence that may or could be reasonably expected to be exculpatory.

5. During the investigation, the injured party may request the state prosecutor to take or preserve evidence that may or could be reasonably expected to demonstrate the harm caused by the criminal offense, the pain and suffering by the victim, or other costs associated with the criminal offense.

Article 116
Identification of Persons or Items

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 item.

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. The other persons must have similar appearance and similar facial features and in the case of a photographic array all photos must have the same format, the same background and all the persons should have similar appearance and similar facial features.

3. The witness shall be instructed that he is under no obligation to select any person or item or

photograph, and that it is just as important to state that he does not recognize a person, item or photograph as to state that he does.

4. A record shall be kept of the description obtained under paragraph 1. of this Article, the time and date of that description, and those present when the description was given. A record shall also be kept of the identification made under paragraph 2. of this Article, including the time and date of that identification and photographs of those other persons or objects.

5. The identification of a person or item under this Article may be overseen by the police or by the state prosecutor. The record made under paragraph 3. of this Article shall be entered into the case file.

Article 117
Obtaining Evidence Prior to Pretrial Testimony

1. The state prosecutor shall obtain all relevant documentary evidence in accordance with the law, if possible prior to taking pretrial testimony. Such documentary evidence shall include, but is not limited to:

1.1. passport, identification cards, or records of border entry;

1.2. financial records;

1.3. surveillance records or photographs;

1.4. records of land ownership;

1.5. records of automobile ownership;

1.6. records of corporations or business entities;

1.7. electronic documents, such as email, text messages, or photographs;

1.8. medical records;

1.9. notes, diaries, or calendars; or

1.10. any other document that is lawfully obtained under this Code.

2. The state prosecutor shall lawfully obtain all tangible evidence, if possible prior to taking relevant pretrial testimonial. Such tangible evidence shall include, but is not limited to:

2.1. tangible evidence obtained at the scene of the crime;

2.2. tangible evidence seized from the search of the premises of the defendant;

2.3. tangible evidence seized from the search of the person of the defendant prior to or during his arrest;

2.4. photographs of or forensic reports about tangible evidence; or

2.5. any other tangible evidence lawfully obtained under this Code that is relevant to the investigation.

3. The state prosecutor may receive documentary and tangible evidence after the termination or conclusion of the investigation, if the request for the evidence was made prior to the termination or conclusion of the investigation or if it was newly discovered evidence. The timing of the receipt of this evidence will not affect its admissibility.

Article 118
Taking and Preserving Information or Evidence from Witnesses

1. The state prosecutor may interview a witness under Article 128 of this Code prior to taking pretrial testimony, or he may instruct the police to conduct the interview.

2. The state prosecutor may schedule pretrial testimony for a witness or defendant under Articles 129-130 of this Code.

3. If the state prosecutor suspects that a witness may be unavailable in the future, either because of illness, impending death, likelihood of leaving Kosovo or if there is a risk for the witness to be subjected to improper interference, he may request the pretrial judge to conduct a Special Investigative Opportunity under Article 147 of this Code.

4. Evidence of an expert analysis can be presented with a report under Article 136 of this Code or clarified with pretrial expert testimony.

Article 119
Pretrial Interviews, Pretrial Testimony and Special Investigative Opportunities

1. During the investigation stage, the evidence from witnesses and expert witnesses may be taken in one of three (3) kinds of sessions: pretrial interviews, pretrial testimony or special investigative opportunity.

2. The pretrial interview is conducted by the state prosecutor. A record of the interview will be made and shall be placed in the file. Evidence obtained during the pretrial interview may be used as a basis to substantiate pretrial investigative orders, orders for detention on remand, and indictments. Evidence obtained during the pretrial interview may not be used as direct evidence during the main trial, but may be used during examination, cross-examination and re-examination, unless otherwise provided by this Code.

3. The pretrial testimony shall be conducted by the state prosecutor in accordance with Articles 129-130 of this Code. Evidence from the pretrial testimony shall be audio-recorded, audio and video-recorded or transcribed verbatim. Evidence obtained during the pretrial testimony may be used as a basis to substantiate pretrial investigative orders, orders for detention on remand, and indictments. Pretrial testimony shall be admissible during the main trial for direct examination, cross-examination and redirect-examination. Pretrial testimony may be used as direct evidence during the main trial if the witness is unavailable due to death, illness, assertion of privilege or lack of presence within Kosovo only if the defendant or defense counsel has been given the opportunity to challenge it by questioning that witness during some stage of the criminal proceedings.

4. The Special Investigative Opportunity shall be conducted before the pretrial judge in accordance with Article 147 of this Code. Evidence from the Special Investigative Opportunity shall be audio-recorded, audio and video-recorded or transcribed verbatim. Evidence obtained during the Special Investigative Opportunity may be used as a basis to substantiate pretrial investigative orders, orders for detention on remand, and indictments. Evidence from a Special Investigative Opportunity shall be fully admissible during the main trial.

5. Statements provided by a defendant in any context, if given voluntarily and without coercion, are admissible during the main trial against that defendant, but may not serve as sole inculpatory or decisive evidence to convict the defendant that entered such statements. Statements provided by a defendant in any context, if given voluntarily and without coercion, may not be used against co-defendants in the same criminal proceedings or in separated proceedings, except when the present code explicitly determines that such statements may serve as evidence.

6. After issuing an expert report, expert witnesses may be interviewed, provide pretrial testimony

or special investigative opportunity.

Article 120
Summoning Witnesses

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

2. The injured party or victim may be examined as a witness.

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.

Article 121
Witness Familiarization

Nothing in this Code precludes the parties from meeting with their witnesses prior to being heard as a witness at the main trial to reconfirm or clarify information provided in the pretrial interviews, pretrial testimony or special investigative opportunity, or to inform the witness about the court rules and the course of the process during the main trial.

Article 122
Warnings Required to be Read to Witnesses, Expert Witnesses, Defendants and Cooperative Witnesses

1. At the beginning of the pretrial interview, pretrial testimony session, or Special Investigative Opportunity, the state prosecutor shall read the following warning to the witness: “This is a criminal investigation. You are obligated to testify. You are obligated to tell the truth. If you do not tell the truth, you might be prosecuted under Article 382 or 383 of the Criminal Code. If you believe that you may incriminate yourself as a result of answering a question, you may refuse to answer. If you believe that you need the assistance of a lawyer as a result of answering a question, you may hire and consult a lawyer. This criminal investigation seeks the truth and the most accurate recollection of the facts that you can provide. If you do not understand the question being asked, you should request that the question be asked differently. If you believe that there is a document or other evidence that may help you answer a question more accurately or remember the facts more vividly, you are obligated to tell us. If you require assistance, translation, or a reasonable and brief break from this session, you should ask. Do you understand these rights?”

2. At the beginning of the pretrial interview, pretrial testimony session, or Special Investigative Opportunity, the state prosecutor shall read the following warning to the expert witness: “This is a criminal investigation of acts about which you have specialized knowledge. You are obligated to testify. You are obligated to tell the truth. If you do not tell the truth, you might be prosecuted under Article 382 or 383 of the Criminal Code. You are obligated to explain the steps you took to obtain the specialized knowledge you have in this case. This criminal investigation seeks the truth and the most accurate recollection of the facts that you can provide. If you do not understand the question being asked, you should request that the question be asked differently. If you believe that there is a document or other evidence that may help you answer a question more accurately or remember the facts more vividly, you are obligated to tell us. If you require assistance, translation, or a reasonable and brief break from this session, you should ask. Do you understand these rights?”

3. At the beginning of the pretrial interview, pretrial testimony session, or Special Investigative Opportunity, the state prosecutor shall read the following warning to the defendant: “This is a criminal investigation of acts you may have committed. You have the right to give a statement but you also have the right to remain silent and not answer any questions, except to give information about your identity. You have the right not to incriminate yourself. If you choose to give a statement or answer questions, you will not be under oath. The information you provide

may be used as evidence before the court. If you need an interpreter, one will be provided at no cost to you. If you believe that you may incriminate yourself or a close relative as a result of answering a question, you may refuse to answer. You have a right to a defense attorney and to consult with him or her prior to and during the examination. If you do not understand the question being asked, you should request that the question be asked differently. If you require assistance, translation, or a reasonable and brief break from this session, you should ask. If you do not understand these rights, you should consult with your attorney."

4. At the beginning of the pretrial interview, pretrial testimony session, or Special Investigative Opportunity the state prosecutor shall read the following warning to anyone who has been declared a cooperative witness: "This is a criminal investigation of acts of which you have direct knowledge. You have agreed to cooperate with this investigation. If you invoke your right to remain silent, you will no longer be a cooperating witness. If you do not tell the truth, that may be considered in your sentencing and you might be prosecuted under Article 384 of the Criminal Code. Your defense attorney is present. If you believe that you need to consult your attorney, you may. This criminal investigation seeks the truth and the most accurate recollection of the facts that you can provide. If you do not understand the question being asked, you should request that the question be asked differently. If you believe that there is a document or other evidence that may help you answer a question more accurately or remember the facts more vividly, you should tell us. If you require assistance, translation, or a reasonable and brief break from this session, you should ask. Do you understand these rights?"

5. Warnings given under this Article shall be entered into the record.

6. Warnings given under this Article shall be submitted in writing to the defendant in a language that he or she understands, together with the summons for testimony.

Article 123
Privileged Witnesses

1. The following persons may not be examined as witnesses:

1.1. a person who by giving testimony would violate the obligation to keep an official or military secret, until the competent body releases him from that obligation;

1.2. a defense counsel, on matters confided to him by the defendant, unless the defendant himself so requests; and

1.3. a co-defendant, while joint or severed proceedings are being conducted, except when the co-defendant is a cooperative witness as provided by Article 231 of this Code.

Article 124
Witnesses Exempted from Duty to Testify

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

1.1. the spouse or extra-marital partner of the defendant, unless proceedings are conducted for a criminal offense punishable by imprisonment of five (5) or more years and he is an injured party of that criminal offense;

1.2. a person who is a close blood relative of the defendant spouse or extra-marital partner: antecedents, descendants, sisters, brothers, uncles, aunts, children of sisters and brothers; or close affinity: mother-in-law, father-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, godfather, godmother, stepmother and stepfather; unless proceedings are conducted for a criminal offense punishable by imprisonment of ten (10) or more years or he is a witness of a criminal offense against a child who is cohabiting with or is related to him or to the defendant;

1.3. the adoptive parent or adopted child of the defendant, unless proceedings are conducted for a criminal offense punishable by imprisonment of ten (10) or more years or he is a witness of a criminal offense committed against a child who is cohabiting with or is related to him or the defendant;

1.4. a religious confessor on matters confessed to him by the defendant or by another person;

1.5. a lawyer, a victim advocate, medical doctor, social worker, psychologist or another person, on what he came to know in the exercise of his profession, if bound by duty to keep secret what he learns of in the exercise of his profession; and

1.6. a journalist or an editor who works in the media or one of his assistants in accordance with applicable law.

2. A person referred to in paragraph 1., subparagraphs 1.4., 1.5. or 1.6. of this Article cannot refuse to testify when there is a legal basis for releasing him 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 this 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 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 testimony cannot, in view of the nature of the matter, be confined solely to the other defendants.

Article 125
Circumstances when Statement is Inadmissible

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

1.1. the person may not be examined as a witness;

1.2. the person is exempted from the duty to testify, but he 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;

1.3. the person is a child who could not understand the meaning of his right to refuse to testify: or

1.4. the testimony was extorted by force, threat or other prohibited manner.

Article 126
Witness is not Obliged to Incriminate Self or Close Relative

A witness is not obliged to answer individual questions by which he would be likely to expose himself or a close relative to serious disgrace, considerable material damage or criminal prosecution. The court or state prosecutor shall notify the witness of this right.

Article 127
General Requirements of Pretrial Interviews, Pretrial Testimony or Special Investigative Opportunity

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

2. Subsequently, the witness shall be asked to state his first name and surname, the name of his 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.

3. The provision in paragraph 2. of this Article shall not apply when it conflicts with measures for the protection of injured parties and witnesses as provided for by the present Code.

4. Police officers are obligated to give personal information under paragraph 3. of this Article but shall be informed of their right to give the address of their police station rather than the address of their current residence.

5. A person who has not reached the age of eighteen (18) years, or any person who is a victim of a violent crime, especially if that person has suffered damage from the criminal offense, shall be examined considerately to avoid producing a harmful effect on his state of mind. If necessary, a child psychologist or child counselor or some other professional expert should be called to assist in the examination of such person.

6. An interview of an injured party or victim shall be conducted without unjustified delay by the police, state prosecutor, or any other bodies conducting the criminal proceedings. The injured party or victim may be accompanied by a victim advocate or his representative during the interview.

7. The interviews of a victim or an injured party shall be kept to a minimum and carried out only when strictly necessary for the purposes of the criminal prosecution.

8. When a person is a victim of a criminal offense of a sexual nature or violence in a domestic relationship, the interview shall take place with a person of the same sex if requested by the victim and if such request will not adversely affect the criminal investigation.

Article 128
Pretrial Interview

1. During the investigative stage, the state prosecutor may summon witnesses, victims, cooperative witnesses, protected witnesses and experts to provide information in a pretrial interview relevant to the criminal proceedings.

2. The state prosecutor may permit the defense counsel, the injured party or victim, the victim's advocate or the victim's representative, to participate in the pretrial interview.

3. The state prosecutor may ask the person being interviewed about documentary or physical evidence during the interview. The documentary or physical evidence shall be identified clearly in any recording, transcript or report of the interview.

4. The pretrial interview may be audio-recorded, audio-video recorded, transcribed verbatim or summarized into a report. The recording, transcript or report shall comply with Chapter XI and shall be included in the case file.

5. A person being interviewed under this Article may later testify in pretrial testimony or in a Special Investigative Opportunity.

Article 129
Pretrial Testimony

1. During the investigative stage, the state prosecutor shall summon witnesses, victims, experts and the defendant or defendants to provide pretrial testimony.

2. During the investigative stage, the state prosecutor shall interview protected witnesses and cooperative witnesses while ensuring the appropriate safety and security for the protected or cooperative witnesses.

3. 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 is to appear, the criminal case in connection with which he is summoned, an indication that he is summoned as a witness and the consequences of unjustifiable non-compliance with the summons.

4. A person under the age of sixteen (16) years shall be summoned as a witness through his parents or legal representative, except where that is not possible for reasons of urgency or other circumstances.

5. 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.

6. The state prosecutor shall give five (5) days written notice to the defendant, defense counsel, injured party and victim advocate or victim's representative of the date, time and location of the pretrial testimony. A copy of the notice shall be placed into the case file.

7. Failure of the defendant, defense counsel, injured party or victim, victim's advocate or victim's representative to participate in a session of pretrial testimony after receiving notice under paragraph 6. of this Article, without justification, shall prevent that same defendant, defense counsel, injured party or victim's advocate from objecting to the admissibility of the testimony at a later stage of the criminal proceeding. These consequences shall be given in the notice provided in paragraph 6. of this Article.

Article 130
Requirements of Pretrial Testimony Session

1. A record of the pretrial testimony session shall be kept in accordance with Chapter XI of this Code. In the criminal proceeding involving a criminal offense punishable by a maximum imprisonment of three (3) years or more, the pretrial testimony shall be audio-recorded or video-recorded, and transcribed. In the criminal proceedings involving a criminal offense punishable by a maximum imprisonment of less than three (3) years, the pretrial testimony may be audio-recorded, video-recorded, transcribed or summarized in a record of the pretrial investigation.

2. The state prosecutor shall first examine witnesses named by the state prosecutor.

3. If the defense has requested pretrial testimony be taken from a witness, the defense shall first examine those defense witnesses.

4. If the victim or victim advocate has requested pretrial testimony be taken from a witness, the victim advocate shall first examine those witnesses.

5. Each party shall be given an opportunity to examine the witness who has been examined by the other party.

6. Article 152 of this Code shall apply mutatis mutandis to the examination of witnesses.

7. Witnesses shall be questioned about relevant documentary and physical evidence.

8. The injured party who is examined as a witness shall be asked whether he intends to pursue a property claim in criminal proceedings.

Article 131
Witnesses with Special Needs

If a witness is examined through an interpreter, or if a witness is deaf or mute, he shall be examined as provided for in Article 151 of this Code.

Article 132
Failure of Witness to Appear

1. If a witness who has been duly summoned fails to appear and does not justify his failure to appear or if he leaves the place where he should be examined without permission or a valid reason, the pretrial judge ex officio or upon a motion of the state prosecutor, may compel the witness to appear. If the witness fails to appear, the pretrial judge shall fine the witness up to two hundred fifty (250) EUR for each time he fails to appear. If the witness continues to refuse to testify after being fined, he may be imprisoned as set forth in paragraph 2. of this Article.

2. If a witness appears when summoned but after being warned of the consequences refuses to give testimony without legal justification, he may be fined up to two hundred and fifty (250) EUR. If the witness refuses to testify, he may be imprisoned. This imprisonment shall last for as long as the witness refuses to testify or until his testimony becomes unnecessary, or until criminal proceedings terminate, but shall not exceed one (1) month.

3. An appeal against a ruling imposing a punishment of a fine or imprisonment shall always be decided by the review panel. An appeal against the ruling on imprisonment shall not stay the execution of the ruling. The punishment under paragraphs 1. and 2. of this 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.

Article 133
Expert Analysis

1. With the purpose of clarifying and proving the relevant facts in criminal procedure there may be engaged persons who based on their professional qualification help the bodies developing the criminal procedure:

1.1. important questions related to clarification and verification of the relevant facts or the extent of harm caused or gained by the criminal offense;

1.2. the expert must have specialized training or experience that is relevant and current;

1.3. the expert must have analyzed lawfully obtained evidence;

1.4. the expert's analysis must have used practices generally accepted within his field or has a scientific or technical basis; and

1.5. the expert must write a report that summarizes his method of analysis and conclusions.

2. An expert may not express an opinion on the guilt or innocence of a defendant.

3. The defendant or defense counsel may request the state prosecutor to take expert testimony.

4. The injured party or victim, victim advocate or victim's representative may request the state prosecutor to take expert testimony.

Article 134
Decision to Engage Expert

1. Prior to engaging an expert, the state prosecutor shall issue a decision which:

1.1. provides a specific written question or series of questions to the expert that is material to either the guilt or innocence of the defendant or the extent of harm caused by the criminal offense;

1.2. specifies the expert and provide the basis for that expert's specialized expertise, including his education, experience and previous service as an expert to the court; and

1.3. provides the expert with access to the evidence needed for the specialized or technical analysis.

2. The defendant, defense counsel, victim or victim advocate may challenge the selection of an expert based on his qualifications or potential conflict of interest by filing a challenge with the pretrial judge. The pretrial judge shall rule on the selection of an expert within ten (10) days from the moment of engaging the expert.

3. Without prejudice to paragraph 2. of this Article, the state prosecutor may defer the notification of the decision to select an expert to the defendant and his defense counsel, if the identity of the defendant is not known at the time of the issuance of such decision. The state prosecutor may also defer the notification of the decision to select an expert to the defendant, his defense counsel, the victim, and victim advocate or victim's representative, if such notification may jeopardize the conduct of the criminal proceedings. The state prosecutor shall make an official note of the reasons for the deferral of the notification.

4. 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.

5. If the expert in question is employed with the Government, he shall conduct the specialized analysis as authorized by law, court order or the order of a state prosecutor.

6. If no relevant expertise exists within public entities, an expert with the relevant expertise shall be hired and shall be compensated from public funds. The costs of the experts shall be added to the costs of the proceedings.

7. Without delay the expert shall conduct his analysis and shall submit to the state prosecutor a written expert report in compliance with Article 136 of this Code.

Article 135
Obligations of Expert Witness

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

2. If an expert witness duly summoned fails to appear and does not justify his absence, or departs without authorization from the location where he is to be questioned, the authority conducting proceedings may order him to be brought in forcibly and the court may impose a fine of two hundred and fifty (250) EUR on expert witness, and a fine up to one thousand (1000) EUR on a professional institution.

3. If an expert witness, after being cautioned about the consequences of declining to perform

expert examination, refuses to perform expert examination without a justifiable reason, or does not provide his expert opinion within the designated time limit, the court may impose a fine up to of five hundred (500) EUR on him, and a fine up to two thousand (2000) EUR on a professional institution.

4. In the case referred to in paragraphs 2. and 3. of this Article, the court shall request the institution to initiate disciplinary proceedings against the expert witness if the expert examination is performed by a public authority.

5. In the investigative stage the fines under paragraphs 2., 3. and 4. of this Article shall be imposed by the court upon request of the state prosecutor.

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

Article 136
Report of the Expert

1. An expert's report shall contain:

1.1. the identity of the expert and the identity of the investigation;

1.2. important questions related to clarification and verification of the relevant facts or the extent of harm caused or gained by the criminal offense;

1.3. the expert's specialized training or experience, why it is relevant, and how current the training or experience is;

1.4. a description of the evidence that was analyzed;

1.5. a description of the analysis, including relevant photographs, drawings, summary charts, x-rays, images, laboratory results or other relevant scientific or technical information;

1.6. an explanation that the analytical practices are generally accepted within the expert's field or has a scientific or technical basis; and

1.7. a conclusion with the expert's opinion answering the question in paragraph 2. of this Article, or explaining why the question could not be answered.

2. An expert may not express an opinion in his report on the guilt or innocence of a defendant.

3. An expert's report that does not comply with this Article shall not be admissible.

4. The expert's report shall be entered into the case file.

5. The expert's report shall be disclosed to the defendant or defense counsel, and to the injured party no less than five (5) days prior to a session of pretrial testimony by that expert, but no later than ten (10) days after the report was received from the expert by the state prosecutor.

6. During the investigation stage, the state prosecutor can summon the expert in order to further clarify the expert's report and to verify if an additional expertise is necessary.

Article 137
Orders Necessary for Evidence to be Examined by Expert

1. The state prosecutor shall order that a post mortem examination and autopsy be performed when there is a suspicion or it appears that the death was caused by a criminal offense or it

is connected with the commission of a criminal offense. An autopsy may not be entrusted to the physician who treated the deceased. If the body has been buried, an exhumation shall by ordered by the court to view the body and perform an autopsy. The Ministry of Justice shall issue guidelines and standards for post mortem examinations.

2. Toxicological laboratory analysis of samples taken from a victim may be ordered by a state prosecutor.

3. If a defendant is unwilling to consent in writing to give a sample of blood, body tissue, DNA or other similar material or is unwilling to consent in writing to undergo a physical examination of injuries as required by an investigation, the state prosecutor shall request an order from the pretrial judge requiring the necessary sample or examination in accordance with Article 142 of this Code.

4. Samples taken pursuant to an order under paragraph 3. of this Article may 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. Such molecular or genetic examination may be conducted only upon an order of the pretrial judge.

5. If existing medical records are likely to contain information relevant to the criminal proceedings, the state prosecutor shall request an order from the pretrial judge for the records to be released to the state prosecutor.

Article 138
Pretrial Expert Testimony

1. The expert may be summoned to testify in a pretrial testimony session if it is important to the investigation.

2. The defendant or injured party or victim may accept the conclusions of the expert's report. If all parties accept the conclusions of the expert's report, it shall be noted on the record and no testimony shall be taken.

3. The pretrial testimony of the expert shall be taken under the rules of any pretrial testimony by a witness.

4. The expert shall be questioned by the state prosecutor, the defense counsel and the injured party or victim and the victim advocate or victim's representatives.

5. The record, transcript or recording of the testimony shall be entered into the case file.

Article 139
Experts Engaged by the Defendant or by the Pretrial Judge upon the Defendant's Request

1. If the defendant does not have financial resources to hire an expert, he may request the pretrial judge to appoint an expert analysis that is relevant to his defense. In the request for an expert, the defendant may suggest an expert to be appointed. If the defendant does not suggest a specific expert, the pretrial judge shall select the expert. The pretrial judge shall make a decision on such request within seven (7) days. No appeal shall be permitted against this decision.

2. The defendant may engage and pay for expert analysis on his own.

3. The expert must comply with Article 136 of this Code and the state prosecutor shall receive a copy of the defense expert's report within fourteen (14) days of its completion.

Article 140
Contradiction between Experts

If the findings of two or more 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 examination of the expert witnesses, the opinion of other expert witnesses may be sought.

Article 141
Toxicological Analysis

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 133-140 of this Code.

2. If poisoning is suspected, the state prosecutor shall order that suspicious substances found in the body or elsewhere be sent to the laboratory for toxicological research for expert analysis.

3. 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.

Article 142
Examination of Bodily Injuries and Physical Examination

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 133-140 of this Code.

2. If bodily injuries relevant to the criminal proceedings have already been treated by a physician, that physician may be summoned to give pretrial testimony based on the records taken in the normal course of medical treatment, which shall be obtained by court order or consent. If the police have taken photographs of the injuries, the treating physician may be asked questions based upon those photographs and provide opinions based upon his education and experience. In lieu of testimony, the physician or physicians may issue an expert report with their findings in compliance with Article 136 of this Code, but are not required to do so.

3. If bodily injuries or the physical condition of a person have not been treated, or the medical records are incomplete, the state prosecutor may request the pretrial judge to order a physical examination to be done. The pretrial judge may order the physical examination if there is grounded cause to believe that the physical examination will result in evidence relevant to the criminal proceeding. The person to be examined may also consent to the physical examination without a court order. The professional institution, physician or physicians shall issue an expert report with their findings in compliance with Article 136 of this Code.

4. The physical examination performed on a victim or injured party shall be kept to a minimum and carried out only where strictly necessary for the purposes of the criminal proceedings.

5. The pretrial judge may order blood or tissue samples, or other intrusive forensic or medical samples be taken from a defendant, only if there is a sound probability that the defendant committed a criminal offense and there is grounded cause to believe that the samples will provide evidence of the criminal offense or identity of the offender, or there exists other forensic evidence that can be matched with the samples ordered to be taken. The personal integrity of the defendant shall be respected during the execution of an order under this paragraph. The professional institution, physician or physicians shall issue an expert report with their findings in compliance with Article 136 of this Code.

6. 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, may be taken during a physical examination without a

specific court order.

7. 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.

8. A physical examination under this Article shall be conducted by a forensic specialist 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.

9. The provision under Article 137 paragraph 2. of this 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.

10. The Ministry of Justice shall maintain all samples taken as a result of court orders and voluntary consent for a period of one (1) year after the final decision in a criminal proceeding, at which time the samples shall be destroyed. The samples shall only be available for and used for court-ordered retesting.

10.1. if Prosecution office and/or Court does not notify IML when the case is concluded, IML shall destroy the samples five (5) years after the submission of the autopsy report.

10.2. destruction of samples shall not take place without prior notice of relevant Prosecution office that issued the autopsy order.

11. The Ministry of Justice shall maintain a record of all forensic results obtained by court orders or voluntary consent only when the subject of the forensic testing is convicted.

Article 143
Molecular and Genetic Examinations and DNA Analysis

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 133-140 of this Code.

2. A court may order that material obtained by measures under Article 142 of this 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.

3. For the purpose of establishing identity in criminal proceedings, cell tissue may be collected from a defendant for DNA identification in accordance with Article 142 of this Code.

4. The cell tissue collected may be used only for DNA identification provided for in paragraphs 1. and 2. of this 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.

5. Evidence that has been found, secured or seized at the scene of a crime or in relation to a criminal proceeding may be examined and samples subjected to molecular and genetic examination upon the order of the state prosecutor.

6. The results of molecular and genetic examination on samples obtained under paragraph 5. of this Article that have not been matched with a suspect or defendant may be retained by the Ministry of Justice until such time that they are matched with a suspect or defendant and that suspect or defendant is either convicted or acquitted. The Ministry of Justice shall issue a sub-legal act for the retention of the results of molecular and genetic examination under this paragraph.

Article 144
Psychological Analysis

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 133-140 of this Code.

2. If a psychological condition relevant to the criminal proceedings has already been evaluated or treated by a psychologist or physician, that psychologist or physician shall be summoned by the state prosecutor to give pretrial testimony based on the records taken in the normal course of treatment, which shall be obtained by court order or consent. The psychologist or physician may provide opinions based upon his education and experience. In lieu of testimony, the psychologist or physician may issue an expert report with their findings in compliance with Article 136 of this Code, but is not required to do so.

3. The person whose psychological condition has been evaluated may challenge the summons with the pretrial judge if there are privacy concerns that are not surpassed by the relevancy to the criminal proceeding.

4. If a relevant psychological condition of a person has not been treated, the state prosecutor may request the pretrial judge to order a psychological evaluation to be done. The pretrial judge may order the psychological evaluation if there is grounded cause to believe that the psychological evaluation will result in evidence relevant to the criminal proceeding. The person to be evaluated may also consent to the psychological evaluation without a court order. The professional institution, psychologist or physician shall issue an expert report with their findings in compliance with Article 136 of this Code.

5. The pretrial judge may order the psychological evaluation of a defendant only if there is a sound probability that the defendant committed a criminal offense, there is grounded cause to believe that the psychological condition of the defendant is impaired or was impaired at the time of the criminal offense, and that impairment of his psychological impairment is either relevant to the criminal proceeding or to the defendant's right to a fair trial. The psychologist or physician shall issue an expert report with their findings in compliance with Article 136 of this Code.

6. The psychological examination shall be done by professional psychologists or physicians trained in psychology or psychiatry. The examinations shall be performed in a manner respectful of the right to privacy.

Article 145
Computer Analysis

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 133-140 of this Code.

2. For computer equipment, electronic storage media, or similar devices that are lawfully obtained through a court order or by consent, the state prosecutor may authorize a police officer or expert to examine, analyze and search for information or data contained within the computer equipment, electronic storage media or similar device.

3. The authorized police officer or other expert shall have education, training or experience in forensic computer analysis and searching.

4. The authorized police officer or other expert shall issue an expert report with their findings in compliance with Article 136 of this Code that shall also include the following information:

4.1. the authorized police officer or other expert shall describe the computer equipment, data storage equipment, or specific computer files examined, including any identifying names, numbers, or exhibit tags;

4.2. the authorized police officer or other expert shall describe where and how the computer equipment, data storage equipment or specific computer files were obtained by the police;

4.3. the authorized police officer or other expert shall describe the chain of custody of the computer equipment, data storage equipment or specific computer files;

4.4. the authorized police officer or other expert shall describe specific factual information for which he has been authorized to search on the computer equipment, data storage equipment or specific computer files;

4.5. the authorized police officer or other expert shall describe the steps taken in keeping with the most current practices in the field of computer forensics to reliably and accurately accomplish the search, including but not limited to steps taken to protect against the loss of files, decrypt files, retrieve deleted files, or obtain metadata about computer files or emails.

4.6. the authorized police officer or other expert shall describe the results of his search and shall attach an electronic copy of the computer files that are relevant to the searches.

Article 146
Financial Analysis

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 133-140 of this Code.

2. For financial records that are lawfully obtained through a court order or by consent, the state prosecutor may authorize a police officer or expert to examine, analyze and summarize financial information. The state prosecutor shall specify whether the authorized police officer or other expert shall determine:

2.1. whether financial assets are material benefits of alleged criminal offenses or were used in the commission of alleged criminal offenses;

2.2. the movement of financial assets that may be material benefits of alleged criminal offenses or may have been used in the commission of alleged criminal offenses;

2.3. whether financial assets are missing due to alleged criminal offenses and, if possible, the means and methods used;

2.4. the financial harm caused by alleged criminal offenses;

2.5. the financial gain from alleged criminal offenses;

2.6. the amount of taxes or customs fees that might be owed by a defendant; or

2.7. any other issue relevant to the criminal proceedings.

3. The authorized police officer or other expert shall have education, training or experience in financial analysis or accounting.

4. The authorized police officer or other expert shall issue an expert report with their findings in compliance with Article 136 of this Code.

5. If an expert audit of financial records is required due to the large extent of financial criminal offenses, large or complex nature of the financial records, or the financial records must be reconstructed or regularized, the state prosecutor shall request the court to authorize an audit to be performed in which case:

5.1. the Court order shall instruct the expert as to the aim and scope of the audit and the facts and circumstances which have to be ascertained. The costs of such task shall be borne by the business organization or legal person.

5.2. the ruling on regularizing accounts shall be rendered by the court upon a written and substantiated report by the expert 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.

5.3. 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.

5.4. 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.

Article 147
Special Investigative Opportunity

1. The state prosecutor, injured party or victim, victim advocate, or victim's representative, defendant or defense counsel may, on an exceptional basis, request the pretrial 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.

2. The pretrial judge shall grant the request in paragraph 1. of this Article only where the criminal proceedings involve criminal offenses which are provided for in Article 89 of this Code.

3. An appeal can be filed with the review panel against the refusal of the pretrial judge to take such testimony.

4. In a Special Investigative Opportunity under the present Article, the pretrial 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 defense counsel and the state prosecutor shall be present at the hearing for the taking of testimony. The injured party or victim and victim advocate or victim's representative, shall also be informed of the hearing and will have the right to attend. The taking of testimony before the pretrial judge shall be conducted according to the provisions that regulate the taking of testimony at the main trial.

5. Any testimony taken in a Special Investigative Opportunity shall be audio- or audio-video recorded, with the recording filed in the case file.

6. The testimony may be taken through video-conference technology if the witness is not within Kosovo and is not likely to return to Kosovo, or in accordance with a measure of witness protection.

Article 148
Site Inspection and Reconstruction

1. The state prosecutor 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 state prosecutor or by the

police. The state 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, unless paragraph 3. of this Article is complied with, the results are inadmissible in court. The state 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 state prosecutor shall provide notice of the site inspection and reconstruction to the suspect, defendant and his defense counsel, if they are known. The defense counsel has 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. The provisions of this Article do not prejudice the power of the police to take initial steps to gather information, make measurements, recordings, draw sketches or collect forensic evidence under Articles 70 - 78 of this Code.

7. The pretrial judge may order a minimal site inspection or reconstruction to confirm the findings in a report under this paragraph. The pretrial judge must order that the report be admissible.

8. An expert witness may also be invited to attend a site inspection or reconstruction, if his presence is considered of service by the state prosecutor or the court.

9. After the filing of the indictment, the single trial judge or presiding trial judge may order a site reconstruction only if necessary to truthfully and completely establish the facts which are important to the case.

D. PRETRIAL EXAMINATION OF THE DEFENDANT

Article 149
Examination of the Defendant before Filing the Indictment

1. Except for cases under Article 234, paragraph 2. of this Code, the defendant shall be examined by the state prosecutor prior to the filing of any indictment. If the defendant is being investigated for a criminal offense or offenses punishable by a maximum period of imprisonment of up to three (3) years, it shall be sufficient that the defendant or the suspect be examined by the police upon state prosecutor's authorization.

2. The defendant shall be obliged to appear before the state prosecutor upon being summoned. Article 172, paragraphs 2. through 5. of this Code shall apply mutatis mutandis.

Article 150
Conduct of Pretrial Examination of the Defendant

1. The examination of the defendant shall be conducted in compliance with Article 149, paragraph 1. of this Code.

2. Before any examination, the defendant, whether detained or at liberty, shall be read the warning in Article 122, paragraph 3. of this Code.

3. Before any examination, the defendant shall be informed of:

3.1. the criminal offense of which he is suspected of;

3.2. the fact that he may request evidence to be taken in his defense. If the defendant is in detention on remand, he shall also be informed before any examination of his right to have defense counsel provided if he cannot afford to pay for legal assistance.

3.3. the right to remain silent and not to answer any questions, except to give information about his identity.

4. The defendant has the right to consult with his defense counsel prior to as well as during the examination.

5. An examination of the defendant by the police or state prosecutor when acting under the present Article shall be audio or video-recorded in accordance with Article 205 or Article 206 of this Code. In cases where this is impossible in practice, a written record of the examination shall be made in accordance with Chapter XI of this Code and the record shall specify the reasons why the examination could not be audio or video-recorded.

Article 151
Right of the Defendant to Interpretation or Translation

1.The defendant is interrogated with the assistance of an interpreter or translator in the cases provided by this Code.

2.When the defendant is deaf or dumb, questions are asked through a qualified sign language interpreter or translator. If the interrogation cannot be carried out in this way, the person who knows how to communicate with the defendant is invited to the role of interpreter or translator, but not in cases of conflict of interest.

3.If the interpreter or translator has not been sworn in before, he swears that he will faithfully translate the questions posed to the defendant and the statements given.

4.The interpreter or translator acts in accordance with Article 211 of this Code.

Article 152
Questioning of the Defendant during Pretrial Testimony

1. At the first examination, the defendant should be asked to provide his first name and surname and nickname, if any; the name and surname of his parents and the maiden name of his mother; his place of birth and place of residence; the day, month and year of his birth; his personal identification number; his nationality and citizenship; his occupation and family conditions; whether he is literate; his education; his personal income and his financial position; whether criminal proceedings against him for some other criminal offense are in progress; and if he is a minor, the identity of his legal representative. He 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 may be permitted to make use of his notes during the examination.

3. The examination shall be conducted with full respect for the dignity of the defendant.

4. 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 has not admitted.

5. The prohibitions under paragraph 4. of this Article shall apply irrespective of the defendant's consent.

6. The defendant shall be asked questions based on evidence or documents that are relevant to the criminal proceeding. Any relevant evidence or documents shall be shown to the defendant during questions related to the evidence or documents. The evidence or documents shall be clearly identified for the record.

7. Objects which are related to the criminal offense or which serve as evidence shall be presented to the defendant for recognition, after he has first described them. If these objects cannot be brought, the defendant may be taken to the place where they are located.

8. The examination should give the defendant an opportunity to dispel the grounds for suspicion against him and to assert the facts that are in his favor.

Article 153
Admissibility of Defendant's Statements

If the examination of the defendant was conducted in violation of the provisions of Article 251, paragraph 4. or Article 150 of this Code, the statements of the defendant shall be inadmissible.

E. REVIEW, SUSPENSION, TERMINATION AND TIME LIMITS OF INVESTIGATIONS

Article 154
Obligation to review the case file

Every three (3) months the state prosecutor and the head of his office shall review the case file to determine whether the investigation should remain open, whether it should be suspended, whether it should be terminated or whether an indictment shall be filed. This shall be determined through official note.

Article 155
Suspension of Investigation

1. The state prosecutor may render a ruling to suspend the investigation if the defendant, after committing a criminal offense, has become afflicted with a temporary mental disorder or disability or some other serious disease, if he has fled, a request for international legal assistance has been made, or if there are other objective circumstances pertaining to the conduct of the investigation which temporarily prevent successful prosecution of the defendant.

2. Before the investigation is suspended, all obtainable evidence regarding the criminal offense and the criminal liability of the defendant shall be collected.

3. The state prosecutor shall render a ruling to suspend the investigation only with regard to the defendant for whom one of the circumstances specified in paragraph 1. of this Article occurred.

4. The ruling provided for in paragraph 3. of this Article shall contain the time and the reasons for suspension of the investigation. A copy of this ruling shall be provided to the pretrial judge without delay.

5. The investigation will resume with a ruling by the state prosecutor following the elimination of the obstacles that caused the suspension. This ruling shall contain the time of the resumption. A copy of this ruling shall be provided to the pretrial judge without delay.

6. The time when the investigation was suspended shall not be taken into account in calculating the period of time for completing the investigation or for the expiration of the statute of limitations of a criminal offense.

Article 156
Termination and Reopening of Investigation

1. The state prosecutor shall terminate the investigation if at any time it is evident from the evidence collected that:

1.1. there is no reasonable suspicion that a specific person has committed the indicated criminal offense;

1.2. the act reported is not a criminal offense which is prosecuted ex officio;

1.3. the period of statutory limitation has expired;

1.4. the criminal offense is covered by a pardon or an amnesty issued prior to the enactment of the Constitution of the Republic of Kosovo; or

1.5. there are other circumstances that preclude prosecution.

2. The state prosecutor shall within eight (8) days of the termination of the investigation notify the injured party or victim, victim advocate, or victim's representative, the defendant and his defense counsel of this fact and the reasons for this. The state prosecutor shall immediately inform the pretrial judge about the termination of the investigation.

3. An investigation shall terminate automatically upon its expiration under Article 157 of this Code.

4. At the expiration of the time limits of investigation under Article 157 of this Code any special investigative measures implemented in accordance with Articles 88 to 96 of this Code, shall expire immediately.

5. If the investigation was terminated under paragraph 1., sub-paragraph 1.1. of this Article, the state prosecutor may request the pretrial judge for permission to reopen the investigation if additional information is obtained that provides sufficient reasons to believe that the suspect has committed a criminal offense. In his request, the state prosecutor must demonstrate that such additional information is prima facie credible and could not have been obtained before through the exercise of due diligence.

6. If the investigation is terminated as a result of the criminal offense of the abuse of the official function of the state prosecutor, the investigation may be reopened. While proving this criminal offense, provisions of Article 423, paragraph 3. of this Code shall be applied.

7. If the pretrial judge grants the application, the state prosecutor may reopen the investigation for six (6) months. After the expiration of this period the state prosecutor may request an extension of the period of investigation in accordance with Article 157, paragraph 2. of this Code.

8. When the investigation is terminated by the state prosecutor, the victim or the injured party may file a complaint against the ruling on termination of the investigation to the Appellate Prosecution Office through the Basic Prosecution Office. The provisions of Article 84 of this Code, shall apply mutatis mutandis.

Article 157
Time Limits of Investigation

1. If an investigation is initiated, the investigation shall be completed within two (2) years.

2. Upon request by the state prosecutor, the pretrial judge may authorize an extension of the investigation under paragraph 1. of this Article, up to one (1) year, when the state prosecutor demonstrates that the investigation has been conducted actively and that any delay is beyond

the control of the state prosecutor. The state prosecutor shall also demonstrate that one of the following circumstances exist:

2.1. the investigation is considered a complex case as defined by subparagraph 1.2. of Article 19 of this Code;

2.2. a request for international legal assistance has been made, without which the case would not be solved in a whole and just way; or

2.3. any other based reason that justifies an extension in the interests of justice.

3. The application of the state prosecutor shall demonstrate that the additional time will allow for the collection of relevant evidence in the investigation.

4. The request of the state prosecutor shall be filed at least fifteen (15) days before the expiration of the time limit for investigation foreseen in paragraph 1. of this Article.

Article 158
Death of Defendant

1. If in the course of criminal proceedings, it is ascertained that the defendant has died, depending on the stage of the criminal proceedings, the state prosecutor or the court shall render a ruling to terminate criminal proceedings.

2. The Court shall instruct the injured party or victim to file a request for state compensation if the same meets the criteria under the Law on Crime Victim Compensation.

CHAPTER X
DEPRIVATION OF LIBERTY PRIOR TO INDICTMENT AND MEASURES TO ENSURE PRESENCE OF THE DEFENDANT

SUB-CHAPTER I
GENERAL PRINCIPLES

Article 159
Principle of Interpretation

1. The Articles in this Chapter shall be interpreted by the police, state prosecutor and courts under the following principles:

1.1. the defendant's right to liberty and security establishes a presumption in favour of remaining free;

1.2. a deprivation of liberty under this Chapter shall only be ordered by the court if the state prosecutor presents evidence under this Chapter which overcomes the presumption in sub-paragraph 1.1. of this paragraph;

1.3. if a deprivation of liberty under this Chapter is ordered, the police, state prosecutor or court should use the most limited restrictions on liberty possible;

1.4. this Article applies to measures to deprive liberty or to ensure the presence of the defendant during criminal proceedings.

SUB – CHAPTER II
DEPRIVATION OF LIBERTY PRIOR TO INDICTMENT

Article 160
Provisional Arrest and Police Detention

If a person is caught in the act of committing a criminal offense prosecuted ex officio or is being pursued, the police or any other person shall be authorized to arrest him provisionally even without a court order. The person deprived of his liberty by persons other than the police shall be immediately turned over to the police or, where that proves impossible, the police or the state prosecutor must be immediately notified. The police shall act in accordance with Articles 161 and 162 of this Code.

Article 161
Limits on Provisional Arrest and Police Detention

1.The police shall not deprive a person of liberty unless:

1.1. an arrest is authorized under Article 160 of this Code;

1.2. there is a court order to arrest a person;

1.3. there is a valid arrest order received through INTERPOL or other diplomatic channels;

1.4. an arrest is authorized under Article 162 of this Code;

1.5. the deprivation of liberty is brief and complies with Article 73 of this Code.

2. Any person whose liberty has been deprived through arrest under this Article shall be brought without delay to a pretrial judge to rule on detention on remand. The delay shall not exceed forty-eight (48) hours.

Article 162
Arrest and Detention During Investigative Stage

1. When a state prosecutor has authorized an arrest, the police shall only arrest and detain a person when:

1.1. there is a grounded suspicion that he has committed a criminal offense which is prosecuted ex officio; and

1.2. there are articulable grounds to believe that:

1.2.1. there is a risk of flight,

1.2.2. that he will destroy, hide, change or forge evidence of a criminal offense or specific circumstances indicate that he will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or

1.2.3. the seriousness of the criminal offense, or the manner or circumstances in which it was committed and his personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offense, complete an attempted criminal offense or commit a criminal offense which he has threatened to commit.

2. The arrest and detention under this Article shall be authorized by the state prosecutor who initiated the investigative stage or, when due to exigent circumstances such authorization cannot be obtained prior to arrest, by the police who must inform the state prosecutor immediately after

the arrest.

3. A person arrested under this Article has the rights of a defendant.

4. Upon arrest, the arrested person shall be informed:

4.1. orally of the rights set forth in Article 166 of this Code; and

4.2. in writing of all the rights set forth in Article 165 of this Code and all the other rights which he enjoys under this Code in a language that he understands.

5. As soon as possible after the arrest and no later than six (6) hours from the time of the arrest, the state prosecutor shall issue to the arrested person a written decision on detention which shall include the first and last name of the arrested person if known, or if not known, any information to adequately identify the arrested person, the place, date, and exact time of the arrest, the criminal offense of which he is suspected, and the legal basis for the arrest. Against the decision on detention issued by the state prosecutor, the arrested person or his defense counsel may file an appeal within six (6) hours from the receipt of the decision. The pretrial judge shall rule on the appeal within twelve (12) hours from the receipt of the appeal.

6. Within thirty-six (36) hours of the arrest, the state prosecutor shall file with the pretrial judge a request for detention on remand.

7. The request for detention on remand shall comply with Article 163 of this Code.

8. As soon as possible, but no later than within forty-eight (48) hours of arrest, the pretrial judge shall hold a hearing to determine whether the defendant shall be held in detention on remand. Pending the decision of the court, the defendant may be detained.

9. The arrested person shall be released if he is not brought before the court within forty-eight (48) hours from the time of arrest.

10. The defendant shall be represented by defense counsel at the hearing on the request for detention on remand. The defense counsel shall have access to review the case file for the defendant in preparation for the hearing.

11. As soon as possible, but no later than forty-eight (48) hours after the hearing under paragraph 8. of this Article, the pretrial judge shall issue a decision determining whether the defendant shall be subject to one of the measures under Article 171 of this Code.

12. The pretrial judge must consider whether lesser measures to ensure the presence of the defendant in Article 171 of this Code may be ordered.

13. The decision of a pretrial judge to order detention on remand is appealable in accordance with the provisions of Article 186 paragraph 3. of this Code.

Article 163
Request for Measure to Ensure Presence of Defendant

1. If the state prosecutor believes that a lesser measure to ensure the presence of defendant in Article 171 of this Code is warranted, he shall file a request for the lesser measure to ensure the presence of the defendant.

2. If the state prosecutor believes that detention on remand is warranted, then he shall file a request for detention with the pretrial judge that shall include:

2.1. the first and last name of the arrested person, if known, or if not known, any information to adequately identify the arrested person;

2.2. the place, date, and exact time of the arrest;

2.3. the criminal offense of which he is suspected;

2.4. a description of the evidence that supports the grounded suspicion that the arrested person has committed the suspected criminal offense;

2.5. a description of the evidence that supports the articulable grounds to believe:

2.5.1. there is a risk of flight;

2.5.2. that the arrested person will destroy, hide, change or forge evidence of a criminal offense or specific circumstances indicate that he will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or

2.5.3. the seriousness of the criminal offense, or the manner or circumstances in which it was committed and his personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offense, complete an attempted criminal offense or commit a criminal offense which he has threatened to commit; and

2.6. a description of articulable grounds to believe that lesser measures to ensure the presence of the defendant are insufficient.

3. If the state prosecutor's request for detention on remand fails to establish the grounded suspicion that the arrested person has committed the suspected criminal offense, the pretrial judge shall release the defendant.

4. If the state prosecutor's request for detention on remand fails to establish the articulable grounds to believe any of the three (3) elements in paragraph 2., sub-paragraph 2.5. of this Article, the pretrial judge shall consider and order a lesser measure to ensure the presence of defendant listed in Article 171 of this Code, release the defendant or request further clarification from the state prosecutor.

5. If the state prosecutor's request for detention on remand fails to establish the articulable grounds that lesser measures to ensure the presence of defendant is insufficient, the pretrial judge shall consider and order a lesser measure to ensure the presence of defendant listed in Article 171 of this Code or release the defendant.

Article 164
Rights of Arrested Person

1. An arrested person has the right to the immediate assistance of defense counsel of his own choice.

2. If the arrested person does not engage a defense counsel and no one engages a defense counsel for him, he shall be provided with a defense counsel at public expense.

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

4. The right to the assistance of defense counsel may be waived in accordance with Article 52, paragraph 3. and Article 56, paragraph 5. of this Code.

Article 165
Informing the Arrested Person of his Rights

1. An arrested person has the following rights:

1.1. to be informed about the reasons for the arrest, in a language that he understands;

1.2. to remain silent and not to answer any questions, except to give information about his identity;

1.3. to access the case file subject to the exceptions provided for in Article 209 of this Code;

1.4. to be given the free assistance of an interpreter, if he cannot understand or speak the language of the police;

1.5. to receive the assistance of defense counsel of his choice or to have defense counsel provided if he cannot afford to pay for legal assistance;

1.6. to be informed of the maximum number of hours he may be deprived of liberty before being brought before a judge;

1.7. to challenge the lawfulness of his arrest or make a request for release;

1.8. to notify or require the police to notify a family member or another appropriate person of his choice about the arrest; and

1.9. to receive a medical examination and medical treatment, including psychiatric treatment.

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

Article 166
Notification of Arrest

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 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 (18) years, the police shall notify the parent or 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 this Article may be delayed for up to twenty-four (24) hours where the state 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 eighteen (18) years of age or displays signs of mental disorder or disability.

Article 167
Right of Arrested Person to Medical Examination

1. An arrested person has the right, upon request, to be examined by a doctor or dentist of his own choice as promptly as possible after his 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 this Article shall be duly recorded, and such records shall be made available to the arrested person and his defense counsel.

Article 168
Right of Arrested Person during Detention

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 (12) hours shall be provided with three (3) meals daily. Whereas a person detained for up to twelve (12) hours shall be provided with a meal every four (4) hours of detention.

4. In any period of twenty-four (24) hours, an arrested person shall have the right to at least eight (8) hours of uninterrupted rest, during which he shall not be examined and shall not be disturbed by the police in connection with the investigation.

Article 169
Right of Arrested Person during Examinations by Police

1. During all examinations by the police, an arrested person has the right to the presence of defense counsel. If defense counsel does not appear within two (2) hours of being informed of the arrest, the police shall arrange alternative defense counsel for him by the authorization of the state prosecutor. Thereafter, if the alternative defense counsel does not appear within one (1) hour of being contacted by the police, the arrested person may be examined only if the state prosecutor determines that further delay would seriously impair the conduct of the investigation.

2. Articles 150 to 153 of this 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 (2) hours. A break may be delayed if there are reasonable grounds to believe that delay would:

3.1. involve a risk of harm to persons or serious loss of, or damage to, property;

3.2. unnecessarily prolong the person's detention or the conclusion of the examination; or

3.3. 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 170
Record of Arrest and Actions by Police

1. The police shall keep a single written record of all actions undertaken with respect to an arrested person, including:

1.1. the personal data of the arrested person;

1.2. the reasons for the arrest;

1.3. the criminal offense of which he is suspected;

1.4. the authorization or notification of the state prosecutor;

1.5. the place, date, and exact time of the arrest;

1.6. the circumstances of the arrest;

1.7. any decision of the state prosecutor regarding detention;

1.8. the place of detention;

1.9. the identity of the police officers and the state prosecutor concerned;

1.10. oral and written notification to the arrested person of his rights, as provided for in Article 162, paragraph 4. and Article 165 of this Code;

1.11. information about the exercise of the rights in subparagraph 1.10. paragraph 1. of this Article by the arrested person, especially the right to defense counsel and to notification of family members or other appropriate persons;

1.12. visible injuries or other signs which suggest the need for medical help;

1.13. the conduct of a medical examination or the provision of medical treatment;

1.14. 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; and

1.15. information on the exit of arrested person from the building, including the exact date and time, information on whether the person was released or sent before the judge, or if he was transferred to the detention center.

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 defense counsel was not present, this shall be duly noted.

3. The written records under paragraph 1. of this 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 this Article shall be made available to the arrested person and his defense 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 (10) years from the time of the official end of the criminal proceedings or the person's release from detention, whichever is later.

SUB-CHAPTER III
MEASURES TO ENSURE PRESENCE OF DEFENDANT

A. GENERAL CONSIDERATIONS

Article 171
Authorized Measures to Ensure Presence of Defendant

1. The measures to ensure the presence of defendant 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:

1.1. summons;

1.2. order for arrest;

1.3. promise of the defendant not to leave his place of current residence;

1.4. prohibition on approaching a specific place or person:

1.5. attendance at a police station:

1.6. bail;

1.7. house detention; and

1.8. 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 or pretrial judge before the indictment has been filed and by the single judge or the presiding trial judge after the indictment has been filed, unless provided otherwise by this Code.

5.The term "lesser measures to ensure the presence of defendant" or "lesser measures" as used in this Code shall mean a summons; a promise of the defendant not to leave his place of current residence; a prohibition on approaching a specific place or person; attendance at a police station; bail or house detention.

6.The court may simultaneously impose one or more measures from paragraph 1. of this Article.

B. SUMMONS

Article 172
Summons

1. The presence of the defendant in the proceedings shall be ensured by serving a summons.

2. The summons prior to the first hearing shall always be transmitted in a sealed letter, and shall include: the name and surname of the defendant; the designation of the criminal offense with which he is charged; the place, day and hour at which he is to appear; an indication that he is being summoned as the defendant; a warning that an order for arrest will be issued and he will be compelled to appear if he 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 right to engage a defense counsel and of the right of the defense counsel to attend his examination.

4. For the duration of the proceedings, 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 and at the same time he shall be warned of the consequences of non-compliance as provided for by this Code.

5. Irrespective of the other provisions of this Code, the court may, at the initial hearing, request the parties present, defense counsel or victim advocate or victim's representative to provide at least one electronic contact address, either a telephone number, e-mail address or other electronic communication address. Future summonses served at the electronic addresses voluntarily provided by the parties are deemed to be equal in effect to other forms of service, if conducted in compliance with the provisions of this Code.

6. The provisions of paragraph 4. of this Article that oblige the parties to notify the court of changes in the address or place of residence shall apply mutatis mutandis with respect to changes in electronic contact information.

7. If by reason of an illness or some other insurmountable obstacle the defendant is unable to comply with the summons, he shall be examined at the place where he 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.

8. The summons shall be served in a manner stipulated in compliance with the provisions of Chapter XXVII of this Code.

C. ORDER FOR ARREST

Article 173
Order for Arrest

1. A pretrial judge, single trial judge or a presiding trial judge may issue an order for arrest ex officio, upon the application of the state prosecutor or, in exigent circumstances, upon the application of the police if the conditions under Article 184, paragraph 1. of this Code exist, or if a defendant, after being duly summoned, fails to appear and to justify his 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 offense with which he is charged and an indication of the pertinent provision of the 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. Unless the order for arrest specifies a different expiration date, the order for arrest shall expire at midnight on the three hundred sixty fifth (365th) day after it is issued.

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. If the defendant refuses to comply, the police officer shall compel him 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 understands and of his rights under Article 165 of this Code.

7. An arrested person shall, immediately after the arrest, and in any event no later than forty-eight (48) hours from the arrest, be brought before the judge who issued the order.

D. PROMISE OF DEFENDANT NOT TO LEAVE HIS PLACE OF CURRENT RESIDENCE

Article 174
Promise of Defendant Not to Leave his Place of Current Residence

1. The court may seek a promise from the defendant not to go into hiding, nor to leave his place of current residence without the permission from the court, if there is a grounded suspicion that he has committed a criminal offense 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 this Article may be sequestered. An appeal against a ruling to sequestrate 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 violates the promise.

E. PROHIBITION OF APPROACHING A SPECIFIC PLACE OR PERSON

Article 175
Prohibition of Approaching a Specific Place or Person

1. The court may prohibit the defendant from approaching a specific place or person, if:

1.1. there is a grounded suspicion that the defendant has committed a criminal offense; and

1.2. the circumstances under Article 184, paragraph 1., subparagraph 1.2.2. or 1.2.3. of this Code exist;

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 this 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 443 of this Code.

7. Unless otherwise provided in the present Article, the provisions of this Code concerning detention on remand shall apply mutatis mutandis to the ordering, duration, extension and termination of the measure under this Article.

8. The extension of a measure under this Article before the indictment is filed shall be decided by the pretrial judge upon the application of the state prosecutor.

F. ATTENDANCE AT POLICE STATIONS

Article 176
Attendance at Police Stations

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:

1.1. there is a grounded suspicion that the defendant has committed a criminal offense; and

1.2. there are grounds to suspect that the defendant will go into hiding, leave for an unknown destination or leave Kosovo.

2. The court shall decide on a measure under this Article in a ruling supported by reasoning. The ruling must contain the justification for determining that the conditions under paragraph 1. of this 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 this Article, the provisions of this Code concerning detention on remand shall apply mutatis mutandis to the ordering, duration, extension and termination of the measure under this Article.

6. The extension of a measure under this Article before the indictment is filed shall be decided by the pretrial judge upon the application of the state prosecutor.

7. The travel document of a person subject to a ruling under the present Article may be sequestered. An appeal against the ruling to sequestrate a person’s travel document shall not stay execution.

G. BAIL

Article 177
Bail

1. The court may order that the defendant remain at liberty on bail or be released on bail from detention on remand, if:

1.1. there is a grounded suspicion that the defendant has committed a criminal offense;

1.2. the only basis for detention on remand is a fear that the defendant may flee; and

1.3. the defendant has promised that he will not go into hiding or leave his place of current residence without permission.

2. The bail ordered by the court shall be provided by the defendant or another person on his behalf.

Article 178
Ruling on Bail

1. The court shall decide on the measure under Article 177 of this Code in a ruling supported by reasoning. The ruling must contain the justification for determining that the conditions under Article 177 of this Code are met and that there is a need for this measure.

2. Prior to indictment, the ruling on bail shall be rendered by the pretrial judge and, after the indictment has been filed, by the single trial judge or presiding trial judge.

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 state prosecutor, if the criminal offense is being prosecuted ex officio, and the opinion of the defendant or the defense counsel. The ruling by which bail is cancelled shall be rendered after a hearing.

4. The ruling shall be served on the defendant.

5. The travel document of a person subject to a ruling on bail shall be temporarily sequestrated, unless there are compelling reasons for the court not to temporarily sequestrate the travel document. An appeal against the ruling to temporarily sequestrate a person's travel document shall not stay execution.

Article 179
Definition of Bail

1. Bail shall always be defined as an amount of money determined relative to the gravity of the criminal offense, 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 property 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 Crime Victim Compensation Program by a ruling of the court.

Article 180
Cancellation of Bail

1. When bail has been ordered under Article 177, paragraph 1. of this Code, the defendant shall be detained on remand and bail shall be cancelled, if after being duly summoned he fails to appear and to justify his non-appearance, if he is preparing to flee or if some other legal ground for his detention on remand arises while he is at liberty. If after being duly summoned, he fails to appear and to justify his non-appearance or if he is preparing to flee, the consequences of Article 179, paragraph 3. of this Code shall be applied.

2. The defendant must always be informed of the consequences of non-compliance in advance.

3. 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 has started serving the sentence.

4. Upon the cancellation of bail, any deposited cash, securities, valuable objects and other movable property of high value shall be returned and any mortgage shall be released.

H. HOUSE DETENTION

Article 181
House Detention

1. The court may order that the defendant be placed under house detention, if:

1.1. there is a grounded suspicion that the defendant has committed a criminal offense; and

1.2. the circumstances under Article 184 paragraph 1. sub-paragraph 1.2. of this Code are met.

2. The court shall decide on a measure under this Article in a ruling supported by reasoning. The ruling must contain the justification for determining that the conditions under paragraph 1. of this 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 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 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 shall have the right to verify the implementation of the measure of house detention at any time, and shall randomly verify the presence of the defendant at the location of the house detention. The police shall inform the court without delay of any possible violations of the measure.

7. Unless otherwise provided for by this Article, the provisions of this Code on detention on

remand shall apply mutatis mutandis to the ordering, duration, extension and termination of the measure under this Article. Provisions of the Criminal Code on the inclusion of detention in the punishment imposed shall also apply mutatis mutandis to the measure under this Article.

8. The single trial judge or presiding trial judge shall in all cases decide on the extension of house detention after the filing of the indictment ex officio or based on a motion of the state prosecutor which is supported by reasoning. The defendant as well as his defense counsel, where the defendant has such, must be informed of the motion no later than three (3) days prior to the expiration of the current ruling on house detention.

9. The travel document of a person subject to house detention may be temporarily sequestered. An appeal against the ruling to temporarily sequestrate a person's travel document shall not stay execution.

J. DETENTION ON REMAND

Article 182
Detention on Remand

1. Detention on remand may only be ordered on the grounds and in accordance with the procedures provided for by this Code.

2. Detention on remand shall last the shortest possible time. All authorities participating in criminal proceedings and authorities 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 164, paragraphs 2. and 3., Article 165, paragraph 2., Article 166, Article 167, Article 168, paragraph 3. and Article 169, paragraphs 3. and 4. of this Code shall apply throughout detention on remand.

5. Upon arrest, the person subject to detention on remand shall be informed:

5.1. orally and in writing of the rights set forth in Article 165 of this Code; and

5.2. in writing of the other rights which he enjoys under this Code.

Article 183
Notification of Competent Social Welfare Body about the Arrest, when such a Measure is Necessary

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 care.

Article 184
Findings Required for Detention on Remand

1. The court may order detention on remand against a person only after it explicitly finds that:

1.1. there is a grounded suspicion that such person has committed a criminal offense;

1.2. one of the following conditions is met:

1.2.1. he is in hiding; his identity cannot be established or other circumstances

indicate that there is a danger of flight;

1.2.2. there are grounds to believe that he will destroy, hide, change or forge evidence of a criminal offense or specific circumstances indicate that he will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or

1.2.3. the seriousness of the criminal offense, or the manner or circumstances in which it was committed and his personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offense, complete an attempted criminal offense or commit a criminal offense which he has threatened to commit; and

1.3. the lesser measures to ensure the presence of defendant listed in Article 171 of this Code would be insufficient to ensure the presence of such person, to prevent reoffending and to ensure the successful conduct of the criminal proceedings.

2. In cases under paragraph 1., sub-paragraph 1.2. of this Article, the detention on remand ordered solely because a person's identity cannot be established is terminated as soon as identity is established. In cases under paragraph 1., sub-paragraph 1.2. of this Article, the detention on remand is 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 lesser measures to ensure the presence of defendant listed in Article 171 of this Code, this shall be taken into particular consideration by the court when establishing the existence of circumstances under sub-paragraphs 1.2. and 1.3. of this Article.

Article 185
Procedure for Imposing Detention on Remand

1. Detention on remand shall be ordered by the pretrial judge of the competent court upon a written application of the state prosecutor and after a hearing.

2. After the arrested person has been brought before the pretrial judge, he shall immediately inform such person of his rights under Article 165 of this 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 pretrial judge.

3. The pretrial judge shall then conduct a hearing on detention on remand. The state prosecutor and the defense counsel shall be present at the hearing.

4. If the arrested person fails to engage his own defense counsel within twenty-four (24) hours of being informed of such right or declares that he will not engage a defense counsel, the court shall appoint a defense counsel for him ex officio.

5. At the hearing on detention on remand, the state prosecutor shall state the reasons for his application for detention on remand. The defendant and his defense counsel may respond with their arguments.

6. The pretrial 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 this Chapter.

Article 186
The Content of the Ruling Ordering Detention on Remand and the Appeal Against it

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 other personal data known to the pretrial judge; the exact time of arrest; the time when the person was brought before the pretrial judge; the time of the hearing for detention on remand; the criminal offense of which he 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 offense and the material facts under Article 184, paragraph 1., sub-paragraph 1.2. of this Code.

2. The ruling on detention on remand shall be served on the person concerned, his defense counsel and the state 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 forty-eight (48) 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 (24) hours of being served with the appeal. The appeal shall be decided within seventy-two (72) hours of the filing of the reply to the appeal or the expiration of the time limit for filing of a reply before the Court of Appeals.

4. If the pretrial judge rejects the request of the state prosecutor for detention on remand, the pretrial judge may order any other measure provided for under this Chapter.

Article 187
Time Limits for Detention on Remand

1. The detainee may be held in detention on remand on the initial ruling under Article 186 of this Code for a maximum period of one (1) month from the day he was arrested. After that time period he may be held in detention on remand only under a ruling of the pretrial judge ordering an extension of detention on remand.

2. Prior to the filing of an indictment, detention on remand shall not exceed:

2.1. four (4) months, if proceedings are conducted for a criminal offense punishable by imprisonment of up to five (5) years;

2.2. eight (8) months, if proceedings are conducted for a criminal offense punishable by imprisonment of more than five (5) years.

3. In exceptional cases where proceedings are conducted for a criminal offense punishable by imprisonment of at least five (5) years, the case is complex as defined under Article 19 paragraph 1., subparagraph 1.2. of this Code and the delay is not attributable to the state prosecutor, in addition to the prescribed periods of time provided for in paragraph 2. of this Article, detention on remand prior to the filing of an indictment may be extended by up to four (4) months for a maximum of twelve (12) months in total.

4. Upon a convincing and grounded cause to believe that public danger or a threat of violence exists upon the pretrial release of a defendant, an extension of the detention on remand under paragraph 3. of this Article can be extended for another six (6) months for a maximum of eighteen (18) months in total.

5. If the indictment is not filed before the expiry of the prescribed periods of time provided for under paragraphs 2., 3. and 4. of this Article, the detainee shall be released.

Article 188
Extension of Detention on Remand

1. Detention on remand may only be extended by the pretrial judge upon the request of the state prosecutor, who shall show that there are grounds for detention on remand under Article 184 of

this Code, that the investigation has been initiated and that all reasonable steps are being taken to conduct the investigation speedily. The injured party or victim advocate may ask the state prosecutor to request an extension of detention on remand. The state prosecutor shall file the request for extension of detention on remand to the court no later than five (5) days prior to the expiry of the current ruling on detention on remand.

2. The request for extension of detention on remand shall be sent to the defendant and his defense counsel no later than three (3) days prior to the expiry of the current ruling on detention on remand.

3. Each ruling on the extension of detention on remand can be appealed. Article 186, paragraphs 3. and 4. of this Code shall apply mutatis mutandis.

Article 189
Court Oversight of Detention on Remand

1. At any time, the pretrial judge may terminate ex officio detention on remand while the investigation is in progress, after giving three (3) days notice to the state prosecutor, who may appeal to a review panel the decision of the pretrial judge to terminate detention on remand. The review panel shall render a ruling within forty-eight (48) hours of receiving the appeal from the state prosecutor.

2. At any time, the detainee or his defense counsel may petition the pretrial judge, single trial judge or presiding trial judge to determine the lawfulness of detention.

3. At any time, the detainee or his defense counsel may petition the judge who imposed detention or the President of the Basic Court to determine the lawfulness of the conditions of detention.

4. If the detainee is petitioning the lawfulness of detention, the pretrial judge, single trial judge or presiding trial judge may conduct a hearing in accordance with Article 185, paragraphs 3., 4., 5., and 6. of this Code if the petition establishes a prima facie case that:

4.1. the grounds for detention on remand in Article 184 of this Code no longer exist due to changed circumstances or the discovery of new facts since the last court order on detention on remand; or

4.2. detention is unlawful for some other reason.

5. If the detainee is petitioning the lawfulness of detention, at the hearing the pretrial judge, single trial judge or presiding trial judge shall order the immediate release of the detainee if:

5.1. the grounds for detention on remand in Article 184 of this Code no longer exist;

5.2. the period of detention on remand has expired;

5.3. the period of detention on remand ordered by the court exceeds the time-limits set forth in Article 187 of this Code; or

5.4. detention is unlawful for some other reason.

6. If the detainee is petitioning the lawfulness of the conditions of detention, the judge who imposed detention or President of the Basic Court may hold a hearing or visit the detention facility if the petition establishes a prima facie case that the conditions of detention do not satisfy the requirements of this Code or conditions exist that do not comply with the European Convention on Human Rights and Fundamental Freedoms, as interpreted by decisions of the European Court on Human Rights.

7. If the judge who ordered the detention or the president of the basic court, at the hearing or

during the visit at the detention facility, has assessed that the conditions of detention are not in accordance with the reasonable interpretation of the conditions set out in paragraph 6. of this Article, shall order changes to the conditions of detention.

8. Hearings or visits under this Article shall be held within seven (7) days of the receipt of the petition by the court.

9. A petition that is substantially similar to a previous petition shall be immediately dismissed ex officio.

Article 190
Imposition, Extension and Termination of Detention after Filling of the Indictment

1. After the indictment has been filed and until the announcement of the judgment or sentencing hearing, if there is any, detention on remand may only be ordered, extended or terminated by a ruling of the single trial judge or presiding trial judge or the trial panel when it is in session. The single trial judge or presiding trial judge shall first hear the opinion of the state prosecutor, and the opinion of the defendant or the defense counsel. The parties may appeal against the ruling. Article 186, paragraphs 3. and 4. of this Code shall apply mutatis mutandis.

2. Upon the expiry of two (2) months from the last ruling on detention on remand, the single trial judge or presiding trial judge, even in the absence of a motion by the parties, shall examine 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 186, paragraphs 3. and 4. of this Code shall apply mutatis mutandis.

SUB-CHAPTER IV
IMPLEMENTATION OF DETENTION ON REMAND

Article 191
Treatment and Conditions for Detained Persons

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 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 192
Detention Facility

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 defense 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 193
Information regarding Detainees

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 this Article shall comprise data on:

2.1. the identity and personal status of the detainee on remand;

2.2. the ruling on detention on remand;

2.3. the work performed while in detention on remand;

2.4. admission to the detention facility and the duration, extension and termination of detention on remand; and

2.5.the behavior 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 this 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. The Ministry of Justice shall issue a sub-legal act which shall define in greater detail the data under paragraph 2. of this Article and procedures in compliance with this Article.

Article 194
Segregation of Detainees

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 offense 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 offense shall not be accommodated in the same room as other persons in detention whom they could negatively influence.

3. The General Director of Kosovo Correctional Service 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 195
Items Detainees Are Permitted to Have and Use

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 put into storage during a personal inspection of the detainee on remand.

Article 196
Right of Detainees to Rest, Exercise and Payment for Work Performed

1. Detainees on remand have the right to eight (8) hours of uninterrupted rest every twenty-four (24) hours. In addition, detainees on remand must be guaranteed at least two (2) 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 pretrial judge, single trial judge or presiding trial 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 Ministry of Justice shall issue a sub-legal act setting forth the manner and amount of payment.

Article 197
Visitation and Right to Communicate

1. With the permission of the pretrial judge, single trial judge or presiding trial judge and under his supervision or the supervision of someone appointed by such judge, the detainee on remand may receive visits from family members as defined in the Criminal Code and, upon his 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 pretrial judge, single trial judge or presiding trial judge, representatives from an embassy, 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 deputy may visit detainees on remand and may correspond with them without prior notification and without the supervision of the pretrial judge, single trial judge or presiding 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 deputy may communicate confidentially with detainees on remand orally and in writing. Communications between a detainee on remand and the Ombudsperson and his 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 pretrial judge, single trial judge or presiding trial judge. The pretrial judge, single trial judge or presiding trial judge may, after consulting the state 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 defense counsel.

5. When the pretrial, single trial judge or presiding trial judge refuses a visit pursuant to paragraph 1. of this Article or prohibits communication pursuant to paragraph 4. of this Article, the detainee on remand may apply to the review panel to grant such permission.

6. Following the filing of indictment and until the rendering of final judgment, the single trial judge or the presiding trial judge shall decide on all matters from paragraphs 1. to 4. of this Article, whereas paragraph 5. of this Article shall apply mutatis mutandis.

Article 198
Discipline of Detainees

1. The Director of the Correctional Institution may conduct the disciplinary procedure and impose a disciplinary measure of a prohibition or restriction on visits or correspondence on a detainee on remand who has committed a disciplinary breach.

2. A disciplinary breach includes:

2.1. a physical attack on other detainees on remand, employees of the detention facility or other official persons;

2.2. the production, acceptance or introduction of items for attacks or escape;

2.3. the production or introduction of alcoholic beverages and narcotics and their distribution;

2.4. a violation of regulations on safety at work, fire safety and the prevention of the consequences of natural disasters;

2.5. repeated violations of the internal order of the detention facility;

2.6. causing serious material damage intentionally or through serious negligence; or

2.7. insulting and undignified behavior.

3. A restriction or prohibition of a visit or correspondence shall not apply to visits by or correspondence with defense counsel, doctors, the Ombudsperson of Kosovo, representatives of an embassy, 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 against a decision on a disciplinary measure under paragraph 1. of this Article may be filed with the pretrial judge, the single trial judge or presiding trial judge within twenty-four (24) hours of receipt thereof. The appeal shall not stay execution of the decision.

5. The decision on the appeal from paragraph 4. of this Article shall be issued within forty-eight (48) hours.

Article 199
Application of the Law on the Execution of Penal Sanctions to Detainees on Remand

Unless otherwise provided for by the present Code and by other legislation issued pursuant to it, the provisions of the Law on the Execution of Penal 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 200
Supervision of the Treatment of Detainees

1. The competent president of the basic court has the ultimate responsibility to supervise the treatment of detainees on remand.

2. The competent president of the basic court and the judge who ordered detention on remand may, at any time, visit detainees on remand, talk to them and accept complaints.

3. The duties under this Article do not diminish the duties of the competent judge under Article 189 of this Code to evaluate petitions by detainees with valid complaints about the conditions of detention and correct unlawful conditions.

CHAPTER XI
RECORDS

A. COMPILATION AND MAINTENANCE OF RECORDS

Article 201
Record of Action in Criminal Proceeding

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 state prosecutor, by the recording clerk of the state 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 answers for the record in his own words. This right may be denied if it is abused.

5. When the pretrial interview, pretrial testimony or special investigative opportunity requires the session to be recorded by audio- or audio-video recording, a copy of the recording shall be included with the record.

Article 202
Entries into the Record

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 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 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.

4. In the conduct of an action, such as a site inspection, a search of a residence, person or other property, 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 evidence or specified property (the description, dimensions and size of the evidence or specified property or of traces that have been left, placing identifying labels on evidence or specified property 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.

5. Documents or physical items which are referred to during the pretrial interview, pretrial testimony or special investigative opportunity shall be identified with exhibit numbers. The documents or physical items shall be referred to during the pretrial interview, pretrial testimony or special investigative opportunity by their exhibit numbers, and shall be referred to in the record by their exhibit numbers.

Article 203
Integrity of the Record

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 204
Review of the Record

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 defense counsel and the victim advocate or victim's representative, 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 residence or other property have been searched, if present during the search. If the record is not signed by the recording clerk, 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 (2) 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 right hand in place of a signature and the recording clerk shall enter his 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 shall read the record of the examination, and, if he 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 fingerprint on it, this shall be noted in the record along with the reason for the refusal.

Article 205
Recording of Sessions by Audio Recording or Audio-Video Recording

1. Applicable sessions of pretrial testimony or special investigative opportunity session, or any other examination or interview as necessary, shall be video-recorded or audio-recorded in accordance with the following procedure:

1.1. the person examined shall be informed, in a language he fully understands and speaks that the examination is to be audio- or video-recorded.

1.2. the recording must include the data under Article 202, paragraph 1. of this Code and the appropriate notification under Article 122 of this 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.

1.3. 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.

1.4. at the conclusion of the examination, the person being examined shall be offered the opportunity to clarify anything he has said and add anything he 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. At the discretion of the state prosecutor or upon the order of the pretrial judge, single trial judge or presiding trial judge, the content of the recording may be transcribed. If it is transcribed, the transcript shall be completed 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.

3. At least four (4) copies of the audio or audio-video recording under this Article shall be made on CD or DVD discs, or their functional equivalent, and placed with the written record of the examination in the case file. One master copy shall remain with the case file at all times, one copy shall be provided to each defense counsel at the time of indictment, one copy shall be available to the victim advocate or victim's representative, one copy shall be retained by the state prosecutor.

4. The written record of the examination shall indicate or include:

4.1. the fact that the examination was recorded by an audio-recording or video-recording device;

4.2. the name of the person who performed the recording;

4.3. the names of the people present during the recorded session;

4.4. the fact that the examined person was informed in advance of the intent to record the examination;

4.5. whether the recording was played back;

4.6. a summary of the testimony; and

4.7. copies of any exhibits shown to the person being examined.

5. After making the required copies, the recording clerk shall seal the master copy of the recording and shall sign and file statement that the recording had not been altered or edited

and is a true recording of the session.

6. If a technical error occurs in the making of the audio or audio-video recording, the person whose testimony or examination is being recorded shall be advised of the technical error while being recorded, and shall be re-questioned on issues or answers whose recording was affected by the technical error or he will be allowed to make corrections on issues or answers whose recording was affected by the technical error.

7. The audio or audio-video recording of the session can not be edited or altered. If an indictment is filed in the criminal proceedings for which the session was recorded, the single trial judge or presiding trial judge may rule an audio or audio-video recording of a session to be inadmissible if there is grounded cause to believe that the recording was edited or altered. Grounded cause under this paragraph cannot be premised solely upon a difference in testimony by the person examined.

8. 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. A violation of this paragraph shall be considered a breach of the ethical duties of the practitioner involved and may be sanctioned by the Court.

Article 206
Recording of Actions by Audio-Recording or Audio-Video Recording

The state prosecutor, the pretrial judge, the single trial judge or the presiding trial judge may order that investigatory actions other than examinations, be video-recorded or audio-recorded. Article 205 of this Code shall apply mutatis mutandis.

Article 207
Use of Shorthand or Typewriter, Stenography and Transcription

The state prosecutor, the pretrial judge, the single-trial judge or the presiding trial 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 (48) hours be transcribed, checked and attached to the record.

Article 208
The Case File

1. All records, reports, recordings, transcripts, evidence, orders, decisions, requests, appeals, judgments or other documents relevant and important to the criminal proceeding shall be maintained in a case file.

2. The case file shall be maintained in an orderly manner by the responsible clerk.

3. The Kosovo Prosecutorial Council and Kosovo Judicial Council are empowered to set rules on internal handling of case file within prosecutor offices and the courts, respectively.

B. INSPECTION OF RECORDS AND THE CASE FILE

Article 209
Access to the Case File by Suspects and Defendants

1. During initial steps by the police, the suspect shall have access to the evidence that is collected upon his request, except when paragraphs 6. or 7. of this Article is applied mutatis mutandis.

2. At the initiation of the investigative stage, the state prosecutor has a positive obligation to

provide access to the case file to any named defendant or his defense counsel, subject to the exceptions within this Article.

3. At no time during the investigative stage may the defense 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 defense counsel has been or should have been admitted or expert analyses.

4. Upon completion of the investigation, the defense shall be entitled to inspect, copy or photograph all records and physical evidence available to the court.

5. Upon the filing of an indictment, the defendant or defendants named in the indictment are provided with a copy or copies, respectively, of the case file.

6. In addition to the rights enjoyed by the defense under paragraphs 2., 3. and 4 .of this Article, the defense shall be permitted by the state prosecutor to inspect, copy or photograph any records, books, documents, photographs and other tangible objects in the possession, custody or control of the state prosecutor which are material to the preparation of the defense or are intended for use by the state prosecutor as evidence for the purposes of the main trial, as the case may be, or were obtained from or belonged to the defendant. The state prosecutor may refuse to allow the defense to inspect, copy or photograph specific records, books, documents, photographs and other tangible objects in his 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 defense can apply to the pretrial judge, single trial judge or presiding trial judge to grant the inspection, copying or photocopying. The decision of the competent judge is final.

7. Information can be redacted or marked out by a thick black line to obscure specific information by the state prosecutor on copies of documents that contain sensitive information. The defendant may challenge the redaction with the pretrial judge, single trial judge or presiding trial judge within three (3) days of receiving the redacted copy. The state prosecutor shall be permitted the opportunity to explain the legal basis of the redaction without disclosing the sensitive information. The competent judge shall review the redacted information and shall decide within three (3) days whether the redaction is legally justified.

8. The provisions of this Article are subject to the measures protecting injured parties or victim and witnesses and their privacy and the protection of confidential information as provided for by law, including Chapter XIII of this Code.

Article 210
Access to the Case File by the Injured Party or Victim and Victim Advocate or Victim's Representative

1. The injured party or victim, victim advocate or victim's representative shall be entitled to inspect, copy or photograph records and physical evidence available to the court or to the state prosecutor if he has a legitimate interest.

2. The court or state 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 state prosecutor refuses the inspection of the files, the injured party can file an appeal with the pretrial judge. The decision of the pretrial judge is final.

4. If the pretrial judge refuses the inspection of the files available to the court, an appeal can be

filed with the review panel.

5. Information can be redacted or marked out by a thick black line to obscure specific information by the state prosecutor on copies of documents that contain sensitive information.

6. The provisions of this 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, including Chapter XIII of this Code.

Article 211
Qualifications of Interpreters or Translators

1. A person serving as an interpreter or translator under the present Code should be qualified to interpret or translate as follows:

1.1. if available, an interpreter or translator should be certified as an interpreter or translator in the relevant languages in compliance with regulations issued under paragraph 2. of this Article.

1.2. if an interpreter or translator under paragraph 1., subparagraph 1.1. of this Article is unavailable, the interpreter or translator should have a degree in the language or languages involved and at least two (2) years experience as an interpreter or translator,

1.3. if an interpreter or translator under paragraph 1., subparagraphs 1.1. and 1.2. of this Article is unavailable, the interpreter or translator should have at least four (4) years experience as an interpreter or translator in the language or languages involved, or

1.4. if an interpreter or translator under paragraph 1., subparagraphs 1.1., 1.2. and 1.3. of this Article is unavailable, the interpreter or translator should have demonstrated sufficient proficiency in the relevant languages to interpret or translate accurately and without bias.

2. A person serving as an interpreter or translator under this Code shall interpret or translate with confidentiality.

3. The Kosovo Judicial Council is empowered to issue regulations on the certification of translators and interpreters as competent to interpret and translate professionally in criminal proceedings in those languages commonly used in criminal proceedings.

CHAPTER XII
EVIDENCE DURING INVESTIGATION

A. APPLICATION OF THE DEFENDANT OR THE INJURED PARTY TO COLLECT OR PRESERVE EVIDENCE

Article 212
Application by the Defendant to Collect or Preserve Evidence

1. During the investigation the defendant may apply to the state prosecutor to collect certain evidence.

2. The state prosecutor shall collect such evidence or testimony if it is relevant to the proceedings and:

2.1. if there is a danger that the evidence or testimony will be lost or is unlikely to be available for main trial;

2.2. if such evidence may justify the release of the defendant from detention on remand;

2.3. if the evidence or testimony sought has a reasonable probability that it will be exculpatory; or

2.4. if there are other justified reasons to collect such evidence or testimony.

3. If the defendant or defense counsel applies to the state prosecutor to collect certain evidence that is located outside of Kosovo, the state prosecutor may collect such evidence in compliance with Article 215 of this Code.

4. If the state prosecutor rejects the application to collect evidence, he shall render a decision supported by reasoning and notify the defendant and defense counsel. The defendant or defense counsel may appeal such decision to the pretrial judge.

Article 213
Application by the Injured Party or Victim to Collect or Preserve Evidence

1. During the investigation the injured party may apply to the state prosecutor to collect certain evidence.

2. The state prosecutor shall collect such evidence or testimony if it is relevant to the proceedings and:

2.1. if there is a danger that the evidence or testimony will be lost or is unlikely to be available for main trial;

2.2. if such evidence may be efficient to take with other evidence sought by the state prosecutor; or

2.3. is directly relevant to a claim filed by the injured party in the criminal proceedings.

3. If the injured party applies to the state prosecutor to collect certain evidence that is located outside of Kosovo, the state prosecutor may collect such evidence in compliance with Article 215 of this Code.

4. If the state prosecutor rejects the application to collect evidence, he shall render a decision supported by reasoning and notify the injured party or victim, the victim advocate or victim's representative. The injured party or victim, the victim advocate or victim's representative may appeal such decision to the pretrial judge.

Article 214
Declaration of Damages by Injured Party

1. During the investigative stage or within sixty (60) days of the filing of the indictment, the injured party or victim may file a simple declaration of damage from the charged criminal offense. The victim advocate or victim's representative or, in his absence, the police officer may assist the injured party or victim in filing a declaration of damage.

2. The declaration may be filed anonymously in compliance with the provisions of Article 222 of this Code.

3. The declaration of damage shall describe:

3.1. the person who caused the damage;

3.2. how the damage occurred;

3.3. how the damage was caused by, or was a foreseeable result of the criminal offense;

and

3.4. if there were costs due to the damage or the loss caused by the criminal offense, the declaration shall provide a reasonable estimate of the costs or losses.

4. If the declaration of damage provides an estimate of the costs or losses, it shall also serve as a property claim. The injured party or the victim may supplement the declaration of damages if until the conclusion of the main trial or until the sentencing hearing he incurred additional costs or losses as a result of the damage.

Article 215
International Requests

1. The state prosecutor or competent judge shall, at the earliest possible time, initiate international legal requests, requests for extraditions, requests for prisoner transfers or requests for executions of judgments.

2.All international requests shall be made in compliance with the applicable legislation.

3. The state prosecutor or competent judge shall make all international requests in consultation and compliance with the relevant Department for International Legal Cooperation in the Ministry of Justice.

4. The Minister of Justice shall have final approval of all international requests made to foreign governments.

5. The state prosecutor or competent judge shall not speak to media about pending or intended international requests but shall refer the media to the Ministry of Justice.

6. Evidence obtained informally from foreign governments, law enforcement agencies, prosecutors or courts shall be admissible if accompanied by a statement from that foreign government, law enforcement agency, prosecutor or court which demonstrates that the evidence is reliable and was obtained in accordance with the law of that foreign state. Such evidence may not form the sole or decisive basis for a finding of guilt. Such information shall be accompanied at the main trial by a notice of corroboration under Article 258 of this Code.

7. If the Department for International Legal Cooperation receives and approves a request for assistance from a foreign government, the Department for International Legal Cooperation shall assign the request to the appropriate state prosecutor, who shall initiate a criminal proceeding with the limited purpose of obtaining the requested information or performing the requested action. If the requested information or action is not permitted by the law or is not possible to obtain or perform, the state prosecutor shall inform the Office of International Cooperation and shall terminate the criminal proceeding.

CHAPTER XIII
PROTECTION OF INJURED PARTIES AND WITNESSES

Article 216
Definitions

1. For purposes of this Chapter, the following definitions shall apply:

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

1.2. The term “Member of the family” means a spouse, extra-marital partner, parent, an adoptive parent, child, an adopted child, sibling, foster parent or a blood relative living in the same home;

1.3. The term “Anonymity” means the absence of revealed information regarding the identity or whereabouts of an injured party, cooperative witness or witness or the identity or whereabouts of a family member of an injured party, cooperative witness or witness or the identity of any person who is associated with an injured party, cooperative witness or a witness.

Article 217
Petition for Protective Measure or Anonymity

1. At any stage of the proceedings, the state prosecutor, defendant, defense counsel, injured party or victim, victim advocate or victim’s representative, cooperative witness or witness may file a written petition with the competent judge for a protective measure or an order for anonymity if there is a serious risk to an injured party, cooperative witness, witness or his family member.

2. The petition shall contain a declaration of factual allegations. The petition and declaration shall be filed in a sealed envelope and only the competent judge over the stage of the proceedings and the state prosecutor may have access to the sealed contents.

3. After receipt of the petition, the competent judge may order appropriate protective measures for an injured party or victim, cooperative witness or a witness, or if he deems it necessary prior to making a decision on the petition, convene a closed hearing to hear further information from the state prosecutor, the defendant, the defense counsel, the injured parties or victim, victim advocate or victim’s representative, cooperative witness or the witnesses. In the case of a petition requesting an order made pursuant to Articles 219 and 220 of this Code, the competent judge shall convene a hearing in closed session.

4. The competent judge may make an order for a protective measure for an injured party, cooperative witness or witness where he determines that:

4.1. there exists a serious risk to the injured party, cooperative witness, witness or his family member; and

4.2. the protective measure is necessary to prevent serious risk to the injured party, cooperative witness, witness or his family member.

5. The state prosecutor shall be immediately notified by the competent judge of any petition made by the defendant, defense counsel, injured party or victim, victim advocate or victim’s representative, cooperative witness or witness and is entitled to make recommendations and statements regarding the facts to the competent judge at a hearing and in writing if there is no hearing ordered by the competent judge.

Article 218
Order for Protective Measures

1. The competent judge may order such protective measures as he considers necessary, including but not limited to:

1.1. omitting or expunging names, addresses, place of work, profession or any other data or information that could be used to identify the injured party, cooperative witness or witness;

1.2. non-disclosure of any records identifying the injured party, cooperative witness or

witness;

1.3. efforts to conceal the features or physical description of the injured party, cooperative witness 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 defense counsel present;

1.4. assignment of a pseudonym;

1.5. closed sessions to the public:

1.6. orders to the defense counsel and the defendant not to disclose the identity of the injured party, cooperative witness or witness or not to disclose any materials or information that may lead to disclosure of identity;

1.7. temporary removal of the defendant from the courtroom if a cooperative witness or 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

1.8. any combination of the above methods to prevent disclosure of the identity of the injured party, cooperative witness or witness.

2. Other provisions of this Code shall not apply where they conflict with protective measures under paragraph 1. of this 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 or victim, cooperative witness, witness or his family member, or which could reveal the existence of, or expose to serious risk, the operational security of ongoing and confidential police initial actions.

4. Once a protective measure has been ordered in respect of an injured party, cooperative witness or witness, the petitioning party may subsequently request an amendment of a protective measure. Only the competent judge of the stage of the proceedings 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 state prosecutor.

Article 219
Order for Anonymity from the Public and from Injured Party or Victim

1. Where protective measures under Article 218, paragraph 1. of this Code are insufficient to guarantee the protection of a witness proposed by the defense, the competent judge may in exceptional circumstances make an order for anonymity whereby a witness proposed by the defense shall remain anonymous to the public, the injured party or victim, victim advocate or victim's representative.

2. Before making an order for anonymity, the competent 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 state prosecutor, essential court and prosecution personnel and the defense counsel may be present.

3. The competent judge can only issue an order for anonymity if he first finds that:

3.1. there exists a serious risk to the witness or his family member and the complete anonymity of the witness is necessary to prevent such serious risk;

3.2. the testimony of the witness is relevant to a material issue in the case so as to make it unfair to compel the defense to proceed without it;

3.3. the credibility of the witness has been fully investigated and disclosed to the judge in a closed session; and

3.4. the need for anonymity of the witness to provide justice outweighs the effect of the interest of the public or the injured party in knowing the identity of the witness in the conduct of the proceedings.

Article 220
Order for Anonymity from the Defendant

1. Where protective measures provided under Article 218, paragraph 1. of this Code are insufficient to guarantee the protection of an injured party or victim, cooperative witness or witness not proposed by the defense, the competent judge may in exceptional circumstances make an order for anonymity whereby the injured party, cooperative witness or witness shall remain anonymous to the defendant and the defense counsel.

2. The state prosecutor shall request an order for anonymity from the defendant only by a written motion filed under seal which describes facts that demonstrate that:

2.1. there exists a serious risk to the injured party, cooperative witness or witness who would be subject to the order for anonymity, and

2.2. anonymity would prevent the serious risk to the injured party, cooperative witness or witness.

3. A court shall not issue an order under this Article based on a request under paragraph 2. of this Article which is based on a general description of danger to witnesses in similar cases.

4. Before making an order for anonymity, the competent judge shall conduct a hearing, in a closed session, at which the injured party, cooperative witness 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 state prosecutor, and essential court and prosecution personnel may be present.

5. The competent judge can only issue such order for anonymity if he finds that:

5.1. there exists a serious risk to the injured party, cooperative witness or witness or to his family member and the complete anonymity of the injured party, cooperative witness or witness is necessary to prevent such serious risk;

5.2. the testimony of the injured party, cooperative witness 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;

5.3. the credibility of the injured party, cooperative witness or witness has been fully investigated and disclosed to the competent judge in a closed session; and

5.4. the need for anonymity of the injured party, cooperative witness or witness to provide justice outweighs the interest of the defendant in knowing the identity of the injured party, cooperative witness or witness in the conduct of the defense.

Article 221
Form of Order for Anonymity

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, cooperative witness, witness or his family member or which could reveal the existence of or expose to serious risk the operational security of ongoing and confidential police initial actions.

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, cooperative witness or witness.

3. The restricted data may be inspected and used by the state prosecutor and the competent judge only in an appeal against an order issued under Article 219 or 220 of this Code. An appeal against an order for anonymity and the use of methods to prevent disclosure of identity to the public, injured parties or victim, victim advocate or victim's representative, witnesses, defense counsel and the defendant may be made to a review panel, if the order has been issued by a pretrial judge. Otherwise it may only be appealed in an appeal of the judgment.

Article 222
Prohibition of Questions that may Reveal Identity

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

Article 223
Witness Protection

Special and extraordinary measures, ways and procedures for witness protection and cooperative witnesses are governed by the relevant Law on Witness Protection.

Article 224
Additional Protective Measures in Cases of Domestic Violence

In cases of domestic violence, the court may impose the measures specified in the relevant Law on Protection Against Domestic Violence and also any measures as provided in Article 171 of this Code.

CHAPTER XIV
ALTERNATIVE PROCEEDINGS

Article 225
Alternative Proceedings

1. The state prosecutor shall apply alternative proceedings under this chapter of this Code when such proceedings would comply with the duties and competencies of the state prosecutor under Article 48 of this Code.

2. The Court may also apply the alternative proceedings under paragraph 1. of this Article mutatis mutandis.

Article 226
Diversion

1. A defendant who has been arrested for a criminal offense for which the maximum punishment is no more than one (1) year of imprisonment, and who has no previous criminal convictions or participation in diversion may receive diversion upon the order of the pretrial judge. The

defendant or state prosecutor may also propose diversion. If the state prosecutor consents to, or proposes diversion to the court, the pretrial judge may suspend the criminal proceedings for one (1) year, and shall release the defendant under the following conditions:

1.1. the defendant shall make reasonable restitution to the victims of the criminal offense, if any exist, as determined by the pretrial judge,

1.2. the defendant shall report to the police station closest to his residence on a regular basis set by the pretrial judge, and

1.3. the defendant shall attend and complete counseling, psychological treatment, substance abuse treatment, educational opportunities, or other alternative actions deemed appropriate by the pretrial judge.

2. If the defendant has complied with the conditions of the pretrial judge, the criminal proceedings against the defendant shall be dismissed by the pretrial judge during the twelfth (12th) month of diversion.

3. If the defendant breaches the conditions of the pretrial judge, the criminal proceedings shall be reinstituted. The pretrial judge may, if warranted, issue an order for arrest under Article 173 of this Code.

Article 227
Provisional Suspension of Proceedings

1. The state prosecutor may suspend the criminal prosecution of a criminal offense punishable by a fine or imprisonment of up to four (4) years or by a fine and imprisonment of up to four (4) years, with the consent of the injured party taking into account the nature, circumstances and character of the criminal offense and the perpetrator, if the defendant undertakes to behave as instructed by the state prosecutor and to fulfill certain obligations to relieve or remove the harmful consequences of the criminal offense, including:

1.1. the elimination of damage or compensation;

1.2. the payment of a contribution to a public institution or a charity or to the Crime Victim Compensation Program; or

1.3. the performance of work in public interest.

2. If the defendant fulfils the obligation within a prescribed period of time not exceeding six (6) months, the criminal report shall be dismissed or the investigation shall be terminated.

3. If the defendant fails to act in accordance with paragraph 1. of this Article, the state prosecutor may recommence the prosecution of the criminal offense.

4. This Article shall not apply in cases of domestic or sexual violence.

Article 228
Conditions when Prosecution is not Obligatory

1. The state prosecutor shall not be obliged to initiate a criminal prosecution or may abandon prosecution:

1.1. if the criminal law provides that the court may waive the punishment of a perpetrator of a criminal offense and the state prosecutor determines that in view of the actual circumstances of the case a finding of guilty alone without a criminal sanction is not necessary; or

1.2. if the perpetrator of a criminal offense punishable by a fine or imprisonment of up to one (1) year expresses genuine remorse over the criminal offense and has prevented harmful consequences or compensated for damage and the state prosecutor determines that in view of the actual circumstances of the case a criminal sanction would not be justified.

Article 229
Mediation Proceedings

1. Prior to the filing of the indictment, the state prosecutor may refer the criminal report on a criminal offense punishable by a fine or by imprisonment up to three (3) years, or by a fine and imprisonment of up to three (3) years for mediation. After the filing of an indictment, with the approval of the state prosecutor, the injured party and the defendant, or the single trial judge may refer the issue, for these offenses, for mediation. Before doing so, the state prosecutor, or single trial judge 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 prior convictions for the same criminal offense or for other criminal offenses, as well as his degree of criminal liability and if mediation is in the interest of the injured party or victim.

2. Criminal offenses of domestic violence as well as criminal offenses against sexual integrity shall be excluded from the mediation procedure.

3. The mediation shall be conducted by an independent mediator. The mediator shall be obliged to accept a case referred by the state prosecutor, or by the single trial judge, and shall be obliged to take measures to ensure the contents of the agreement are proportionate to the seriousness and consequences of the act. If agreed by the parties, the cost of mediation shall be borne, if prior to indictment, by the respective state prosecutor's office, and if after indictment, by the respective Basic Court. Prior to starting mediation, the mediator shall inform the injured party or victim with full and unbiased information about the process and the potential outcomes, as well as information about the procedures for supervising the implementation of an agreement.

4. An agreement may only be reached through mediation with the consent of the defendant and the injured party or victim, based on the injured party's or victim's free and informed consent. The injured party's or victim's consent may be withdrawn at any time.

5. On receiving notification that an agreement has been reached, the state prosecutor shall dismiss the criminal report or terminate the criminal proceedings. If an indictment is submitted the single trial judge shall, if he formally accepts such agreement, shall render a ruling to dismiss the indictment and terminate criminal proceedings. The mediator is obliged to inform the state prosecutor or, as applicable, the single trial judge of a failure to reach an agreement and the reasons for such failure. The length of time for reaching an agreement may not exceed ninety (90) days, unless extended by the court in accordance applicable Law on Mediation.

6. An agreement concluded due to mediation, referred by the state prosecutor or by the single trial judge is an executive title according to the relevant legislation in force.

Article 230
Negotiated Pleas of Guilty

1. At any time prior to the filing of the indictment, the state prosecutor and the defense counsel may negotiate the terms of a written plea agreement under which the defendant and state prosecutor agree to the charges of an indictment and the defendant agrees to plead guilty in return for:

1.1. the state prosecutor's agreement to recommend a more lenient punishment to the court. This may include the recommendation for a sentence under the minimum provided by the law, but not under the limits of mitigation of punishment;

1.2. the state prosecutor's withdrawal from criminal prosecution for any of the criminal offenses included in the ruling on the initiation of investigation or indictment; or

1.3. other considerations in the interest of justice, such as the waiver of the punishment.

2. At any time following the filing of the indictment and before the completion of the main trial, the state prosecutor and the defense counsel may negotiate the terms of a written plea agreement under which the defendant agrees to plead guilty in return for:

2.1. the state prosecutor's agreement to recommend a more lenient punishment to the court. This may include the recommendation for a sentence under the minimum provided by the law, but not under the limits of mitigation of punishment;

2.2. the state prosecutor's withdrawal from criminal prosecution for any of the criminal offenses included in the ruling on the initiation of investigation or indictment; or

2.3. other consideration in the interests of justice, such as the waver of the punishment.

3. In cases when the defendant wishes to enter into a guilty plea agreement, the defendant's counsel, or the defendant if not represented by counsel, requests the state prosecutor for a preliminary meeting to commence negotiations for a plea agreement. At all such negotiations, a defendant must be represented by counsel, in accordance with paragraph 1. of this Article.

4. Upon receiving a request for a preliminary meeting, the state prosecutor informs the chief prosecutor of his respective office, who gives written authorization for such meeting for plea agreement discussions, at which the defendant's statements will be given limited immunity as provided in paragraph 10. of this Article. All plea agreements must be in writing and cleared by the chief prosecutor of the respective state prosecutor's office before being formally offered to the defendant.

5. In cases when the state prosecutor wishes to enter into a guilty plea agreement, the state prosecutor obtains the approval of the chief prosecutor of his respective office to commence negotiations for a plea agreement. Upon the approval of the chief prosecutor of his respective office, the state prosecutor shall either:

5.1. send a letter to the defense counsel with a description of the offered plea agreement, including the terms required under paragraph 11. of this Article, or

5.2. meet with the defense counsel and defendant to negotiate the possibility of and terms for a plea agreement. Paragraph 4. of this Article applies mutatis mutandis.

6. The written plea agreement may include a provision that the state prosecutor will make an application, in accordance with Article 231 of this Code, to call the defendant as a "co-operative witness". If such defendant provides assistance as a co-operative witness, the state prosecutor shall recommend to the court a more lenient punishment in accordance with Article 231, sub-paragraph 9.6 of this Code that reflects the extent of the assistance and cooperation provided by the defendant, while taking into account the severity of the criminal offense.

7. The defendant and the defense counsel shall be present during the plea negotiations and must agree to the terms of any written plea agreement before it may be presented to the court. When the defendant is not participating as a cooperative witness, the following conditions apply. The state prosecutor informs the injured party of the negotiated plea agreement, once the agreement reaches its final form. When the injured party has a claim for damages arising from the criminal offense that has been filed in the indictment, the plea agreement must make an effort to address the injured party's claim, and the state prosecutor must inform the injured party that the defendant is seeking to negotiate a plea agreement. The injured party must be given an opportunity to present a statement to the court regarding such property claim prior to the court's acceptance of the plea agreement.

8. Where the defendant participates as a cooperative witness, the state prosecutor ensures that the injured party's claim for damages is treated by the plea agreement. When the injured party has a claim for damages arising from the criminal offense that has been filed in the indictment, the plea agreement must make an effort to address the injured party's claim. The injured party must be given an opportunity to present a statement to the court regarding such property claim prior to the court's sentencing of the defendant pursuant to the plea agreement.

9. The court does not participate in the plea negotiations, but may set a reasonable deadline not longer than three (3) months for the conclusion of the negotiations to prevent delay of the procedure.

10. At any time prior to acceptance of the plea agreement by the court, either the state prosecutor or the defendant may reject a plea agreement and the single trial judge or presiding trial judge schedules the court trial as provided for under Chapter XIX of this Code. If the state prosecutor and the defense counsel or defendant fails to reach a guilty plea agreement, or if the plea agreement is not accepted by the court, any statements of the defendant made during the plea negotiations, as provided in paragraph 3., 4. and 5. of this Article, are inadmissible as evidence in the court trial or other related proceedings.

11. A written plea agreement must state every term of the agreement, must be signed by the chief prosecutor of the respective office, the defense counsel and the defendant, and is binding on each party. At a minimum, the plea agreement must specify:

11.1. the charges to which the defendant will plead guilty;

11.2. whether the defendant agrees to cooperate;

11.3. the rights that are waived;

11.4. defendant's liability for restitution to an injured party and confiscation of all assets subject to confiscation under Chapter XVIII of this Code.

12. The plea agreement may also include a provision in which the parties agree on a range of punishment to be proposed by the state prosecutor if the defendant cooperates substantially, whereas if the court imposes a sentence outside of this range to the detriment of one party, that party is entitled to appeal against the decision on the sentence.

13. The written plea agreement must be presented to the court in a hearing open to the public, except as provided in paragraph 16. of this Article.

14. If the written plea agreement is negotiated prior to indictment, a separate indictment for the defendant subject to the plea agreement is filed concurrent with the plea agreement. They may both be presented in a sealed and stamped envelope. The initial hearing with the single trial judge or presiding trial judge may also serve as a hearing under this Article.

15. The court may officially accept or reject the plea agreement in accordance with the conditions to be considered in paragraph 17. of this Article. The guilty plea agreement enters into effect only after it is officially accepted by the court on the record.

16. If the defendant agrees to be a co-operative witness and when the foreseen measures in Chapter XIII of this Code are ensured to him, upon the request of either party, the court may order the hearing to consider the guilty plea agreement to be closed to the public and may order the written plea agreement to be sealed.

17. In considering whether to accept the guilty plea agreement, the court must question the defendant, his defense counsel and the state prosecutor, and shall determine whether:

17.1. the defendant understands the nature and the consequences of the guilty plea;

17.2. the guilty plea is voluntarily made by the defendant after sufficient consultation with defense counsel, if defendant has a defense counsel, and the defendant has not been forced to plead guilty or coerced in any way;

17.3. the guilty plea is supported by the facts and material proofs of the case that are contained in the indictment, by the 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 defendant; and

17.4. none of the circumstances under Article 248, paragraph 1. of this Code exists.

18. In considering the guilty plea agreement, the court must invite the views of the state prosecutor, the defense counsel and the injured party. If the defendant's agreement to cooperate and plead guilty is under seal pursuant to paragraph 16. of this Article, the court permits the injured party to make a statement at the end of defendant's cooperation, prior to sentencing.

19. If the court is not satisfied that all of the conditions set forth in paragraph 17. of this Article are fulfilled, the court rejects the guilty plea and the case proceeds to trial as provided for by this Code.

20. If the court is satisfied that all of the conditions in paragraph 17. of this Article are established, the court accepts the guilty plea agreement and orders that the agreement be filed with the court. The court sets a date for the parties to make their statements regarding sentencing after which the court imposes the punishment. This date, however, may be deferred for the defendant to serve as a co-operative witness.

21. After the court accepts the guilty plea and the written plea agreement, but before the punishment is imposed, the court may not permit defendant to withdraw the guilty plea or the state prosecutor to rescind the plea agreement unless the court finds that any of the conditions in paragraph 17. of this Article are no longer satisfied. The party seeking to withdraw from the agreement bears the burden of proof in making such application to the court.

CHAPTER XV
COOPERATIVE WITNESSES

Article 231
Cooperative Witnesses

1. The suspected person or the defendant of one or more criminal offences committed in co-perpetration may obtain the status of a cooperating witness by entering into a cooperation agreement with the state prosecutor, when:

1.1. there is a chance to prevent other criminal offences by another person;

1.2. there is a chance to lead towards the finding of truth in criminal proceedings;

1.3. the agreement was made voluntarily and in full accordance to testify about the truth;

1.4. it may lead towards the successful criminal prosecution of the other perpetrators of the criminal offence.

2. The agreement from paragraph 1. of this Article includes the conditions of cooperation and may be entered into at any stage of the criminal proceeding, even after the decision becomes final and is executed.

3. The agreement is entered into when the defendant testifies on all the facts and circumstances for which he is aware as a result of his participation in the criminal activity and identifies all the assets that derive from criminal activity that are under his possession or the possession of his accomplices.

4. A cooperating witness may request special protection for himself or his family pursuant to the legislation for the protection of witnesses.

5. A cooperating witness is interviewed in the capacity of a witness. He bears criminal liability in accordance with the law for any false statement or testimony.

6. A cooperation agreement is revoked and the state prosecutor initiates or continues criminal prosecution against the cooperating witness, if the cooperating witness:

6.1. violates the conditions of the cooperation agreement;

6.2. hides facts that are in the interest of justice;

6.3. makes false statements or gives false testimony;

6.4. commits a new criminal offense before the conclusion of the criminal proceedings, except for a criminal offence committed by negligence.

7. If an agreement with a cooperating witness is revoked, no statement or information given by the cooperating witness shall be used in the criminal proceedings against him even after he takes the capacity of a defendant. The material evidence obtained in a lawful manner as a result of a statement or information given by the cooperating witness is admissible.

8. If an agreement with a cooperating witness is revoked, the reliability of the statement or the information given by a cooperating witness is examined by the court in relation to co-defendants.

9. An agreement with a cooperating witness includes:

9.1. the identity of the state prosecutor and the personal data of the cooperating witness;

9.2. the obligation of the cooperating witness to testify in the capacity of a witness;

9.3. the obligation of the cooperating witness to give full information on all the facts and circumstances from paragraph 3. of this Article;

9.4. the warning on the revocation of agreement and criminal liability for instances under paragraph 5. of this Article;

9.5. the right of the cooperating witness to request a plea agreement with the state prosecutor, including proposed sentencing;

9.6. the possibility of the state prosecutor to recommend a mitigation of punishment, including under the limits of mitigation of punishment, in proportion to the extent of his contribution in cooperating with justice;

9.7. the right of the cooperating witness to request special protection under paragraph 4. of this Article;

9.8. the signature of the state prosecutor, the chief prosecutor of the respective prosecution office, the cooperating witness, and the defense counsel if present.

10. The statements of the cooperating witness and the agreement shall become part of the case file. The cooperation agreement shall not be disclosed to the opposing party.

11. The cooperating witness is obliged to tell the truth and not to hide any information relevant to the case.

12. The person who is convicted as an organizer of an organized criminal group or the person who is sentenced to life-long imprisonment shall not be a cooperating witness.

13. Before making a statement, the cooperating witness is warned that Article 126 of this Code does not apply to him. After the cooperating witness states that he will answer the questions regarding the criminal offences even when there is a chance that in doing so he may expose him or herself or a close relative to serious disgrace, considerable material damage or criminal prosecution, the cooperating witness gives a written statement in which he states that:

13.1. he testifies the truth as a witness in a criminal proceeding and does not hide any information relevant to the criminal offence or its perpetrators;

13.2. he testifies the truth as a witness in a criminal proceeding and does not hide any information relevant to other criminal offences or its perpetrators;

13.3. he testifies the truth as a witness in a criminal proceeding and does not hide any information relevant to the obtained assets, material benefit, other income, items or circumstances related to the criminal offense; and

13.4. he does not know anything else regarding the above subparagraphs other than what he shall testify.

14. Such warnings and notifications are added in the record and signed by the cooperating witness.

Article 232
Notice to the Defendant Identifying Cooperating Witness

1. If the state prosecutor intends to call a cooperative witness to testify at trial, the state prosecutor gives written notice to defendants who are pending trial, his defense counsel and the single trial judge or presiding trial judge at least fourteen (14) days before the commencement of the main trial.

2.The state prosecutor may request the single trial judge or presiding trial judge to file this notice with protection and secrecy measures under Chapter XIII of this Code if the state prosecutor includes information in the notice that the cooperative witness will be placed in danger should the notice be available to the public. The court promptly rules on this request.

3. This notice by the state prosecutor provides a summary of the expected testimony and the relevance to the trial, along with any police reports or other written materials documenting the information provided by the cooperative witness.

Article 233
Reducing Sentence of Cooperative Witness after Judgment

1. Upon the state prosecutor’s motion made within one (1) year of sentencing of a defendant, the single trial judge or presiding trial judge may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person, or otherwise provided truthful information to the state prosecutor as defined by this Article.

2. Upon the state prosecutor’s motion made more than one (1) year after the sentence was imposed, the single trial judge or presiding trial judge may reduce a sentence if the defendant’s substantial assistance or truthful information involved:

2.1. information not known to the defendant until one (1) year or more after the sentence;

2.2. information provided by the defendant to the state prosecutor within one (1) year of the sentence, but which did not become useful to the state prosecutor until more than one (1) year after the sentence; or

2.3. information the usefulness of which could not reasonably have been anticipated by the defendant until more than one (1) year after the sentence and which was promptly provided to the state prosecutor after its usefulness was reasonably apparent to the defendant.

3. In evaluating whether the defendant has provided substantial assistance or truthful information, the single trial judge or presiding trial judge may consider the defendant's assistance provided before the original sentence was imposed.

4. When acting under this Article, the single trial judge or presiding trial judge may reduce the sentence below the minimum sentence established by law.

CHAPTER XVI
INDICTMENT AND PLEA STAGE

Article 234
Filing of Indictment

1. After the investigation has been completed and when the state prosecutor considers that the information that he has in relation to the criminal offense and the offender provide a well-grounded suspicion that the defendant has committed a criminal offense or criminal offenses, proceedings before the court may be conducted only on the basis of an indictment filed by the state prosecutor.

2. In cases when the defendant has fled or when from other reasons his presence cannot be obtained by prosecuting authorities, the state prosecutor may file an indictment even if the defendant has not been interviewed during pretrial interviews or pretrial testimony. The indictment under this paragraph is only filed after the state prosecutor has exhausted all the efforts to locate the defendant from Articles 172, 173, 534 and 535 of this Code.

3. If the investigation is completed and there is insufficient evidence to support a well-grounded suspicion that the defendant has committed a criminal offense or criminal offenses, the state prosecutor files a ruling that terminates the investigation.

4. The indictment is filed no later than three (3) months after the expiry of the investigation deadline.

5. If an indictment is filed by the state prosecutor after the deadline provided for in paragraph 4. of this Article, the single trial judge or presiding trial judge dismisses the indictment.

Article 235
Indictment

1. The indictment contains:

1.1. an indication of the court before which the main trial is to be held; and

1.2. the first name and surname of the defendant and his personal data;

1.3. an indication as to whether and for how long detention on remand or other measures

to ensure the presence of defendant were ordered against the defendant, whether he is at liberty and, if he was released prior to the filing of the indictment, how long he was held in detention on remand;

1.4. the legal name of the criminal offense with a citation of the provisions of the Criminal Code;

1.5. the time and place of commission of the criminal offense, the object upon which and the instrument by which the criminal offense was committed;

1.6. 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.

1.7. 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;

1.8. the identity of the injured party or victim known to the state prosecutor, if any;

1.9. detail any property subject to confiscation known to the state prosecutor at the time of the filing of the indictment, including information on the holder, respectively the owner and third parties who have an interest on the property, as well as the reasoning of the confiscation request.

1.10. the proposal of mitigating and aggravating circumstances that are known at the time of filing of the indictment, which may be relevant in rendering an appropriate decision.

2. If the defendant is at liberty, the state prosecutor may make a motion in the indictment that detention on remand be ordered; if the defendant is in detention on remand, the state prosecutor may make a motion that he be released.

3. A single indictment may be filed for several criminal offenses or against several defendants only when, in accordance with Article 34 of this Code, joint proceedings may be conducted.

4. Upon receiving the indictment, the single trial judge or presiding trial judge checks whether the indictment is drawn up in accordance with paragraph 1. of this Article. If he finds that it does not comply with the provisions of paragraph 1. of this Article, he returns it to the state prosecutor to amend within the deadline set forth by the court. The single trial judge or presiding trial judge may, on the motion of the state prosecutor, extend this prescribed period of time for good reason. If the state prosecutor fails to observe the time limit it is considered that he has refrained from prosecution and the indictment is deemed withdrawn. The single trial judge or the presiding trial judge renders a ruling pursuant to Article 357, paragraph 1., subparagraph 1.3. of this Code.

5. When the criminal proceedings are initiated pursuant to the motion of the state prosecutor, the provisions from paragraph 1. and 2. of this Article apply mutatis mutandis regarding the content of the motion.

Article 236
Procedure for Filing the Indictment

1. The indictment is filed in the competent court in as many copies as there are defendants and their defense counsel, plus one copy for the court. A complete file on the investigation is also submitted to the court by the state prosecutor.

2. The court assigns a single trial judge or presiding trial judge and trial panel based on an objective and transparent case allocation system, as appropriate.

3. The single trial judge or presiding trial judge may ex officio determine whether it has jurisdiction over the matter within the indictment.

4. The single trial judge or presiding trial judge immediately schedules an initial hearing to be held within thirty (30) days of the indictment being filed.

5. If the defendant is being held in detention on remand, the initial hearing is held at the first opportunity, not to exceed fifteen (15) days from the indictment being filed.

6. The single trial judge or presiding trial judge notifies the state prosecutor, defendant, defense counsel, the injured party or victim and victim advocate or victim's representative, of the time and place of the initial hearing.

Article 237
Access to the Indictment by the Public

1. The indictment is not public until the initial hearing is held pursuant to Article 240 of this Code and as further provided in this Article.

2. From the moment of filing the indictment and until the initial hearing, the court at the request of the parties shall enable the access to initials of the defendant, legal qualification of the criminal offense and brief description of the provisions of the indictment.

3. The following parts of the indictment are never public:

3.1. month and day of birth of any defendant;

3.2. address of any defendant;

3.3. personal number of any defendant;

3.4. any information related to persons subject to protection under Chapter XIII of this Code;

3.5. any identifying information related to cooperative witnesses under Article 232 of this Code; and

3.6. any identifying information related to undercover investigators or individuals who have assisted in undercover investigations.

4. A copy of the parts of the indictment referred to in paragraph 2. of this Article is provided to any person upon a request to the court where the indictment has been filed as provided by paragraph 6. of this Article. To assist the court in complying with this Article, the state prosecutor files a document with the court which includes the information in paragraph 2. of this Article at the same time as the filing of the indictment. The provisions of paragraph 1. of this Article apply mutatis mutandis to this document filed by the state prosecutor.

5. Court personnel shall provide access to the portions of the indictment referred to in paragraph 2. of this Article to the person making a request within two (2) working days. The person making the request is responsible to appear at the court to obtain it.

6. Nothing in this Article precludes the state prosecutor from reading or summarizing the indictment as required by Article 241 paragraph 3. and Article 320 of this Code.

7. Nothing in this Article precludes a member of the press or public from publishing information disclosed in a public court proceeding or limits the timing of such publication.

8. This Article does not apply in juvenile cases, in cases of criminal offenses committed within a

domestic relationship and in cases in which a victim's or third parties' sexual integrity is involved.

Article 238
Filings Supplemental to the Indictment

1. Concurrent with filing the indictment, the state prosecutor files the following documents if appropriate:

1.1. the state prosecutor files a notice of corroboration of evidence under Article 258 of this Code with any statement taken under Article 129 of this Code or evidence obtained under Article 215, paragraph 6. of this Code that he intends to submit as direct evidence which could not be challenged by the defendant or defense counsel though questioning during some stage of the criminal proceedings. The notice of corroboration of evidence describes the independent evidence that corroborates the statement that the state prosecutor intends to submit as direct evidence. This notice of corroboration of evidence may be supplemented or filed at a later date if a witness for whom this provision applies is no longer available to testify at the main trial.

1.2. the state prosecutor files a request to continue or implement any measure to ensure the presence of the defendant. Articles 171 through 190 of this Code apply mutatis mutandis to any request under this paragraph.

2. The state prosecutor may file notices of corroboration or requests under this Article at other times if he could not know the basis for filing the notice or request at the time the indictment was filed.

Article 239
Materials Provided to Defendant upon Indictment

1. No later than at the filing of the indictment the state prosecutor provides the defense counsel or lead counsel or defendant if not represented by a defense counsel with one copy of the following materials or copies thereof which are in his possession, control or custody, including those in the possession, control or custody of the police, if these materials have not already been given to the defense counsel during the investigation:

1.1. records of statements or confessions, signed or unsigned, by the defendant;

1.2. names of witnesses whom the state prosecutor intends to call to testify and any prior statements made by those witnesses;

1.3. information identifying any persons whom the state 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;

1.4. results of physical or mental examinations, scientific tests or experiments made in connection with the case;

1.5. criminal reports and police reports; and

1.6. a summary of, or reference to, tangible evidence obtained in the investigation.

2. The statements of the witnesses are made available in a language which the defendant understands and speaks.

3. After the filing of the indictment, the state prosecutor provides the defense counsel with any new materials provided for in paragraph 1. of this Article within ten (10) days of their receipt.

4. The provisions of this Article are subject to the measures protecting injured parties, witnesses

and their privacy and confidential information, as provided for by law.

5. When the state prosecutor fails to comply with obligations from paragraph 1. of this Article, the chief prosecutor of the office is notified.

Article 240
The Initial Hearing

1. At the initial hearing, the state prosecutor, defendant or defendants, and defense counsel shall be present.

2. The injured party or the victim and the victim advocate or the victim`s representative shall be notified of the initial hearing and they shall have the right to be present but their absence shall not be an obstacle for holding the session.

3. During the initial hearing, the single trial judge or presiding trial judge provides copies of the indictment to the defendant or defendants, if they have not already received copies of the indictments despite the state prosecutor's reasonable effort to deliver them.

4. During the initial hearing, the single trial judge or presiding trial judge rules on any motion to extend or implement measures to ensure the presence of the defendant.

5. During the initial hearing, the single trial judge or presiding trial judge ensures that the state prosecutor has fulfilled the obligation relating to the disclosure of evidence under Article 239 of this Code.

6. During the initial hearing, the single trial judge may, in accordance with Article 229 of this Code refer the case to mediation.

7. At the beginning of the initial hearing, the single trial judge or presiding trial judge informs the defendant and defense counsel that they may file the following motions by a date set no more than thirty (30) days after the initial hearing:

7.1. any objections to the evidence listed in the indictment as provided in Article 243 of this Code; and

7.2. any requests to dismiss the indictment as provided in Article 244 paragraph 1. of this Code.

8. No witness or expert witness is examined or other evidence presented during the initial hearing, unless the witness is required for the decision to extend or implement measures to ensure the presence of the defendant under paragraph 3. of this Article.

Article 241
Plea

1. At the beginning of the initial hearing the single trial judge or presiding trial judge instructs the defendant of the rights not to plead his case or to answer any questions and, if he pleads his case, not to incriminate himself or his close relative, nor to confess guilt; to defend himself in person or through legal assistance by a defense counsel of his own choice; to object to the indictment; and to challenge the admissibility of evidence presented in the indictment.

2. The single trial judge or presiding trial judge then satisfies himself that the right of the defendant to defense counsel has been respected and that the state prosecutor has fulfilled the obligation relating to the disclosure of evidence under Article 239 of this Code.

3. The state prosecutor reads the indictment to the defendant, excluding the parts of the indictment specified in paragraph 3. of Article 237 of this Code, unless the defendant agrees to

waive the reading of the indictment. If the defendant waives the reading of the charges in the indictment against him, the state prosecutor summarizes the content of the indictment.

4. The single trial judge or presiding trial judge satisfies himself 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 single trial judge or presiding trial judge calls on the state 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 guilt, he is considered to have pleaded not guilty.

5. If the defendant decides to enter a guilty plea, the procedures of Article 230 of this Code apply.

Article 242
Guilty Plea and Imposition of Penal Sanction during the Initial Hearing

1. A defendant may plead guilty at the initial hearing to all charges in the indictment, or the defendant may plead guilty to particular charges of the indictment if more than one charge is alleged.

2. Where the accused pleads guilty on each count or some of the counts of the indictment under Article 241 of this Code or this Article, the single trial judge or presiding trial judge determines whether:

2.1. the accused understands the nature and consequences of the guilty plea;

2.2. the guilty plea is voluntarily made by the accused after sufficient consultation with defense counsel, if the accused has a defense counsel, and the plea of guilty did not result from force, threats, or promises, other than promises in a plea agreement under Article 230 of this Code;

2.3. the guilty plea is supported by the facts of the case that are contained in the indictment, materials presented by the state prosecutor to supplement the indictment and accepted by the accused; and any other evidence, such as the testimony of witnesses, presented by the state prosecutor or the accused; and

2.4. the indictment does not contain any obvious legal errors or factual misstatements.

3. During this discussion between the single trial judge or presiding trial judge with the defendant regarding the factual basis for the plea, a defendant's failure to admit each allegation in the indictment regarding how the criminal offense was committed shall not be a reason to reject a guilty plea, if the defendant's admissions establish each element of the criminal offense.

4. If the single trial judge or presiding trial judge is not satisfied that the defendant understands the nature and consequences of a plea of guilty and the requirements of paragraph 2. of this Article are not established, the single trial judge or presiding trial judge renders a ruling to reject the guilty plea and proceed with the initial hearing or other hearings.

5. The state prosecutor notifies any victim or injured party of the date and time of the defendant's guilty plea so the victim or injured party can be present for the hearing and make a statement pursuant to Article 356 of this Code. In considering any guilty plea, or a guilty plea pursuant to a negotiated plea agreement under Article 230 of this Code, the single trial judge or presiding trial judge invites the views of the state prosecutor, the defense counsel, and the injured party or victim.

6. If the single trial judge or presiding trial judge is satisfied that the matters provided for in paragraph 2. of this Article are established, he renders a ruling to accept the guilty plea made by the defendant and proceeds with sentencing, schedules a hearing pursuant to Article 356 of

this Code to determine a matter relevant for sentencing, or suspends sentencing pending the completion of the cooperation by the defendant with the state prosecutor.

7. The provisions of Article 322, paragraph 5. of this Code apply mutatis mutandis in cases when there is more than one defendant and one of them does not plead guilty.

8. In cases when the accused has plead guilty only on one criminal offense or some of the criminal offenses for which he is accused, the single trial judge or presiding trial judge may:

8.1. adjourn the imposition of a penal sanction until the conclusion of the main trial;

8.2. severe the proceedings for this part of the indictment and impose the penal sanction; or

8.3. continue the main trial for the criminal offense or offenses for which he did not plead guilty.

9. The defendant who pleads not guilty during the initial hearing may change his statement and plead guilty at any time. For any defendant wishing to plead guilty under this paragraph, the single trial judge or presiding trial judge shall appropriately apply the review under this Article.

Article 243
Objections to Evidence

1. The defendant may file objections to the evidence listed in the indictment within the deadline foreseen in Article 240 paragraph 7. of this Code, based upon the following grounds:

1.1. the evidence was not lawfully obtained by the police, state prosecutor, or other government entity;

1.2. the evidence violates the rules in Chapter XVII of this Code; or

1.3. there is an articulable ground for the court to find the evidence intrinsically unreliable.

2. The state prosecutor is given an opportunity to respond to the objection in writing.

3. For all evidence where an objection has been filed, the single trial judge or presiding trial judge issues a written reasoned decision that permits or excludes the evidence within fifteen (15) days from the day of the expiration of the time limit set for the state prosecutor to file a response as provided for in paragraph 2. of this Article or from the hearing set by the court to consider the objection as provided for in Article 247 of this Code.
4. Inadmissible evidence is excluded from the file and sealed. Such evidence is 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. All evidence where no objection has been filed is admissible at the main trial, unless the court ex officio determines that the admission of the evidence would violate rights guaranteed to the defendant under the Constitution of the Republic of Kosovo.

6. Either party may appeal a ruling under paragraph 3. of this Article. The appeal must be made within ten (10) days of the receipt of the written decision.

Article 244
Request to Dismiss Indictment

1. The defendant may file a request to dismiss the indictment within the deadline foreseen in Article 240 paragraph 7. of this Code, based upon the following grounds:

1.1. the offense charged is not a criminal offense;

1.2. circumstances exist which exclude criminal liability;

1.3. the period of statutory limitation has expired, a pardon covers the offense, or other circumstances exist which bar prosecution;

1.4. the defendant and the injured party have entered in a mediation agreement;

1.5. there is not sufficient evidence to support a well-grounded suspicion that the defendant has committed the criminal offense in the indictment;

1.6. the indictment has not been filed within the deadline provided under Article 234 of this Code; or

1.7. the indictment is in violation of the law.

2. The state prosecutor is given an opportunity to respond to the request verbally or in writing.

3. The single trial judge or presiding trial judge issues a written reasoned decision that either denies the request or dismisses the indictment within fifteen (15) days from the day of the expiration of the time limit set for the state prosecutor to file a response as provided for in paragraph 2. of this Article or from the hearing set by the court to consider the objection as provided for in Article 247 of this Code.

4. Either party may appeal a ruling under paragraph 3. of this Article. The appeal must be made within ten (10) days of the receipt of the written decision.

Article 245
Responses

1. The state prosecutor has the opportunity to respond to an objection under Article 243 or a request under Article 244 of this Code.

2. The response under paragraph 1. of this Article shall be in writing.

3. The single trial judge or presiding trial judge provides the state prosecutor with fifteen (15) days to file a written response to an objection under Article 243 of this Code or a request under Article 244 of this Code.

4. In lieu of a response to a request under Article 244 of this Code, the state prosecutor may file an amended indictment under Article 246 of this Code.

Article 246
Amended Indictment

1. If a request to dismiss the indictment filed by the defendant under Article 244 of this Code can be remedied by amending the indictment, the state prosecutor files an amended indictment in accordance with Article 235 of this Code within fifteen (15) days of receiving the defendant's request to dismiss the indictment.

2. If an amended indictment is filed against one defendant or multiple defendants, the single trial judge or presiding trial judge schedules an initial hearing under Article 240 of this Code as though the indictment was new.

3. The defendants may file any new objections under Article 243 or requests under Article 244 of this Code, but only as to those parts of the indictment that have been amended.

4. The defendant may renew his previous objections under Article 243 or requests under Article 244 of this Code. If he does not renew his previous objections or requests, the single trial judge or presiding trial judge concludes that those objections or requests are not relevant to the amended indictment and does not consider them further.

5. The state prosecutor may only amend the indictment once, unless he has obtained new information that requires the indictment to be amended.

Article 247
Hearings to Determine Validity of Motions

1. If the single trial judge or presiding trial judge determines that a hearing is necessary, to evaluate the defendant's objections under Article 243 or requests under Article 244 of this Code, he schedules and conducts a hearing as soon as possible, but within fifteen (15) days after the date of the filing of the defendant's motions and responses by the state prosecutor, if any.

2. The single trial judge or presiding trial judge issues a written decision with reasoning as soon as possible after the hearing held under this Article, but no later than fifteen (15) days from the day of the hearing held under this Article.

Article 248
Dismissal of Indictment and Termination of the Procedure

1. For every request to dismiss the indictment under Article 244 of the present Code, the single trial judge or presiding trial judge renders a ruling to dismiss the indictment and to terminate the criminal proceedings if he determines that:

1.1. the offense charged is not a criminal offense;

1.2. circumstances exist which exclude criminal liability;

1.3. the period of statutory limitation has expired, an amnesty or pardon covers the offense, or other circumstances exist which bar prosecution;

1.4. the defendant and the injured party have entered into a mediation agreement that has been formally accepted by the court;

1.5. there is not sufficient evidence to support a well-grounded suspicion that the defendant has committed the criminal offense in the indictment;

1.6. the indictment has not been filed within the deadline provided under Article 234 of this Code.

2. In rendering a ruling under the present Article, the single trial judge or presiding trial judge is not bound by the legal designation of the criminal offense as set forth by the state prosecutor in the indictment.

3. In response to a request under Article 244 of the present Code, the state prosecutor may withdraw from the indictment if the request has merit.

Article 249
Confirmed Indictment and Scheduling of the Main Trial

1. The single trial judge or presiding trial judge schedules the main trial as provided for in Article 280 of this Code when the indictment is confirmed, namely when:

1.1. the defendant does not file objections to the evidence pursuant to Article 243 of this Code or request to dismiss the indictment pursuant to Article 244 of this Code;

1.2. no appeal was filed by the parties against a decision confirming the indictment rendered by the single trial judge or presiding trial judge pursuant to Article 243 paragraph 3 of this Code or Article 244 paragraph 3 of this Code; or

1.3. the Court of Appeals confirmed the indictment by the issuance of a ruling on appeals against a decision issued pursuant to Article 243 paragraph 3 of this Code or against a decision issued pursuant to Article 244 paragraph 3 of this Code.

2. The single trial judge or presiding trial judge schedules the main trial to commence within thirty (30) days from when the indictment is confirmed pursuant to paragraph 1 of this Article.

Article 250
Materials Provided by the Defense

1. Once the indictment is confirmed, the defense provides to the state prosecutor by a date set by the single trial judge or presiding trial judge no more than thirty (30) days after the initial hearing:

1.1. notice 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 offense and the names of witnesses and any other evidence supporting the alibi;

1.2. notice of the intent to present a ground for excluding criminal liability, specifying the names of witnesses and any other evidence supporting such ground; and

1.3. notice of the names of witnesses whom the defense intends to call to testify.

2. The defense counsel may supplement the information provided in paragraph 1 of this Article to the state prosecutor in writing at any time prior to court trial.

3. If the defense counsel has not performed the duty under paragraphs 1 and 2 of this Article and the court finds no justifiable reasons for such omission, the court may impose a fine of up to two hundred and fifty (250) EUR upon the defense counsel and inform the Kosovo Bar Association of this.

CHAPTER XVII
EVIDENCE

Article 251
General Rules of Evidence

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

2. Evidence obtained in violation of the provisions of criminal procedure is inadmissible when the present Code or other provisions of the law expressly so prescribe.

3. The court cannot base a decision on inadmissible evidence.

4. In any questioning or examination it is prohibited to:

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

4.2. threaten the defendant with measures not permitted under the law;

4.3. hold out the prospect of an advantage not envisaged by law; and

4.4. impair the defendant's memory or his ability to understand.

5. The prohibition under paragraph 4 of the present Article applies irrespective of the consent of the subject of the questioning or examination.

6. If questioning or examination has been conducted in violation of paragraph 4 of the present Article, no record of such questioning or examination is admissible.

Article 252
Evidence and Order within the Court

1. The single trial judge or presiding trial judge is responsible for the orderly functioning of the main trial, including the taking of evidence.

2. The court may prevent evidence from being taken if:

2.1. the taking of such evidence to supplement other evidence is unnecessary or is superfluous because the matter is common knowledge;

2.2. the fact to be proven is irrelevant to the decision or has already been proven;

2.3. the evidence is wholly inappropriate, impossible or unobtainable; or

2.4. the application is made to prolong the proceedings.

3. The court may prevent the taking of evidence or exclude evidence.

Article 253
Inadmissibility of Manifestly Irrelevant or Intrinsically Unreliable Evidence

1. Any evidence that is unrelated to the proving of an element of the criminal offense, the damage caused by the criminal offense, a defense to the prosecution, or other relevant issue may be ruled to be manifestly irrelevant and is inadmissible.

2. Any evidence that is intrinsically unreliable as defined in Article 19, paragraph 1, sub-paragraph 1.30 of the present Code is inadmissible.

Article 254
Inadmissible Evidence in Cases of Criminal Offenses of Sexual Nature

1. Any evidence that is related to the past sexual conduct of the witness, injured party or victim is ruled to be inadmissible in criminal proceedings of criminal offenses of sexual nature, unless relevant and strictly necessary and not degrading to the witness, victim or injured party.

2. Specifically, such evidence may be relevant only in the following instances involving criminal offenses of a sexual nature:

2.1. to prove that the semen, injuries or any other physical evidence derives from a person other than the defendant;

2.2. to prove consent based on a prior sexual conduct between the defendant and the witness, victim or injured party.

3. Prior sexual conduct is not used as a sole or decisive evidence proving consent.

Article 255
Consideration of Admissible Evidence at Main Trial

1. Once the single trial judge or presiding trial judge excludes evidence in accordance with Article 243 of the present Code, that evidence may only be considered by the court upon retrial if the ruling by the single trial judge or presiding trial judge to exclude is reversed on appeal.

2. Evidence may be considered by the single trial judge or presiding trial judge during the main trial if it is not excluded under Article 243 of this Code or is not inadmissible under Article 253 of the present Code.

3. The single trial judge, presiding trial judge or a member of the trial panel, assesses the credibility, relevance and probative value of evidence that is admitted under paragraph 2 of the present Article.

Article 256
Prior Statements Used at Main Trial

1. A statement by the defendant given to the police or the state prosecutor may be admissible evidence in court only when taken in accordance with the provisions of Article 74 paragraph 2, Article 128 or Article 129 and in accordance with Articles 149 through 153 of the present Code. Such statements can be used to challenge the testimony of the defendant in court or as direct evidence in accordance with Article 257 paragraph 2 of the present Code.

2. Pre-trial interviews may be used as evidence in accordance with Article 119 paragraph 2 of the present Code.

3. Pre-trial testimony may be used as evidence in accordance with Article 119 paragraph 3 of the present Code.

4. A special investigative opportunity may be used as evidence in accordance with Article 119 paragraph 4 of the present Code.

Article 257
Limitations on Evidence

1. The court does 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 defense counsel through questioning during some stage of the criminal proceedings.

2. The court does not find the accused guilty based solely, or to a decisive extent, upon statements given by the defendant to the police or the state prosecutor.

3. The court does 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 defense counsel and the accused.

4. The court does not find any person guilty based solely on the evidence of testimony given by the cooperative witness.

Article 258
Notice of Corroboration of Evidence

1. A state prosecutor who intends to rely on prior statements under Article 256 or evidence obtained under Article 215 paragraph 6 of the present Code, shall file a notice of corroboration of evidence.

2. A notice of corroboration of evidence contains:

2.1. a description of the testimony, statements or other evidence upon which the state prosecutor intends to rely that would be limited under Article 257 of the present Code;

2.2. a brief description of any other testimony, documents or evidence that corroborates the incriminating information in the evidence listed under sub-paragraph 2.1 of this paragraph.

3. The notice of corroboration of evidence is filed with the indictment, but no later than the start of the main trial.

CHAPTER XVIII
RESTRAINT OF PROPERTY SUBJECT TO CONFISCATION

Article 259
General Provisions

1. Restraint proceedings are:

1.1. proceedings for a temporary restraint order; and

1.2. proceedings for a final restraint order.

2. Applications in restraint order proceedings are to be dealt with by the court in writing and without a hearing, unless the court dealing with the application orders otherwise, and subject to Article 263 of this Code.

3. The burden of proof on the state prosecutor in restraint proceedings is the grounded suspicion.

4. All decisions of the court regarding applications submitted under this Chapter are by way of a court order supported by reasoning, and are served on the state prosecutor, defendant and any third party named in the restraint order within forty-eight (48) hours of being issued.

Article 260
Temporary Restraint Order

1. If the state prosecutor has a grounded suspicion that property is specified property, the state prosecutor may issue a temporary restraining order prohibiting any person named in the order from dealing with the specified property in the order.

2.The prohibition from dealing with the specified property includes, but not exclusively:

2.1. the sale of specified property;

2.2. the transfer of ownership of specified property;

2.3. the gift of specified property;

2.4. the decrease in value of specified property;

2.5. the withdrawal from a bank account of specified property;

2.6. the use of any rental monies received from specified property;

2.7. the management of specified property;

2.8. any act that adversely affects the preservation of the value of specified property.

3.The temporary restraint order issued by the state prosecutor:

3.1. describes the specified property that is included in the order;

3.2. describes the articulable evidence which demonstrates the relevant grounded suspicion specified in paragraph 1 of this Article;

3.3. describes the necessity for the temporary restraint order to preserve the availability of the specified property for future confiscation, including preventing the dissipation or depreciation in value of the specified property;

3.4. orders the recipient of the order to prevent any dealing with specified property for a period of seven (7) days from the issuance of the temporary restraint order;

3.5. details all persons known to the state prosecutor that may have an interest in the specified property; and

3.6. states the time of issuance and the time of expiration of the temporary restraint order.

4. The temporary restraint order issued by the state prosecutor may include the temporary sequestration of specified property, which is executed by the police who take custody of the specified property and maintain it pursuant to Article 110 of this Code until further order of the court.

5. If the person or entity who possesses specified property that is subject to temporary sequestration in a temporary restraint order issued by a state prosecutor, as detailed in paragraph 4 of this Article, refuses to deliver the specified property to the authorized police officer responsible for executing the order, that person or entity is subject to prosecution for Obstruction of Evidence or Official Proceedings under Article 386 of the Criminal Code, and a fine by the pre-trial judge of up to fifty percent (50%) of the value of the specified property. The person or entity subject to such a fine may appeal the fine within seven (7) days from its imposition or may negate the fine by complying with the temporary restraint order immediately but no later than seven (7) days from the moment the decision to impose the fine becomes final.

6. Any bank or financial institution which receives the temporary restraint order immediately informs the state prosecutor of the amount of money in the account and complies with the order and immediately prevents any further activity from occurring with the bank account or any other specified property at the bank described in the order which decreases the amount of monies in the bank account, or decreases the value of the specified property.

7. Any other party which receives the temporary restraint order under this Article shall comply with the terms of the order and prevent any activity which decreases the value of the specified property.

8. A temporary restraint order under this Article has the effect for seven (7) days from the issuance of the temporary restraint order until the conditions for filing an application for final restraint are met as set forth in paragraph 9 or 10 this Article.

9. The state prosecutor submits an application for a final restraint under Article 261 of this Code within seven (7) days of the temporary restraint order being issued. If the state prosecutor has filed an application for final restraint, the temporary restraint order remains valid until the court decides on the application for the final restraint order.

10. The state prosecutor informs any bank, or financial institution, or any other party which receives the temporary restraint order, that an application has been submitted for a final restraint order and that the temporary restraint order remains valid until the court decides on the application for the final restraint order.

11. If the state prosecutor does not apply for a final restraint order as set forth in Article 261 of this Code, the temporary restraint order is no longer valid and any specified property in the temporary restraint order is released from the temporary restraint order and returned to the owner as set forth in Article 110 paragraph 13 and Article 113 of this Code unless:

11.1. the specified property is needed for evidence, as set forth in Article 110 paragraph 15 of this Code, in which situation it will be transferred to the police to maintain under Article 110 of this Code until the conclusion of the criminal proceedings, and then disposed of pursuant to the Articles on the disposition of evidence after the conclusion of a criminal proceedings; or

11.2. the specified property is subject to automatic confiscation as provided in Article 276 of this Code.

12. A temporary restraint order may include specified property that is located both inside and outside the Republic of Kosovo.

13. Where the state prosecutor believes that specified property is situated in a state or territory outside the Republic of Kosovo, he requests assistance from the government of such state or territory to enforce the temporary restraint order and any subsequent final restraint order in such state or territory, in accordance with the law on mutual legal assistance in force.

Article 261
Application for Final Restraint Order

1. The application for a final restraint order to the competent court contains the following:

1.1. a copy of the temporary restraint order, unless the application for the final restraint order is pursuant to Article 103, paragraph 6, Article 107, paragraph 4 sub-paragraph 4.2, Article 108, paragraph 4 sub-paragraph 4.2 or Article 110 paragraph 15 of this Code;

1.2. a description of the articulable evidence which demonstrates the grounded suspicion that the property is specified property;

1.3. a description of the necessity for the final restraint order to preserve the availability of the specified property for future confiscation including preventing the dissipation or depreciation in the value of the specified property;

1.4. details of all persons known to the state prosecutor that may have an interest in the specified property; and

1.5. details of the temporary measures requested by the state prosecutor to secure any specified property that has been temporarily sequestrated.

2. The state prosecutor serves a copy of the application for final restraint on the defendant and any person named in the temporary restraint order, or person who may have an interest in the specified property. If a copy of the application cannot be served upon every person named in the final restraint order, the state prosecutor makes a reasonable effort to inform every person in the final restraint order of the existence and consequences of the application for a final restraint order.

3. Reasonable efforts in paragraph 2 of this Article include mailing the application to the last known address of the defendant or person, mailing the application to the counsel for the defendant or person, publishing the application on the notice-board of the municipal assembly in the territory where the defendant lives, in the territory where the criminal offense was committed, and in the territory where the evidence, instrumentality, or material benefit was located, or publication in a daily newspaper.

Article 262
Temporary Measures to Secure Specified Property

1. The state prosecutor details in the application for a final restraint order which specific temporary measures are required to secure the specified property that has been temporarily sequestrated, either pursuant to a temporary restraint order or a search order issued by the court.

2. The Agency for the Management of Sequestrated and Confiscated Assets is responsible for managing any specified property in accordance with Law on the Management of Sequestrated and Confiscated Assets.

3. Temporary measures for securing specified property that may be included in an application for a final restraint order include, but are not limited to:

3.1. maintaining the specified property in a safe;

3.2. maintaining the specified property in a secured warehouse;

3.3. maintaining the specified property with a property manager;

3.4. maintaining funds in a bank account authorized by the court;

3.5. sale or disposition of the specified property under paragraphs 4-7 of this Article; or

3.6. reasonable steps to maintain the specified property in its current state or to stop the decrease in value.

4. For specified property that will require high costs to manage, maintain, insure, feed or place in a storage, the state prosecutor shall request any temporary measures that will minimize the high costs but maintain the value of the specified property.

5. Temporary measures under paragraph 4 of this Article include, but are not limited to:

5.1. the sale of the specified property at a market rate;

5.2. the slaughter or sale of livestock;

5.3. the processing of crops or materials into final products.

6. For specified property that will quickly diminish in value or is fungible, the state prosecutor requests any temporary measure that will prevent the loss of value or unnecessary costs of maintenance.

7. Temporary measures under paragraph 6 of this Article include, but are not limited to:

7.1. the sale of the specified property at a market rate;

7.2. the comingling of specified property;

7.3. the processing of crops or materials into final products.

8.The management and sale of any specified property under this Article is conducted in accordance with the Law on the Management of Sequestrated and Confiscated Assets in power.

9. Funds from the sale of any specified property under this Article are maintained in a manner consistent with the Law on the Management of Sequestrated and Confiscated Assets unless otherwise provided in this Code.

Article 263
Defendant and Third-Party Rights before Issuing of Final Restraint Order

1. Within fifteen (15) days from being served with the application for a final restraint order, the defendant and any third party claiming a legal interest in any specified property detailed in the application for the final restraint order may give evidence to the court to prove that:

1.1. the specified property is not identified in the application for the final restraint order;

1.2. the property is not specified property;

1.3. the final restraint order is not necessary to preserve the availability of the specified property for future confiscation;

1.4. in cases where the instrumentality is owned by a third party and is not a tainted gift, the third party proves:

1.4.1. that the instrumentality is owned by the third party; and

1.4.2. that the third party did not know or could not have suspected that the asset was an instrumentality.

2. The evidence detailed in paragraph 1 of this Article includes any evidence or any relevant document.

Article 264
Issuing of Final Restraint Order

1. For each specified property detailed in the application by the state prosecutor for a final restraint order, the court issues a final restraint order, and orders temporary measures for securing temporarily sequestrated property, if the state prosecutor demonstrates with articulable evidence that:

1.1. the specified property has been identified in the application for the final restraint order;

1.2. there is a grounded suspicion that the property is specified property;

1.3. that the final restraint order is necessary to preserve the availability of the specified property for future confiscation including preventing the decrease in the value of the specified property; and

1.4. the state prosecutor complied with Article 261 paragraph 2 of this Code.

2. If the defendant or third party has proved the conditions detailed in paragraph 1 of Article 263 of this Code for any specified property in the application of the state prosecutor, the court does not issue a final restraint order for that specified property and the specified property is released from the temporary restraint order, and returned to the owner as set forth in Article 110 paragraph 13 and Article 113 of this Code, unless:

2.1. the specified property is needed for evidence, as set forth in Article 110 paragraph 15 of this Code, in which situation it will be transferred to the police to maintain under Article 110 of this Code until the conclusion of the criminal proceedings, and then disposed of pursuant to the Articles on the disposition of evidence after the conclusion of a criminal proceeding; or

2.2. the specified asset is subject to automatic confiscation as provided in Article 276 of this Code.

3. If the state prosecutor has requested the sale of specified property pursuant to Article 262 of this Code as a temporary measure, the court must order the sale of the specified property if the state prosecutor has demonstrated the need for this temporary measure.

4. The temporary restraint order remains in force until a decision of the court on the application for a final restraint order is issued.

5. The court decides on the application for a final restraint order within thirty (30) days of the application being submitted.

6. The court serves the final restraint order on the Agency for Management of the Sequestrated and Confiscated Assets, which executes it within fifteen (15) days of being served with the order.

Article 265
Final Restraint Order

1.The final restraint order:

1.1. describes the specified property included in the final restraint order;

1.2. describes the articulable evidence which demonstrates the grounded suspicion detailed in Article 261 of this Code, and the necessity for the final restraint order;

1.3. orders the recipient of the order to comply with the terms of the order;

1.4. details the temporary measures to secure temporarily sequestrated property;

1.5. details all persons that may have an interest in the specified property;

1.6. states the date and time of issuance of the order;

1.7. is served on the state prosecutor, defendant and any third party named in the order; and

1.8. if applicable, contains reasoning as to why the application for issuance of the order regarding a particular item of specified property was rejected.

2. A final restraint order has the following effect:

2.1. any bank or financial institution which receives the final restraint order complies with the order and immediately prevents any further activity from occurring with the bank account or any other asset at the bank described in the order which decreases the amount of monies in the bank account, or decreases the value of the specified property;

2.2. any other party which receives the final restraint order complies with the terms of the order.

3. The final restraint order may include specified property that is situated in or outside the territory of the Republic of Kosovo.

4. The final restraint order remains in force until varied or discharged by further order of the court.

5. The final restraint order states the following: “The specified property listed in the attached final restraint order has been restrained and you are prohibited from dealing with it. If you intend to challenge the restraint of this specified property, you should submit an appeal in accordance with the relevant provisions of the law”.

Article 266
Temporary Restraint Order for Additional Specified Property

1. Following the issuing of a temporary restraint order a state prosecutor may:

1.1. at any time during the investigation after the indictment has been filed and until the judgment becomes final, exercise the power detailed in Article 260 of this Code to issue a further temporary restraint order to include additional specified property;

1.2. at any time after the judgment becomes final, exercise the power detailed in Article 260 of this Code to issue a further temporary restraint order to include additional specified property that may be included in an application by the state prosecutor pursuant to Article 275 of this Code.

2. Following the issuance of a further temporary restraint order, the provisions of Articles 260-263 of this Code apply and the state prosecutor submits an application for a final restraint order in accordance with Article 261 of this Code.

Article 267
Final Restraint Order – Additional Specified Property

Upon receipt of an application by the state prosecutor for a further final restraint order under Article 261 of this Code, the Court complies with Articles 264 and 265 of this Code.

Article 268
Grounds for Appeal of the Issuance or Denial of Final Restraint Order

1. The state prosecutor, defendant and any third party named in the final restraint order may file an appeal against the issuance or denial of the order within fifteen (15) days of being served with the written order.

2. The appeal does not stay the execution of the order. Provisions of Chapter XXI of this Code apply mutatis mutandis.

3. The only grounds for an appeal by the defendant or a third party pursuant to paragraph 1 of this Article are:

3.1. the state prosecutor has not demonstrated the grounded suspicion detailed in Article 260 paragraph 1 of this Code;

3.2. the state prosecutor has not described the necessity for the temporary restraint order as detailed in Article 260 sub-paragraph 3.2 of this Code; or

3.3. in the case of specified property that is an instrumentality of a criminal offense owned by a third party and is not a tainted gift, the third party has proved that he owns the specified instrumentality and did not know or could not have reasonably suspected that the property was used as an instrumentality.

4. The only grounds for an appeal by the state prosecutor pursuant to paragraph 1 of this Article are:

4.1. the state prosecutor has demonstrated the grounded suspicion detailed in Article 260 paragraph 1 of this Code;

4.2. the state prosecutor has described the necessity for the temporary restraint order as detailed in Article 260 sub-paragraph 3.2 of this Code; and

4.3. in the case of specified property that is an instrumentality of a criminal offense owned

by a third party and is not a tainted gift, the third party has not proved that he owns the specified instrumentality and did not know or could not have reasonably suspected that the property was to be used as an instrumentality.

Article 269
Confiscation

1. Following the conviction of a defendant for a criminal offense, the court confiscates all specified property detailed in the indictment or in the notification pursuant to Article 278 paragraph 5 of this Code.

2. If any specified property, in whole or in part, is not available to be confiscated for any reason, the court determines the monetary value of such specified property and complies with the provisions of Article 273 of this Code.

3. The monetary value of the specified property is the greater value as determined either at the time of conviction or when first obtained by the defendant or third party.

Article 270
Confiscation of Instrumentality

1. Before the court can order confiscation of property that was an instrumentality, the state prosecutor proves at the main trial that the asset was an instrumentality of a criminal offense of which the defendant was convicted.

2. If the property that was an instrumentality belongs to a third party, the property is confiscated if:

2.1. the asset was a tainted gift; or

2.2. the third party knew or could have reasonably suspected that the asset was to be used as an instrumentality.

Article 271
Confiscation of Material Benefit

Before the court can order confiscation of property constituting material benefit, the state prosecutor proves at the main trial that the property is the material benefit of a criminal office of which the defendant was convicted.

Article 272
Confiscation of Tainted Gift

1. Before the court can order confiscation of property constituting a tainted gift, the state prosecutor proves at the main trial that the asset is a tainted gift.

2. In determining whether property is a tainted gift the court may consider any evidence submitted by the state prosecutor, defendant and third party, regarding the market value of the property.

Article 273
Value Substitution Property

1. Notwithstanding the provisions of Article 92 of the Criminal Code, if the court has determined that the defendant obtained a material benefit from the offense or has made a tainted gift and if the material benefit or tainted gift in whole or in part is not available to be confiscated for any reason, the court confiscates any other property of the defendant or the third party up to the monetary value of the material benefit or tainted gift determined pursuant to Article 269 of this Code, notwithstanding that this other property is not detailed in the indictment as

required in Article 235 sub-paragraph 1.9 of this Code or in the notification pursuant to Article 278 paragraph 5 of this Code.

2. The state prosecutor submits to the court evidence of the additional property of the defendant or the third party available to be confiscated as value substitution property.

3. Value substitution property includes property of either lawful or unlawful origin.

4. If the court notifies the defendant or third party that it intends to confiscate value substitution property, the defendant or third party may pay to the court the value substitution amount.

5. If the defendant or third party complies with paragraph 4 of this Article, the court does not confiscate the value substitution property.

Article 274
Confiscation Procedure During Main Trial

1. The state prosecutor, defendant, and any third party asserting a legal interest in any specified property have the opportunity at the main trial to:

1.1. make submissions and present evidence to the court;

1.2. question witnesses and submit evidence to support or contest any application that may be made under this Chapter; and

1.3. submit evidence to the court from a qualified financial expert regarding any factual determination that must be made by the court under this Chapter.

2. The judgment contains reasoning as to whether the state prosecutor has proved that each item of property detailed in the indictment or in the notification pursuant to Article 278 paragraph 5 of this Code is specified property subject to confiscation.

3. If the court has made a determination pursuant to Article 273 of this Code, the judgement also contains reasoning as to whether it was proven that:

3.1. the specified property, in whole or in part, is not available for confiscation in whole or in part for any reason; and

3.2. the defendant and/or third party have other property of equivalent value to the monetary value amount determined in Article 269 of this Code.

4. Each item of specified property detailed in the indictment or in the notification pursuant to Article 278 paragraph 5 of this Code as subject to confiscation, is considered separately in the judgment of the court.

5. In determining any factual issue raised in this Chapter the court may appoint an expert witness.

Article 275
Confiscation of Additional Property after the Judgment is final

1. This Article applies if the following conditions are fulfilled:

1.1. the court has convicted the defendant of a criminal offense;

1.2. the court has determined that the defendant obtained a material benefit from the offense or has made a tainted gift;

1.3. the material benefit or tainted gift, in whole or in part, is not available to be confiscated for any reason.

2. If the conditions in paragraph 1 of this Article are satisfied, the state prosecutor can, at any time after the judgment is final apply to the court which passed the final judgment to confiscate any additional property of the defendant or of the third party, up to the monetary value of the material benefit or tainted gift determined by the court pursuant to Article 269 of this Code.

Article 276
Property Subject to Automatic Confiscation

1. Property that is inherently dangerous or illegal is subject to confiscation at any stage of the proceedings by the competent judge, regardless of the guilt or innocence of the defendant and regardless of whether the state prosecutor has taken any action to confiscate the property. The possessor, user, or defendant does have a right to object.

2. Property subject to paragraph 1 of this Article includes:

2.1. weapons that have been used in or created by a criminal offense under Articles 364-369 of the Criminal Code;

2.2. chemicals, objects, substances, equipment or weapons that have been used in or created by a criminal offense under Articles 114, 115, 117, 118, 120, 121, 122, 128, 129, 130, 131, 132, 133, 136, 138, 141, 142, 143, 144, 145, 146, 147, 152, 153, 155, 157, 166, 167, 168, 169 or 170 of the Criminal Code;

2.3. chemicals or substances used in or created by a criminal offense under Articles 256, 257, 258, 259, 260, 263, 264, 334, 338, 339, 341, 344, 345 or 346 of the Criminal Code, as well as any animals, crops, food or water contaminated by the criminal offense;

2.4. chemicals, plants, laboratory equipment or substances used in or created by a criminal offense under Articles 267-274 of the Criminal Code;

2.5. counterfeit money or items used in or created by a criminal offense under Article 286, 287, 295 or 297 of the Criminal Code;

2.6. items that are out of legal circulation, respectively items that according to the law cannot be in legal circulation.

3. At any stage of the criminal proceedings ex officio or upon the request of the state prosecutor, the competent judge issues a decision confiscating the property in this Article.

4. For items listed in paragraph 2 of this Article which are necessary as evidence for the main trial, the item is destroyed or otherwise rendered safe, but photographs, laboratory tests or an expert report serve as admissible evidence of the existence, identity and composition of the inherently dangerous item. For items under paragraph 2, sub-paragraphs 2.2, 2.3, 2.4 and 2.5 of this Article, a small sample is retained, when possible.

5. The police informs the state prosecutor of actions taken under paragraph 4 of this Article within twenty-four (24) hours.

Article 277
Reasoned Order for Confiscation of Property

1. The judgment contains a reasoned order that determines whether each item of specified property detailed in the indictment in compliance with Article 235, paragraph 1, subparagraph 1.9 of the present Code or in the notification pursuant to Article 278 paragraph 5 of this Code, shall be confiscated.

2. Each building, immovable property, movable property or asset detailed in the indictment in compliance with Article 235, paragraph 1, subparagraph 1.9 of the present Code or in the notification pursuant to Article 278 paragraph 5 of this Code is considered separately in the order under paragraph 1 of the present Article.

3. If the single trial judge or trial panel has ordered the confiscation of value substitution property pursuant to Article 273 of this Code, it shall provide reasoning for each item of such property.

4. The state prosecutor may request that the specified property be sold or liquidated. Funds from the sale or liquidation are used in accordance with paragraph 6 of this Article.

5. The sale of confiscated specified property is conducted in accordance with the Law on the Agency for the Management of Sequestered or Confiscated Assets

6. The state prosecutor may request that the specified property be retained for the use by the government of Kosovo.

7. If funds are confiscated directly or through paragraph 3 of this Article, the state prosecutor, injured party or victim or victim advocate or victim's representative may request that the funds be used to compensate the injured party. Any remaining funds are transferred to the state budget.

8. The order under paragraph 1 of this Article instructs the Agency for the Management of Sequestered or Confiscated Property to sell, liquidate, or retain the specified property. If a request under paragraph 7 of this Article is made, the court may order the restitution of the injured party. The single trial judge or trial panel may set additional conditions on the use of the property, if retained by the government.

9. The Agency for the Management of Sequestered or Confiscation Assets executes the order within ten (10) days of its issuance.

Article 278
Confiscation Investigation

1. If the state prosecutor has reasonable suspicion that an application may be made for confiscation, the state prosecutor may initiate a confiscation investigation:

1.1. at any stage of the criminal investigation;

1.2. after an indictment is filed;

1.3. before the main trial;

1.4. during the main trial; and

1.5. after the conclusion of the main trial, if an application is to be made pursuant to Article 275 of this Code.

2. A confiscation investigation is an investigation into specified property that may be subject to a confiscation application pursuant to Article 269 of this Code.

3. For the purpose of paragraphs 1 and 2 of this Article, the state prosecutor may use all the investigative powers and actions detailed in this Code for the pre-investigative and investigative stages.

4. The competent Basic Court assigns a judge to the confiscation investigation proceedings if this Code requires that a decision be issued by the court.

5. If the confiscation investigation results in the discovery of any new specified property not known at the time of the filing of the indictment, the state prosecutor notifies in writing the court and the parties thereof.

Article 279
Disclosure Order

1. A state prosecutor may apply for a disclosure order as part of a confiscation investigation.

2. A disclosure order is an order authorizing the state prosecutor to give to any person he has reasonable suspicion to have relevant information for the confiscation investigation, a notice in writing requiring him to do any, or all, of the following:

2.1. answer questions, either immediately or at a time specified in the notice at a place so specified;

2.2. provide information specified in the notice, by a time and in a manner so specified;

2.3. produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

3. Relevant information is information, whether or not contained in a document in relation to which the state prosecutor has reasonable suspicion to be relevant to the confiscation investigation.

4. The application for a disclosure order, among others, must state that:

4.1. a person specified in the application is subject to a confiscation investigation which is being carried out by the state prosecutor;

4.2. the order is sought for the purposes of the investigation; and

4.3. information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value, whether or not by itself to the investigation for the purposes of which the order is sought.

5. A disclosure order does not confer the right to require a person to answer any privileged question, provide any privileged information or produce any privileged document, except that a lawyer may be required to provide the name and address of a client of his. A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in court proceedings.

6. Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in court proceedings as defined in this Code.

7. Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in court proceedings.

8. The state prosecutor may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.

9. Documents so produced may be retained for so long as it is necessary to retain them, as opposed to a copy of them in connection with the confiscation investigation for the purposes of which the order was made.

10. If the state prosecutor has reasonable grounds for believing that the documents may need to be produced for the purposes of any legal proceedings and the documents might otherwise be unavailable for those purposes, such documents may be retained until the proceedings are concluded.

11. An application for a disclosure order is made ex parte to a judge, in writing and without a hearing.

12. A copy of a disclosure order made by the court is served on the defendant and any named party in the order.

13. An application to discharge or vary a disclosure order may be made to the court by the state prosecutor, or any person affected by the order.

14. The judge may discharge or vary the order.

CHAPTER XIX
MAIN TRIAL

SUB – CHAPTER I
PREPARATION FOR THE MAIN TRIAL

Article 280
Scheduling of Main Trial

1. The day, hour and venue of the main trial is determined by an order issued by the single trial judge or presiding trial judge in accordance with Article 249 of the present Code.

2. If the single trial judge or presiding trial judge determines that the main trial cannot be held within the time period set in paragraph 1 of this Article, the single trial judge or presiding trial judge issues a decision delaying the main trial until the first available date.

Article 281
Venue of Main Trial

1. The main trial is 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, President of the Court may order that the main trial be held in another building.

3. Exceptionally, when the main trial cannot be held according to paragraphs 1 and 2 of this Article due to natural disasters, epidemics or other objective circumstances, the Kosovo Judicial Council may issue a decision permitting holding of main trials through virtual platforms which enable visual image and sound.

4. If the Kosovo Judicial Council issues a decision to permit main trials through virtual platforms, the court notifies the parties on the time of the scheduled main trial. Such notification is made through email or telephone. The judge makes an official note of the notification.

5. In determining to hold a main trial through virtual platforms, the court seeks the opinion of the party. If the party objects to the holding of the main trial through virtual platforms, the court decides by a ruling.

6. During the main trial held through virtual platforms, the single trial judge or trial panel, the state prosecutor and the defense counsel appear from their respective offices. The defendant, the injured party or victim, victim advocate or victim's representative, the witnesses and other participants appear from a location chosen by them. Exceptionally, if the state prosecutor or the defense counsel are unable to be present physically in their respective offices for objective reasons, the single trial judge or the presiding trial judge may permit them to appear from another location. Nothing in this paragraph prevents the defense counsel and the defendant from being physically present in the same location.

7. In cases when the defendant is under detention or serving the sentence, the respective correctional centre enables virtual access to the defendant. Upon the request of the defense counsel and when permitted by the circumstances, the correctional center permits him to be present together with the defendant.

8. If they are not present in the same location, the defendant and his defense counsel have the right to consult through virtual platforms, and the court enables them private and secret communication through technological means chosen by them.

9. The provisions of paragraphs 3 to 8 of this Article apply to all court hearings in basic courts, Court of Appeals, and the Supreme Court.

10. The court enables virtual access to the public and the media in accordance with the provisions of this Code.

11. The provisions that regulate the holding of the respective court hearing, as well as the procedural rights and safeguards provided under this Code, apply mutatis mutandis when the hearing is held using virtual platforms.

Article 282
Persons Summoned to Main Trial

1. The persons summoned to appear at the main trial include the accused, his defense counsel, the state prosecutor, the injured party or victim and victim advocate or victim's representative, as well as the interpreter. Witnesses and expert witnesses proposed by the state prosecutor in the indictment and by the accused under Article 250 of the present Code are also summoned to the main trial.

2. Article 172 of the present Code applies to the contents of the summonses served on the accused and witnesses. When defense is not mandatory, the accused is instructed in the summons that he has the right to engage defense counsel but that the main trial need not be postponed because defense counsel has not come to the main trial or because the accused has engaged defense counsel at the main trial.

3. The accused is served with the summons no less than eight (8) 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 defense. At the request of the accused, or at the request of the state 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 is informed in a summons that the main trial may be held in his absence and that his statement on a property claim shall be read.

5. The accused, witness and expert witness are informed in the summonses of the consequences of failure to appear at the main trial.

6. At the request of the Ombudsperson of Kosovo, the Ombudsperson is also notified of the main trial for the purpose of monitoring the criminal proceedings within the limits of his authority.

Article 283
Requests after Main Trial Scheduled

1. The parties, the defense counsel and the victim advocate or victim's representative 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 of the parties must be supported by reasoning and must indicate which facts are to be proven and by which proposed evidence.

2. The single trial judge or presiding trial judge grants a request under paragraph 1 of this Article if the new witness, new expert witness or new evidence was unknown at the time of the confirmation of the indictment does not substantially duplicate another witness, expert witness or evidence, and the defendant's right to a fair trial could be harmed by rejecting the request.

3. If the single trial judge or presiding trial judge rejects the motion for new evidence to be collected, the ruling with which such motion is rejected may be appealed within forty-eight (48) hours from its receipt.

4. The parties and defense counsel shall be informed of the order to collect new evidence prior to the opening of the main trial.

Article 284
Reserve Judges

If it appears that the main trial may last for some time the presiding trial judge may request the president of the court to assign one judge 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. This judge is called the reserve judge.

Article 285
Examination of Witnesses or Expert Witnesses Outside the Courtroom

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 resides, unless such witness or expert witness has already been examined during a special investigative opportunity.

2. The parties, defense counsel and the injured party are 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 single trial judge or presiding trial judge decides whether his presence at the examination is necessary, providing that in the absence of the accused his defense counsel can be present. When the parties, the defense counsel and the victim advocate or victim's representative are present, they have the rights under Article 147 of this Code.

Article 286
Adjournment of Main Trial

1. The single trial judge or presiding trial judge may for well-founded reasons adjourn the date of the main trial upon motion of the parties, the defense counsel, the victim advocate or victim's representative or ex officio.

2. If the single trial judge or presiding trial judge adjourns the date of the main trial under paragraph 1 of this Article, he may schedule periodic hearings to discuss the status of the case, pending issues and to ensure a timely disposition of the case or scheduling of the main trial.

Article 287
Withdrawal of Indictment prior to Opening of the Main Trial

1. The state prosecutor may withdraw the indictment prior to opening of the main trial if he files a notice of withdrawal from the indictment. In such a case the single trial judge or presiding trial judge dismisses the indictment with a ruling and terminates the criminal procedure.

2. A withdrawn indictment may not be refiled by the state prosecutor.

SUB – CHAPTER II
PUBLIC CHARACTER OF THE MAIN TRIAL

Article 288
Publicity of the Main Trial

1. The main trial is public with the exception of cases when this Code provides otherwise.

2. No arms or dangerous instruments are allowed inside the courtroom except for officers of the correctional service or police officers guarding the accused who are authorized by the single trial judge, presiding trial judge or President of the Court.

Article 289
Closed Hearings at Main Trial

1. At any time from the beginning until the end of the main trial, the single trial judge or trial panel may, on the motion of the parties or ex officio, but always after it has heard the parties, close the hearing to the public in whole or part of the main trial if this is necessary for:

1.1. protecting of national security and official secrets protected by law;

1.2. protecting the interests of children;

1.3. maintaining law and order; or

1.4. protecting injured parties, cooperative witnesses and witnesses as provided for in Chapter XIII of the present Code.

2. Closure of the proceedings under sub-paragraphs 1.3 and 1.4 of the present Article, is only ordered in the event that expelling one or more individuals from the courtroom is not sufficient to meet the purpose served.

3. At any time from the beginning until the end of the main trial, the single trial judge or trial panel may, on the motion of the parties but always after it has heard the parties, close the hearing to the public in whole or part of the main trial if this is necessary for:

3.1. maintaining the confidentiality of information which would be jeopardized by the public;

3.2. protecting the personal or family life of the accused, the injured party or of other participants in the proceedings; or

3.3. in cases provided for in Article 337 of this Code.

4. Closure of the proceedings under sub-paragraphs 1.3, 3.1 and 3.2 of the present Article may only be ordered when the interest supported by closure substantially outweighs the public interest on open proceedings.

Article 290
Persons that shall not be Excluded from the Main Trial and Maintenance of Confidentiality

1. The exclusion of the public does not apply to the parties, victim advocate or victim's representative and the defense counsel, except for cases foreseen in Article 297, 303 and 337 of this Code and except under the conditions of the provisions regarding the protection of injured parties, cooperative witnesses and witnesses as set forth in Chapter XIII of the present Code.

2. The single trial judge or presiding trial judge 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 close relatives to attend a main trial which is not open to the public.

3. The single trial judge or presiding trial judge warns 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 informs them that disclosing such information constitutes a criminal offense.

Article 291
Ruling to Exclude Public

1. The exclusion of the public is determined by the single trial judge or presiding trial judge in a ruling which must be supported by reasoning and made public.

2. The ruling on the holding of a closed hearing may be challenged only in an appeal against the judgment.

SUB –CHAPTER III
CONDUCT OF THE MAIN TRIAL

Article 292
Continuous Presence and Additional Duties of the Single Trial Judge in the Main Trial

1. If the trial is before a single trial judge, the single trial judge and recording clerk shall be continuously present at the main trial.

2. It shall be the duty of the single trial judge to confirm that the court has been constituted in accordance with the law and whether there are reasons for excluding the recording clerk.

Article 293
Continuous Presence and Additional Duties of the Presiding Trial Judge in the Main Trial

1. If the trial is before a trial panel, the presiding trial judge, members of the trial panel, the recording clerk and any assigned reserve judge shall be continuously present at the main trial.

2. It shall be the duty of the presiding trial 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 294
Single Trial Judge or Presiding Trial Judge in Charge of Main Trial

1. The single trial judge or presiding trial judge directs the main trial and calls on the parties, the victim advocate or victim's representative, the defense counsel, and the expert witnesses to give their testimony or pose their questions.

2. Members of a trial panel may pose questions to any witness or expert witness.

3. It shall be the duty of the single trial judge or presiding trial judge to ensure that the case is thoroughly and fairly examined in accordance with the rules of evidence as provided for by this Code.

4. The single trial judge or presiding trial judge ensures that evidence is taken in accordance with Chapter XVII of this Code.

5. The single trial judge or presiding trial judge rules on the motions of the parties.

6. The rulings of the single trial judge or presiding trial judge are always announced and entered in the record of the main trial with a brief explanation.

Article 295
Sequence for Examination of Evidence at the Main Trial

The main trial proceeds in the sequence provided for by the present Code. However, the single trial judge or presiding trial judge may decide to alter the sequence of the hearing due to special circumstances, in particular the number of accused, the number of criminal offenses or the volume of the evidential material.

Article 296
Maintenance of Order and Media in the Courtroom

1. The parties and other participants shall stand up whenever the single trial judge or trial panel enters or leaves the courtroom. Otherwise the court may impose the measures for maintaining order in the courtroom as described in Article 297 of this Code.

2. The single trial judge or presiding trial judge is obliged to ensure the maintenance of order in the courtroom and the dignity of the court. He 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 single trial judge or presiding trial judge may order a personal search of persons present at the main trial.

3. The single trial judge or presiding trial judge 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 is held without disturbance.

4. The parties and defense counsels may make audio recording of an open court hearing for the purpose of their procedural rights and participation within the criminal proceedings only. The personal data recorded for the defendant, the injured party or the witness are confidential and can be used only during criminal proceedings. A witness is not allowed to listen to audio recording made under this paragraph.

5. Photography, film, television and other recordings apart from the official recording of the main trial is permitted, unless the single trial judge or presiding trial judge limits photography, film, television or other recordings in a reasoned written ruling.

6. When recording of the main trial is permitted, the single trial judge or presiding trial judge may, for justifiable reasons, prohibit the recording of special parts of the hearing.

Article 297
Disturbance of Order or Failure to Comply with Directions of Court

1. If the accused, defense counsel, the injured party, the victim advocate or victim's representative, witness, expert witness, interpreter or some other person attending the main trial disturbs order or fails to comply with the directions of the single trial judge or presiding trial judge regarding the maintenance of order, the single trial judge or presiding trial judge warns him. If the warning is of no avail, the single trial judge or presiding trial judge 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 one thousand (1.000) EUR.

2. With the order of the single trial judge or presiding trial judge the accused may be removed from the courtroom temporarily, but if he has already been examined in the main trial he may

be removed for as long as the evidentiary proceedings last. Before the evidentiary proceedings are concluded, the single trial judge or presiding trial judge summons the accused and informs him of the course of the main trial. If the accused continues to violate order or if he abuses the dignity of the court, the single trial judge or presiding trial judge may order him to be removed again. In such case, the main trial is concluded in the absence of the accused and the single trial judge or presiding trial judge or a judge sitting in the trial panel informs him of the judgment in the presence of the recording clerk. In cases where the defendant has been excluded and he is not represented by defense counsel, the single trial judge or presiding trial judge appoints defense counsel ex officio until the accused is permitted to return to the courtroom by the competent judge.

3. The single trial judge or presiding trial judge may dismiss the defense counsel from the main trial if after being punished he continues to disturb order and in such case the party is requested to engage another defense counsel. If the accused cannot engage another defense counsel immediately or the latter cannot be appointed by the court without prejudice to the defense, the main trial is recessed or adjourned. The defendant may file and appeal against the ruling on the dismissal of the defense counsel, within three (3) days. Court of Appeals decides on the appeal within three (3) days.

4. If a state prosecutor violates order, the single trial judge or presiding trial judge notifies the supervisor of the state prosecutor of this, and may also suspend the main trial and ask the supervisor of that state prosecutor to appoint another state prosecutor for the case.

5. When the court removes from the courtroom or fines a member of the Kosovo Bar Association or a lawyer in training who violates order, the Kosovo Bar Association is informed.

Article 298
Appeals of Rulings at Main Trial

1. An appeal may be filed against a ruling imposing punishment and the single trial judge or trial panel may revoke the ruling.

2. The Court of Appeals decides on the appeal if the single trial judge or trial panel does not revoke the ruling on the punishment. The provisions that regulate the appeal against a ruling apply mutatis mutandis to an appeal under this paragraph.

3. No appeal is permitted against rulings relating to the maintenance of order and the direction of the main trial, unless otherwise provided by this Code.

Article 299
Criminal Offenses Committed at Main Trial

1. If the accused commits a criminal offense at the main trial, the provisions of Article 349 of the present Code apply.

2. If a person other than the accused commits a criminal offense while the court is in session at the main trial, the single trial judge or trial panel may, upon an oral charge by the state prosecutor, recess the main trial and try the criminal offense 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 offense may not be tried immediately. In such case, the single trial judge or presiding trial 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 state prosecutor.

4. If the perpetrator of a criminal offense which is prosecuted ex officio cannot be tried immediately, the competent state prosecutor is notified of this for further action.

SUB – CHAPTER IV
PRECONDITIONS FOR THE MAIN TRIAL

Article 300
Opening of Session

The single trial judge or presiding trial judge opens the session and announces the case to be tried at the main trial and, if there is a trial panel, the composition of the trial panel. He then determines whether all the persons summoned have appeared and, if they have not, he checks whether they were served with a summons and whether the absent persons have justified their absence.

Article 301
Failure of the State Prosecutor to Appear at the Main Trial

If the state prosecutor fails to appear at the main trial scheduled upon an indictment which he has filed, the main trial is adjourned and the single trial judge or presiding trial judge notifies the chief-prosecutor of the state prosecutor thereof.

Article 302
Failure of Accused to Appear at Main Trial

1. Without prejudice to Article 303 of this Code, if a duly summoned accused fails to appear at the main trial without justifying his absence, the single trial judge or presiding trial judge issues an order for arrest of the accused in accordance with Article 173 of the present Code. If the accused cannot be produced immediately, the single trial judge or trial panel adjourns the main trial and order that the accused be compelled to appear at the next session or otherwise issues a ruling suspending the criminal procedure, until the accused is brought before the court. If the accused justifies his absence before being arrested, the single trial judge or presiding trial judge revokes the order for arrest. The main trial commences as to the missing defendant when he is arrested.

2. If a duly summoned accused is obviously evading the main trial and there are no reasons for his detention on remand under Article 184 of the present Code, the single trial judge or trial panel may order detention on remand to ensure his presence at the main trial. An appeal against this ruling does not stay its execution. Articles 182 through 200 of the present Code apply, mutatis mutandis, to detention on remand ordered for this reason. Unless terminated earlier, the detention lasts until the announcement of the judgment, but no longer than one (1) month.

Article 303
Trial in Absentia

1. The accused is present at:

    1.1. the initial hearing; and

    1.2. the main trial.

2. The accused waives the right to be present at the main trial in the following circumstances:

    2.1. when the accused was present at the initial hearing and was informed of the trial date by the single trial judge or presiding trial judge pursuant to Articles 280 and 282 of this Code, or during another court hearing, and the accused was told of the requirement to be present for the trial and that the trial could proceed if the accused voluntarily fails to appear for trial; or

    2.2. was present at the trial, but then failed to appear at subsequent trial sessions, and

was informed of the new trial date pursuant to sub-paragraph 2.1 of this Article.

3. In the event the accused fails to appear in any circumstance in sub-paragraphs 2.1 or 2.2 of this Article, the single trial judge or presiding trial judge determines if the accused is voluntarily absent after the hearing described in paragraph 4 of this Article and the accused is represented by a defense counsel.

4. In deciding whether to hold a trial in the absence of the accused, the single trial judge or presiding trial judge holds a hearing to determine why the accused is absent and assess any explanation or evidence regarding whether the accused has voluntarily decided to be absent from the trial. In particular, in making this determination, the single trial judge or presiding trial judge considers if reasonable efforts have been made to locate the accused.

5. If the court, in accordance with paragraph 4 of this Article determines that the accused has voluntarily decided to be absent from the trial, in deciding whether to hold a trial in the absence of the accused, the court also considers if one of the following conditions is met:

5.1. the difficulty of rescheduling the trial, particularly in trials involving multiple accused;

5.2. the burden on the state prosecutor in having to undertake two trials involving evidence common to co-accused; or

5.3. if a delay will place the prosecution witnesses in substantial jeopardy or inconvenience.

6. In the event of a trial held as provided in paragraph 2 of this Article, the court makes reasonable efforts to inform the defendant regarding the judgement. However, if the court is not able to inform the defendant due to his absence, the defense counsel has the right to appeal the judgment on behalf of the defendant pursuant to Article 383 of this Code. In doing so, the defense counsel has to demonstrate that he has taken the best interest of the accused into account. The provisions of Article 380 of this Code regarding the deadline apply mutatis mutandis.

7. In cases of offenses set forth in Article 104 of the Criminal Code, a trial in absentia may be conducted without meeting the criteria of ensuring the presence of the accused as set forth in this Article, if the single trial judge or presiding trial judge is satisfied that reasonable efforts have been made to notify the accused of the trial and ensure the presence of the accused. In this case, the accused is represented by a defense counsel throughout the criminal proceedings, until the judgment becomes final. Articles 11 and 56 of this Code regarding mandatory defense apply mutatis mutandis.

8. The reasonable efforts in the meaning of paragraphs 6 and 7 of this Article include the procedures under Articles 172 and 173 of this Code and a thorough information campaign calling the accused to surrender to the jurisdiction of the court. Additionally, the summons with the indictment are published in the website of the State Prosecutor, the court conducting the proceedings, and the official gazette, calling on the accused to surrender. Such notifications invite any person with information as to the whereabouts of the accused to communicate such information to the police.

9. A person tried under paragraph 7 of this Article is entitled to have an unconditional, automatic and full retrial upon request.

Article 304
Failure of Defense Counsel to Appear at Main Trial

1. If a duly summoned defense counsel fails to appear at the main trial without notifying the court of the reason for his absence as soon as he learns about it, or if the defense counsel leaves the main trial without permission of the single trial judge or trial panel, the court asks the accused to engage immediately another defense counsel. If the accused fails to do so and

it is impossible to appoint a defense counsel without prejudicing the defense, the main trial is adjourned.

2. In those instances of paragraph 1 of the present Article, the single trial judge or the presiding trial judge imposes a fine of at least five hundred (500) up to one thousand (1.000) Euro.

Article 305
Failure of Witness or Expert Witness to Appear at Main Trial

1. If the duly summoned witness fails to appear at the main trial without justification, the single trial judge or presiding trial judge shall impose a punishment with fine in the amount of two hundred and fifty (250) Euro for each time he/she fails to appear.

2. If the duly summoned witness fails to appear at the main trial without justification, the single trial judge or presiding trial judge shall, except imposing the punishment by fine as defined in paragraph 1 of this Article, at the same time, order that the witness be compelled to appear, and the procedure costs for compulsion to appear are imposed to the witness.

3. If the single trial judge or presiding trial judge has imposed the punishment according to paragraph 1 of this Article and has ordered the compulsion to appear according to paragraph 2 of this Article, and if the witness presents the justified reasons for failure to appear upon the summons, the single trial judge or presiding trial judge may, by a ruling, revoke the imposed punishment and may not impose the procedure costs to the witness for compulsion to appear.

4. If the summoned witness in main trial or compelled to appear refuses to give testimony, he/she may be imprisoned. The imprisonment shall last for as long as the witness refuses to testify or until his/her testimony becomes unnecessary, or until criminal proceedings terminate, but shall not exceed one (1) month.

5. When the duly summoned expert fails to appear at the main trial or when he/she appears and refuses to give testimony, the single trial judge or presiding trial judge shall apply the provisions of Article 135 of this Code mutatis mutandis.

SUB – CHAPTER V
ADJOURNMENT AND RECESS OF THE MAIN TRIAL

Article 306
Reasons for adjourning the main trial

1. In addition to cases specified in the present Code, the main trial may be adjourned under a ruling of the single trial judge or 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 offense, 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 specifies the day and hour at which the main trial will be resumed. In the same ruling, the single trial judge or trial panel may order the collection of such evidence that is likely to be lost with the passing of time.

3. No appeal is permitted against a ruling under paragraph 2 of the present Article.

Article 307
Change of Composition of Trial Panel during Adjournment

1. When the composition of the trial panel has changed, save for the cases that can be remedied under Article 284 of this Code, the adjourned main trial starts from the beginning. However, in such case, 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 continues and the presiding trial judge gives a short account of the course of the previous main trial.

3. If the main trial has been adjourned for more than six (6) months or if it is held before a new presiding trial judge, the main trial recommences from the beginning and all the evidence is examined again. However, in such case, 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.

Article 308
Recess of Main Trial

1. In addition to instances specified in the present Code, the single trial judge or presiding trial 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 defense.

2. A recessed main trial always continues in front of the same single trial judge or trial panel.

3. If the main trial cannot continue in front of the same trial panel or if it is recessed for more than six (6) months, the provisions of Article 307 of the present Code apply.

Article 309
Change in composition of trial panel due to lack of jurisdiction

If in the course of the main trial held before a single trial judge the facts upon which the charge is founded indicate that a criminal offense is involved for which a trial panel of three (3) judges is competent, the trial is transferred to an appropriate panel within the Basic Court and the main trial recommences from the beginning.

Article 310
Time to Complete Main Trial

1. Unless the single trial judge or trial panel adjourns the main trial under Article 306 of the present Code, the main trial shall be completed within the following time limits:

1.1. if the main trial is before a single trial judge, the main trial shall be completed within ninety (90) days, unless the single trial judge issues a reasoned decision to extend the time for the main trial for one of the reasons in paragraph 2 of the present Article;

1.2. if the main trial is before a trial panel, the main trial shall be completed within one hundred and twenty (120) days, unless the trial panel issues a reasoned decision to extend the time for the main trial for one of the reasons in paragraph 2 of the present Article.

2. The main trial may be extended by a reasoned decision under paragraph 1 of the present Article if there exist circumstances which require more time, including but not limited to:

2.1. there are an unusually large number of witnesses;

2.2. the testimony of one or more witnesses is unusually lengthy;

2.3. the number of exhibits is unusually big;

2.4. the security of the trial requires the extension.

3. The main trial may be extended for thirty (30) days for each decision under paragraph 1 of the present Article.

SUB – CHAPTER VI
THE RECORD OF THE MAIN TRIAL

Article 311
Record of the Main Trial

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 is either audio- or video-recorded or recorded stenographically.

3. When the accused has been punished by imprisonment, the audio- or video-recording of the main trial shall be available within three (3) working days after the completion of the main trial. The time limit may be extended by the single trial judge or presiding trial judge, if this is justified by circumstances, for a period of fifteen (15) days. The single trial judge or presiding trial judge reviews and confirms the transcript and inserts it in the record as a constituent part of the record of the main trial.

4. The decision on how the main trial is recorded is taken by the single trial judge or presiding trial judge.

Article 312
Verbatim Record

1. The single trial judge or presiding trial judge may order, upon a motion of a party or ex officio, that testimony which he considers particularly important be entered in the record verbatim.

2. If necessary, and especially where testimony has been entered in the record verbatim, the single trial judge or presiding trial judge may order that particular part of the record to be read immediately. Testimony recorded verbatim are always read immediately if so requested by a party, defense counsel or the person whose testimony has been entered in the record.

Article 313
Inspection, Correction and Signing of the Main Trial and Initial Hearing Records

1. The record of the main trial and initial hearing is finalized at the end of the session. It is signed by the recording clerk, single trial judge, presiding judge and parties that are present.

2. The parties are 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 single trial judge or presiding trial 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 single trial judge or the trial panel.

4. Comments and motions of parties regarding the record, as well as corrections and amendments to the record, are entered in an addendum to the finalized record. The reasons why certain suggestions and comments were not accepted are also indicated in the addendum. The recording clerk and either the single trial judge or presiding trial judge sign the addendum to the record.

Article 314
Content of the Record of the Main Trial

1. The introductory part of the record of the main trial shall indicate the court in which the main trial is held; the case number; the venue and the time of the session; the names of the single trial judge or presiding trial judge and panel members, recording clerk, state prosecutor, the accused and his defense counsel, the injured party or victim and the victim advocate or victim's representative and the name of the interpreter; the criminal offense in question, and whether the main trial was public or the public was excluded.

2. The record contains in particular the following information: the identification of the indictment; whether the state prosecutor changed or expanded the indictment; what motions were filed by the parties and what decisions the single trial judge, presiding trial 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, exhibits used, and comments of the parties thereon. If the public was excluded from the main trial, the record indicates that the single trial judge or presiding trial 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 prosecutor, defendant, witnesses and expert witnesses is entered in the record. Upon request of a party the single trial judge or presiding trial judge orders 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 single trial judge or trial panel dismissed as impermissible is also entered in the record.

Article 315
Entering the Enactment Clause of the Judgment in the Record of the Main Trial

1. The complete enacting clause of the judgment and an indication of whether the judgment was announced in public is entered in the record of the main trial. The enacting clause of the judgment contained in the record of the main trial is considered as the original.

2. A ruling on detention on remand, if rendered, is also be entered in the record of the main trial.

Article 316
Records of Trial Panel's Deliberation and Voting

1. If the main trial is before a trial panel:

1.1. separate records are kept concerning the deliberation and voting of the trial panel.

1.2. the records on the deliberation and voting of the trial panel contain the course of the voting and the judgment rendered;

1.3. these records are signed by all the members of the trial panel and the recording clerk. Separate opinions are appended to the record of the deliberation and voting unless they have been entered in the record;

1.4. the record of the deliberation and voting of the panel of judges is 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.

SUB – CHAPTER VII
COMMENCEMENT OF THE MAIN TRIAL AND THE PLEA OF THE ACCUSED

Article 317
Attendance of Persons Summoned at the Main Trial and Establishment of Defendant's Identity

After the single trial judge or presiding trial judge has established that all persons summoned have appeared at the main trial or the single trial judge or 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 single trial judge or presiding trial judge calls on the accused and asks him to give his personal data, except data about prior convictions, in order to determine his identity.

Article 318
Initial Instructions of the Court to Witnesses and Injured Parties

1. Having established the identity of the accused, the single trial judge or presiding trial judge directs the witnesses and expert witnesses to a designated place where they wait until called upon to testify. The single trial judge or presiding trial 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 property claim, the single trial judge or presiding trial judge reminds him that he may file a motion to realize such claim within criminal proceedings.

3. The single trial judge or presiding trial judge may take necessary measures to prevent collusion between witnesses, expert witnesses and the parties.

Article 319
Instructions to the Accused

1. The single trial judge or presiding trial judge invites the accused to follow closely the course of the main trial and instructs him that he may state his case, address questions to the co-accused, witnesses and expert witnesses, and make comments on and give explanations of their testimony.

2. The single trial judge or presiding trial judge then instructs the accused:

2.1. that he has a right not to give testimony in connection with his case or to answer any questions;

2.2. that if he gives testimony, he is not obliged to incriminate himself or his next of kin, nor to confess guilt;

2.3. that he may defend himself in person or through legal assistance by a defense counsel of his own choice; and

2.4. of consequences related to Articles 299 paragraph 1 and 349 paragraph 1 of this Code.

Article 320
The Commencement of the Main Trial

1. The main trial opens with the reading by the state prosecutor of the charges against the accused in the indictment.

2. If the accused waives the reading of the charges indictment against him, the state prosecutor summarizes the indictment on the record.

Article 321
Plea by the Accused to Indictment

1. The single trial judge or presiding trial judge satisfies himself 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 single trial judge or presiding trial judge 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 guilt, it is considered that he has pleaded not guilty.

Article 322
Guilty Plea by the Accused at Trial

1. If the accused pleads guilty on each count or some of the counts of the indictment at the main trial, the single trial judge or trial panel determines whether the requirements under Article 242, paragraph 2 of the present Code have been met.

2. In considering a guilty plea of the accused, the single trial judge or presiding trial judge may invite the views of the state prosecutor, the defense counsel and the injured parties.

3. If the single trial judge or trial panel is not satisfied that the requirements under Article 242, paragraph 2 of the present Code have been met, it proceeds as if the guilty plea has not been made.

4. If the single trial judge or trial panel is satisfied that the requirements under Article 242, paragraph 2 of the present Code have been met, the main trial continues with the closing statements.

5. If there are multiple accused and one or more pleads guilty, the main trial continues as to the defendants who did not plead guilty. The single trial judge or presiding trial judge postpone the sentencing of the accused who plead guilty at the beginning of the main trial until the end of the main trial or he orders the severance of the proceedings for the defendants who have pled guilty. If evidence had been taken in the main trial that only incriminates the accused who has plead guilty, but is not relevant evidence against the remaining accused who have not plead guilty, such evidence cannot be considered.

6. If the accused pleads guilty under this Article as a result of a plea agreement, the single trial judge or presiding trial judge apply Article 230 of this Code mutatis mutandis.

SUB – CHAPTER VIII
ORDER OF PRESENTATION OF EVIDENCE

Article 323
Order of Presentation of Evidence at Main Trial

1. Statements by the parties and evidence in the main trial are presented in the following order:

1.1. opening statements;

1.2. the evidence presented by the state prosecutor;

1.3. the evidence presented by the injured party, if any;

1.4. the evidence presented by the accused and his defense counsel; and

1.5. closing statements.

2. If the request for sentencing hearing has not been made, closing statements include the discussion pertaining to sentencing.

3. If the court finds the defendant guilty and a sentencing hearing was scheduled, the court proceeds pursuant to Article 356 of this Code.

SUB –CHAPTER IX
OPENING STATEMENT

Article 324
Opening Statement

1. If the defendant does not plead guilty at the beginning of the trial, the single trial judge or the presiding trial judge asks the state prosecutor, the injured party and the defense counsel to summarize the evidence that supports their case or claim. The state prosecutor speaks first, then the injured party and the defense counsel.

2. Persons presenting opening statements may refer to the admissible evidence, the applicable law, 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.

3. The presentation of opening statements by the parties may be subject to time limits by the single trial judge or presiding trial judge.

SUB – CHAPTER X
PRESENTATION OF EVIDENCE

Article 325
General Rules of Presentation of Evidence

1. Presentation of evidence includes all facts deemed by the court to be important for a correct and fair adjudication.

2. The rules of evidence as provided for in Chapter XVII of the present Code are observed during the main trial.

3. The parties 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 single trial judge, presiding trial judge or the trial panel had earlier dismissed.

4. In addition to the evidence proposed by the parties or the injured party or victim, the single trial judge or trial panel has the authority to provide evidence that it considers necessary for the fair and complete determination of the criminal case.

Article 326
Examination of witness or expert without the presence of other witnesses

A witness who has not yet testified does not, as a rule, attend the presentation of evidence, and an expert witness who has not yet given his expert findings and opinion shall not attend a hearing when another expert witness gives testimony on the same matter.

Article 327
Evidence Given by Witness at Main Trial

1.The single trial judge or presiding trial judge issue a schedule of the witnesses, beginning with the witnesses proposed by the state prosecutor, the witnesses proposed by the injured party or victim or victim advocate or victim's representative, and then the witnesses proposed by the defendant or defense counsel. If possible, the schedule calls witnesses in the order that the state prosecutor, injured party or victim, victim advocate or victim's representative, defendant and defense counsel proposed.

2. The state prosecutor, defendant or injured party may request the court to hear witnesses to rebut testimony or evidence presented by other party under paragraph 1 of the present Article.

Article 328
Direct Examination, Cross Examination and Reexamination of Witness

1.When a party presents evidence, the party proposing the evidence questions the witness or presents the evidence first.

2. Other parties will then be given the opportunity to cross examine the witness or challenge the witness' credibility.

3.The party who sponsored the evidence is given the final opportunity to clarify answers with the witness or rehabilitate the witness' credibility.

4. If a party is represented by more than one counsel, only the lead counsel may examine witnesses, cross examine witnesses and rehabilitate witnesses.

Article 329
Direct Examination of Witnesses

1. The party who proposes the witness or expert witness examines him first.

2. The party examining the witness or expert witness may ask questions of the witness in compliance with the rules of evidence.

3. The party may show a witness an exhibit in compliance with Article 332 of the present Code.

4. If a witness or an expert witness cannot recall the facts he has presented in previous testimony, the party who proposes the witness may show him admissible evidence which refreshes his memory.

5. If the witness or expert witness provides an answer that is contradicted by the evidence given by the witness during the pre-trial stage, the party who proposes the witness may then show or read the contradicting evidence to the witness. The party who proposes the witness or the court may ask the witness to explain the difference.

Article 330
Cross Examination of Witnesses

1. The party who is cross examining a witness may ask questions in compliance with the rules of evidence and:

1.1. ask the witness to confirm or deny a fact. If the witness provides an answer that is contradicted by admissible evidence, the party cross examining the witness may then show or read the contradicting evidence to the witness;

1.2. ask the witness to explain the discrepancy within the testimony of the witness;

1.3. ask questions of the witness which examine the reliability of the witness' testimony or any bias the witness may have.

2. Exhibits used during cross examination shall be clearly identified for the court and the record reflects the use of the exhibit.

Article 331
Redirect Examination

1. After the witness or expert witness has been cross examined, the party who proposes the witness or expert witness has the opportunity to ask questions that clarify testimony that was unclear, explain differences in testimony, concerns about the reliability of the witness' testimony, or any bias the witness may have.

2. After the single trial judge or presiding trial judge has assured himself or herself that the parties have no more questions, he may proceed to examine the witness or the expert witness. If the testimony or answers of the witness or expert witness contains gaps, ambiguities or contradictions and the single trial judge or the trial panel considers them relevant, the single trial judge or the presiding trial judge has the duty to ask questions that clarify his testimony. Thereafter, the trial panel may put questions directly to the witness or the expert witness.

SUB – CHAPTER XI
RULES RELATING TO WITNESSES

Article 332
Exhibits in Aid of Witness Testimony

1. A party may show an exhibit to a witness and question the witness about that exhibit during the examination, cross examination or redirect examination.

2. An exhibit may be a document, chart, summary, videotape, audiotape, or other physical evidence.

3. Any exhibit that summarizes or demonstrates admissible evidence that is numerous, large or has been identified by photograph or in some other manner, is first shown to a witness who can identify the admissible evidence used, explain how the exhibit was created, and demonstrate that the exhibit is a true, reliable and accurate representation of the original admissible evidence.

4. Any exhibit under paragraph 2 or 3 of the present Article is admitted if it is a true, reliable and accurate representation of the original admissible evidence. The exhibit is added to the record if it hasn't already been admitted.

Article 333
Use of Prior Witness Testimony

1. A party may present evidence in the main trial from the previous testimony of a witness if it was obtained during a Special Investigative Opportunity under Article 147 of the present Code.

2. A party may present evidence in the main trial from the previous testimony of a witness if it was obtained during a session of pre-trial testimony under Article 129 of the present Code, the witness is not available to testify, and a notice of corroboration has been filed in accordance with Article 258 of the present Code.

3. The state prosecutor may present evidence in the main trial from audio or video recordings or their functional equivalent of the accused taken in accordance with Article 88 or 90 of the present Code.

4. If an audio or video recording or their functional equivalent of the testimony or statement under paragraphs 1 to 3 of the present Article was made, it is replayed at the main trial in its entirety, unless the single trial judge or trial panel decides that the entire videotape or audiotape would contain excessive irrelevant information. In such case, the single trial judge or trial panel can order specific, relevant portions of the videotape or audiotape to be replayed at trial.

5. This Article does not prohibit the use of prior statements by a witness during examination, cross-examination and re-examination of that witness.

Article 334
Use of prior testimony of persons subjected to interference

1. The pre-trial interview and pre-trial testimony is admissible and may be used as direct evidence during the main trial if the single trial judge or trial panel is satisfied that the failure of the person to give evidence or testifying materially differently from the evidence given in the pre-trial interview or pre-trial testimony was influenced by improper interference, including threats, intimidation, injury, bribery, or coercion.

2. For the purposes of paragraph 1 of the present Article, an improper interference may relate to the physical, economic, property, or other interests of the person or of another person.

3. For the purpose of applying this Article, the single trial judge or trial panel may have regard to any relevant evidence, including written evidence.

4. If the pre-trial interview is deemed admissible under the present Article it may not be used as the sole or as a decisive inculpatory evidence for a conviction.

Article 335
Reading of Other Previously Entered Statements

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 offense as well as records and other documents regarding the findings and opinions of expert witnesses may be read and used as direct evidence only in the following cases:

1.1. 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;

1.2. if the witnesses or expert witnesses refuse to testify at the main trial without lawful reasons;

1.3. if the parties agree that the direct examination of a witness or expert witness who has failed to appear, irrespective of whether he has been summoned or not, be replaced by reading the records of his previous examination; or

1.4. if the single trial judge or trial panel is satisfied that:

1.4.1. the person has not given evidence at all or has testified materially differently from the evidence given by him during the pre-trial interview;

1.4.2. the failure of the person to give evidence or testify materially differently from the evidence given in the pre-trial interview and pre-trial testimony was influenced by improper interference, including threats, intimidation, injury, bribery, or coercion; and

1.4.3. where appropriate, reasonable efforts have been made pursuant to secure

the attendance of the person as a witness;

1.4.4. paragraphs 2 and 3 of Article 334 of this Code apply to the procedure provided in sub-paragraph 1.4. of the present Article.

2. Records of previous examinations of persons exempt from the duty to testify 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 is inadmissible evidence.

3. The reasons for the reading of the record are indicated in the record of the main trial and during the reading it is announced whether or not the witness or expert witness took the oath.

4. The provisions of paragraph 1 of this Article apply to records containing the testimony of witnesses and experts and to pre-trial examination of the co-accused and participants given either in the same proceeding or in other proceedings, only if they have been disclosed to the defense in accordance with Article 156 or 239 of this Code, or to the prosecutor in accordance with Article 250 of this Code.

Article 336
Witnesses Subject to Special Protection

1. The examination of a witness under the age of sixteen (16) years of age who is a victim of a criminal offense under Chapter XX of the Criminal Code is not permitted in the main trial if his testimony has already been taken under Article 129 or 147 of the present Code and if the trial panel recognizes that a new examination is not necessary. If such witness is examined, the trial panel may decide to exclude the public.

2. If a child is present at a hearing as a witness or an injured party, he is taken out of the courtroom as soon as his presence is no longer necessary.

3. Measures for the protection of injured parties and witnesses as provided for in Chapter XIII of the present Code are observed during the main trial.

Article 337
Measures to Facilitate the Examination of Witnesses or Victims Related to the Weight of the Criminal Offense

1. Upon the request of the witness or injured party or victim or victim advocate or victim's representative, the trial panel may order the following measures for the examination in the main trial of a witness or victim or injured party of a criminal offense, including but not limited to criminal offenses listed under Chapters XV and XX of the Criminal Code, taking into account the weight of the criminal offense and if the Court is satisfied that such measure facilitates the testimony of the witness or victim:

1.1. testifying at the closed sessions to the public; and

1.2. testifying during the contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television.

Article 338
Oath

1. Before the examination of a witness, the single trial judge, presiding trial judge or the pre-trial judge when acting under Article 147 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 offense or participated in the criminal offense in relation to which he is being examined

cannot be required to take an oath. If a witness has taken an oath in the pre-trial proceedings, he is only reminded at the main trial of the oath already taken.

2. The oath of a witness reads: “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 single trial judge or presiding trial judge may require him 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 might be kept from appearing at the main trial. The reason for his taking an oath is entered in the record. A permanent expert witness who has taken a general oath for the type of examinations concerned is only reminded at the main trial of the oath already taken.

4. The oath of an expert witness reads: “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 take the oath by signing the text of the oath, and deaf witnesses and expert witnesses read the text of the oath. If a deaf or mute witness is illiterate, the oath is given through an interpreter.

Article 339
Expert statement

1. An expert witness communicates his findings and opinion to the court through a report that complies with Article 136 of the present Code.

2. At the main trial, the report is entered into the record. The expert describes his findings and explain his analysis. The expert may use exhibits in assistance of his testimony.

3. The party which did not request the expert analysis may cross-examine the expert witness about his report, his analysis, or his education, experience, or basis for his expertise.

Article 340
Presence of Witnesses in Courtroom

1. Witnesses and expert witnesses who have been examined remain in the courtroom unless the single trial judge or presiding trial judge upon hearing the parties permits them to leave or removes them temporarily from the courtroom.

2. The single trial judge or presiding trial 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 341
Evidence Taken Outside of Court

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 appearance involves considerable difficulties, the trial panel may, if it deems his testimony to be important, order that he give his testimony to the single trial judge or presiding trial 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 an inspection or reconstruction of the event has to be carried out outside the main trial, it

shall be conducted by the single trial judge or presiding trial judge or a judge on the trial panel.

3. The parties and the victim or injured party are always advised when and where a witness shall be examined or when and where an inspection or reconstruction of an event shall take place, and are instructed of their right to attend these actions. If the parties and the victim or injured party are present at these actions, they have the rights under Article 147 of the present Code.

Article 342
Reading of Records or Replay of Recordings

1. The record of a site inspection conducted outside the main trial, of a search of premises and a person and of the temporary sequestration of specified property or evidence shall be read or reproduced at the main trial in order to establish their contents. The trial panel has 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 are, if possible, 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 343
Examination of the Accused after Presentation of Evidence

1. After the examination of witnesses, expert witnesses and presentation of material evidence the examination takes place of the accused who has pleaded not guilty.

2. The provisions applying to the examination of the defendant in the pre-trial proceedings 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 344
Examination of the Accused

1. The accused has the right to not declare. If he chooses to declare, his testimony is conducted in accordance with paragraphs 2 through 4 of the present Article.

2. The lead defense counsel questions the accused in accordance with Article 329 of the present Code.

3. The state prosecutor questions the accused in accordance with Article 330 of the present Code.

4. The co-accused, if any, may question the accused in accordance with Article 330 of the present Code.

5. The injured party may question the accused in accordance with Article 330 of the present Code.

6. The defense counsel may conduct redirect examination of the accused in accordance with Article 331 of the present Code.

7. After the single trial judge or presiding trial judge has assured himself that the parties have no more questions, he 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.

8. After the examination has been completed, the single trial judge or presiding trial judge asks the accused whether he has anything to add in his defense. If the accused elaborates upon his defense, he may again be examined.

Article 345
Examination of Co-Accused

1. After the examination of the first accused has finished, each of the other accused, if there are any, are examined in turn in compliance with Article 344 of the present Code. Each accused is entitled to address questions to the other co-accused who have been examined.

2. The previous testimony of co-accused during the main trial may be used by the parties under Article 330 of the present Code. If the testimony of individual co-accused on the same circumstances differ, the single trial judge or presiding trial judge may also confront the co-accused except when they exercise the right to remain silent.

Article 346
Supplementary Evidence by the Court and the Parties

1. Upon completion of the evidentiary proceedings, the single trial judge or presiding trial judge may order ex officio or upon request of the parties, additional evidence not produced by the parties when it considers it necessary for the determination of the truth.

2. The Court may recess the main trial up to sixty (60) days in order to allow for the evidence to be collected.

3. If no additional evidence is requested ex officio or by the parties, or if the motion by the parties has been made and denied, and the court finds that the case has been clarified, the single trial judge or presiding trial judge announces that the evidentiary proceedings are concluded.

Article 347
Criminal Records of the Accused

The data from the criminal register as well as other data about convictions for criminal offenses 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 are read out before the parties make their closing statements.

SUB – CHAPTER XII
AMENDMENTS AND EXTENSION OF THE INDICTMENT

Article 348
Modification of Indictment at Main Trial

1. If the state 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 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 single trial judge or the trial panel grants the recess of the main trial in order for a new indictment to be prepared, it determines the time in which the state prosecutor is obliged to file a new indictment. A copy of the new indictment is served on the accused. If the state prosecutor fails to file a new indictment within the prescribed period of time, the court resumes the main trial on the basis of the previous indictment.

3. When the indictment has been modified, the accused or the defense counsel may make a motion to recess the main trial in order to prepare the defense. The single trial judge or trial

panel may recess the main trial to allow for the preparation of defense, if the indictment has been substantially modified or extended.

Article 349
Extension of Indictment at the Main Trial

1. If the accused commits a criminal offense during a hearing in the course of the main trial or if a previous criminal offense committed by the accused is discovered in the course of the main trial, the single trial judge or trial panel may, in acting upon a charge by the state prosecutor which may also be submitted orally, extend the main trial to include this new offense as well.

2. In such case, the court may recess the main trial to give the defense time to prepare, and after hearing the parties it may decide that the accused be tried separately for the offense under paragraph 1 of the present Article.

3. If another department within the basic court is competent to adjudicate a matter under paragraph 1 of the present Article, the single trial judge or trial panel after hearing the parties decides whether it shall refer the matter about which it is conducting the main trial to the competent higher court for adjudication.

SUB – CHAPTER XIII
CLOSING STATEMENTS

Article 350
Parties' Closing Statements

1. Upon completion of the evidentiary proceedings, the single trial judge or presiding trial judge calls on the parties and their representatives, to sum up their arguments. The state prosecutor speaks first, then the injured party or victim, victim advocate or victim's representative, the defense 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, as well as mitigating and aggravating factors. They may use charts, diagrams, court-approved transcripts of tapes or their functional equivalent, 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.

3. If a sentencing hearing has been requested pursuant to Article 356 of this Code, the closing statements shall only address arguments and facts regarding the guilt or innocence of the accused.

Article 351
Closing Statement by State Prosecutor

In his closing statement the state prosecutor presents his evaluation of the evidence taken at the main trial, explain his conclusions concerning facts which are important for the decision, and presents and justifies his proposal regarding the criminal liability of the accused, the provisions of the Criminal Code to be applied and the mitigating and aggravating circumstances to be taken into consideration for the punishment. The state prosecutor may propose the amount of the punishment, and he may also propose that a judicial admonition or one of the alternative punishments under Article 46 of the Criminal Code be imposed.

Article 352
Closing Statement on Behalf of Injured Party

In his closing statement, the injured party or victim or the victim advocate or victim's representative

may explain the impact and the consequences of the criminal offense on the injured party or the victim, his declaration of injury or property claim, and call attention to evidence of the criminal liability of the accused.

Article 353
Closing Statement and Comments on Behalf of Accused

1. The defense counsel or the accused himself presents the defense in a closing statement and may comment on the allegations of the prosecution and the injured party.

2. After the defense counsel has presented arguments for the defense, the accused has the right to speak, to assert whether he agrees with the defense presented by his counsel and to supplement such defense.

3. The state prosecutor and the injured party have the right to respond to the defense, and defense counsel or the accused have the right to comment on those responses.

4. The accused has always the right to speak last.

Article 354
Presentation of Closing Statements

1. The presentation of closing statements by the parties may be subject to time limits by the single trial judge or presiding trial judge. The closing statements may also be submitted in writing.

2. The single trial judge or presiding trial judge may, upon prior warning, interrupt the speaker who in his closing statements offends public order and morality, insults another person, repeats himself or speaks at great length on matters manifestly irrelevant to the case. The interruption and the reason for this is noted in the record of the main trial.

3. When several persons act for the prosecution and several defense counsels represent the defense, only the lead prosecutor or counsel or a co-counsel designated by the lead counsel may present closing arguments on behalf of their party.

4. After all closing statements have been presented, the single trial judge or presiding trial judge asks whether anyone has any further statement to make.

Article 355
Conclusion of the Main Trial, Deliberation and Voting

1. If after the closing statements of the parties the single trial judge or trial panel does not find a need for any further evidence, and no request for a sentencing hearing was made by the state prosecutor, the accused or his defense counsel, or if all parties agree to waive the sentencing hearing as such hearing is not needed, the single trial judge or presiding trial judge indicates that the main trial has been concluded.

2. The single trial judge then withdraws to render a judgment, whereas the trial panel then withdraws for deliberation and voting in order to render a judgment.

Article 356
Sentencing Hearing following Guilty Plea or Judgment of Guilty

1. A sentencing hearing may be held if:

1.1. an accused pleads guilty;

1.2. an accused has been found guilty of a criminal offence after the main trial.

2. The request for a sentencing hearing is made in writing or in the record after the accused pleads guilty or before the anticipated conclusion of the main trial. The state prosecutor, the accused or his defense counsel may request that a hearing be held to present matters relevant to sentencing. The request for such a hearing by the accused or his defense counsel shall not be regarded as any admission of guilt.

3. The single trial judge or trial panel may also order a sentencing hearing ex officio to obtain additional information relevant to the sentence if such a hearing is not requested by the parties.

4. The single trial judge or trial panel grants the request and advises the parties that the closing statements shall address only the guilt or innocence of the accused.

5. The sentencing hearing is scheduled within seven (7) days of the announcement of a guilty judgment pursuant to Article 364 of this Code. The single trial judge or trial panel immediately gives notice of the date and time of the sentencing hearing to the state prosecutor, accused, defense counsel, injured party or victim and victim advocate or victim's representative.

6. Following the announcement of a guilty judgment, the single trial judge or trial panel may order, ex officio or upon the request of the parties, from the probation service to compile a pre-sentencing report. The order specifies the date for the submission of the report. In instances when a pre-sentencing report is ordered, the deadline from paragraph 5 of this Article for scheduling a sentencing hearing commences from the specified date for the submission of the report by the probation service.

7. At the sentencing hearing the state prosecutor, accused, defense counsel, injured party or victim and victim advocate or victim's representative may present to the court:

7.1. matters in aggravation of the sentence, including data from the criminal record of the accused;

7.2. matters in mitigation of the sentence, including those relevant for the mitigation of the sentence under the minimum punishment provided by the law;

7.3. a statement or argument regarding an appropriate sentence, either orally or in writing; and

7.4. any other matters that the single trial judge or trial panel finds relevant in determining an appropriate sentence.

8. The applicable provisions for the sequence of presentation of evidence at main trial apply mutatis mutandis during the sentencing hearing.

9. The accused has the right to speak in the hearing in favor of mitigating his sentence.

10. The injured party or the victim or the victim advocate or victim's representative may also make a statement during the hearing on the physical, psychological or material impact of the offence. The statement shall not include a recommendation on the type and severity of the sentence.

11. In lieu of a statement during the sentencing hearing, the injured party or the victim may request that a declaration of damages from Article 214 of this Code be presented in writing or be read during the hearing, and considered in determining the sentence. The declaration shall not include a recommendation on the type and severity of the sentence. A copy of the declaration is submitted to the accused and the state prosecutor pursuant to the provisions of this Code, if such declaration is not part of the casefile. The accused and his defense counsel may object to the information in the declaration during the sentencing hearing.

12. At the conclusion of the sentencing hearing, the single trial judge then withdraws to render the judgment, whereas the trial panel then withdraws for deliberation and voting in order to render the judgment. The provisions of Article 365 of this Code apply mutatis mutandis for the announcement of the sentence.

Article 357
Dismissal of Indictment

1.The single trial judge or trial panel dismisses the indictment by a ruling:

1.1. if the proceedings were conducted without the request of the state prosecutor;

1.2. if the required motion of the injured party or the permission of the competent public authority is lacking, or if the competent public authority has withdrawn permission; or

1.3. if there are other circumstances which bar prosecution.

2. The single trial judge or trial panel may render a ruling by which the indictment is dismissed even after the main trial has been scheduled.

CHAPTER XX
JUDGMENT

SUB – CHAPTER I
RENDERING OF THE JUDGMENT

Article 358
Rendering and Announcement of Judgment

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 renders a judgment.

2. The judgment is rendered and announced in the name of the people.

Article 359
Subjective and Objective Identity of the Judgment over the Indictment

1. The judgment may relate only to the accused and only to an offense 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 is not bound by the motions of the state prosecutor regarding the legal classification of the offense.

3. The court is not bound by any agreement between the state prosecutor and the defense regarding modification of the charges or the guilty plea, except for plea agreements accepted by the court under Article 230 of the present Code.

Article 360
Basis of Judgment

1.The court bases its judgment solely on the facts and evidence considered at the main trial.

2. The court is 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.

SUB – CHAPTER II
TYPES OF JUDGMENTS

Article 361
Form of Judgment

1. The court, by a judgment, rejects the charge or acquits the accused of the charge or pronounces the accused guilty.

2. If the charge includes several criminal offenses, the judgment specifies whether, and for which offense, the charge is rejected or the accused is acquitted, or the accused is pronounced guilty.

Article 362
Rejection Judgment

1. The court renders a judgment rejecting the charge, if:

1.1. the state prosecutor withdraws the charge during the period from the opening until the conclusion of the main trial;

1.2. the accused was previously convicted or acquitted of the same offense under a final judgment;

1.3. the period of statutory limitation has expired, an amnesty or pardon covers the act, or there are other circumstances which bar prosecution; or

1.4. the injured party withdraws the motion for criminal offense not prosecuted ex officio, unless the court has evidence that the decision to withdraw has been unduly influenced by a third party.

Article 363
Judgment of Acquittal

1. The court renders a judgment acquitting the accused, if:

1.1. the offense with which the accused is charged does not constitute a criminal offense;

1.2. there are circumstances which exclude criminal liability; or

1.3. it has not been proven that the accused has committed the offense with which he has been charged.

Article 364
Judgment of Guilty

1. In a judgment pronouncing the accused guilty the court states:

1.1. the criminal offense of which he has been found guilty, together with facts and circumstances indicating the criminal nature of the offense committed, and facts and circumstances on which the application of pertinent provisions of criminal law depends;

1.2. the legal designation of the criminal offense and the provisions of the criminal law applied in passing the judgment;

1.3. the decision to confiscate specified property;

1.4. the decision on costs of criminal proceedings and on a property claim;

1.5. fee for Crime Victim Compensation Program as per the applicable Law; and

1.6. the Judgment also states on whether the final judgment should be announced in the press, radio or television.

2. If no request for a sentencing hearing was made by the state prosecutor, accused or his defense counsel, in a judgment pronouncing the accused guilty the court also states:

2.1. the punishment imposed on the accused, including an alternative punishment under the Criminal Code, or a waiver of punishment;

2.2. the decision to include the time spent in detention on remand or imprisonment under an earlier sentence in the amount of the punishment;

2.3. the decision to impose mandatory rehabilitation treatment of perpetrators addicted to alcohol or drugs; and

2.4. if the accused is punished by a fine, the judgment states the time within which he must pay the fine and the manner of substituting the fine if the fine cannot be collected by means of compulsion.

3. Following the sentencing hearing, if any, the guilty judgment states findings specified in sub-paragraphs 2.1 to 2.4 of the present Article.

SUB – CHAPTER III
ANNOUNCEMENT OF JUDGMENT

Article 365
Announcement of Judgment

1.The judgment is announced by the single trial judge or presiding trial judge immediately after the court has rendered it. If the court is unable to render judgment on the day the main trial or the sentencing hearing is completed, it postpones the announcement by a maximum of three (3) days and determines the time and place for the announcement of the judgment.

2. If the single trial judge or presiding trial judge renders a judgment of acquittal or rejection judgment, he reads the enacting clause of the judgment in open court and in the presence of the parties, the victim advocate or victim's representative and defense counsel, after which he gives a brief account of the grounds for the judgment.

3. If the single trial judge or presiding trial judge issues a judgment of guilty and a sentencing hearing is scheduled pursuant to Article 356 of this Code, the enacting clause of this judgment only contains the fact that he is guilty. If a sentencing hearing is not scheduled, the single trial judge or presiding trial judge also announces the sentence.

4.The judgment is announced even in the absence of a party, victim advocate, victim's representative or defense counsel. If the accused is not present, the single trial judge or presiding trial judge may order that the judgment be reported to him orally or that the judgment be served on him in writing.

5. If the public was excluded from the main trial, the enacting clause of the judgment is always read out in open court, with the exception of cases where the proceedings are conducted involving a minor who is a party to the proceedings. The trial panel decides whether and to what extent the public should be excluded while the grounds for the judgment are announced.

6. All persons present stand while the enacting clause of the judgment is being read.

Article 366
Detention on Remand upon Announcement of Judgment

1. In rendering a judgment by which the accused is punished by imprisonment, the single trial judge or trial panel may:

1.1. order or extend detention on remand if conditions set forth in Article 184 paragraph 1 of the present Code are met, or

1.2. terminate 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 always terminates detention on remand and orders the release of the accused if:

2.1. the accused is acquitted of the charge;

2.2. he is found guilty but the punishment has been waived;

2.3. he is only punished by a fine or has received a judicial admonition;

2.4. one of the alternative punishments is imposed, with exception of the punishment of semi-liberty under Article 58 of the Criminal Code;

2.5. due to the inclusion of detention on remand in the amount of punishment he has already served the sentence; or

2.6. the charge is rejected, except in a case in which it is rejected on grounds of lack of competence of the court.

3. Before ordering or terminating detention on remand under paragraph 1 of the present Article, the single trial judge or trial panel first hears the opinion of the state prosecutor, if the proceedings were initiated upon his request, and either the accused or his defense counsel.

4. Detention on remand under the present article is ordered, extended or terminated by a separate ruling. An appeal against this ruling does not stay execution.

5. If the accused is in detention on remand and the single trial judge or trial panel finds that the grounds on which detention on remand was ordered still exist, it extends detention on remand under a separate ruling. It also renders a separate ruling when detention on remand is to be ordered or cancelled. An appeal against this ruling does not stay execution.

6. Detention on remand ordered or extended under the provisions of sub-paragraph 1.1 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 basic court.

7. An accused in detention on remand who has been punished by imprisonment may upon his request be transferred to a penal institution under a ruling of the single trial judge or presiding trial judge even before the judgment has become final.

Article 367
Instructions and Warnings Accompanying Judgment

1. After announcing the judgment, the single trial judge or presiding trial judge instructs the parties of their right to appeal. The instruction is entered into the record of the proceedings of the main trial.

2. Where an alternative punishment listed under the Article 46 of the Criminal Code has been imposed, the single trial judge or presiding trial judge warns the accused of the meaning of the punishment and the conditions by which he is bound to abide.

3. The single trial judge or presiding trial judge reminds the parties of their obligation to report to the court any change in address until the final conclusion of proceedings.

SUB – CHAPTER IV
DRAWING UP AND SERVING OF JUDGMENTS

Article 368
Delivering of Written Judgment

1. The judgment shall be drawn up in writing within fifteen (15) days of its announcement, if the accused is in detention on remand or if detention on remand has been imposed on him, while in all other cases it is drawn within thirty (30) days of its announcement. When a case is complex, as defined by Article 19 sub-paragraph 1.2 of this Code, the single trial judge or presiding trial judge may ask the President of the Court to extend the deadline up to sixty (60) more days, from its announcements, for the judgment to be drawn up. A member of the trial panel may submit a separate dissenting or concurring opinion on legal or factual questions and such opinion will be attached to the judgment.

2. Every judge is obliged to maintain electronic copies of the judgments he or she writes and signs according to paragraph 3 of this Article.

3. The judgment is signed by the single trial judge or presiding trial judge and the recording clerk.

4. The judge who is authorized to sign the judgment, according to paragraph 3 of this Article, must deliver, or give access to, the judgment at the court's respective office of case management, in editable electronic version and hard copy, within five (5) days after the judgement is signed.

5. A certified copy of the judgment containing an instruction on the right to appeal is served on the parties.

6. A certified copy of the judgment with an instruction on the right to appeal is served on the injured party and on a person from whom an object is confiscated under the judgment.

7. Where, under the provisions on a single punishment for concurrent criminal offenses, the court has rendered a judgment taking into account judgments rendered by other courts, certified copies of the final judgment are sent to the courts concerned.

Article 369
Content and Form of Written Judgment

1. The judgment drawn up in writing shall be fully consistent with the judgment as it was announced. It has an introduction, the enacting clause and a statement of grounds.

2. The introduction includes: 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 single trial judge or presiding trial judge, members of the trial panel and the recording clerk; the first name and surname of the accused; the criminal offense of which the accused was convicted and an indication as to whether he 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 state prosecutor, defense counsel, victim advocate or victim's representative present at the main trial; the day of the announcement of the judgment that has been rendered; and the date when the judgment was drawn up.

3. The enacting clause of the judgment includes the personal data of the accused and the decision by which the accused is pronounced guilty of the criminal offense of which he is accused or by which he is acquitted of the charge for that offense or by which the charge is rejected.

4.If the accused has been convicted, the enacting clause of the judgment contains the necessary data specified in Article 364 of the present Code, and if he was acquitted or the charge was rejected, the enacting clause contains a description of the offense with which he 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 offenses the court indicates in the enacting clause, the punishment determined for each separate offense, whereupon it indicates the aggregate punishment.

6. In the statement of grounds for a judgment, the court presents the grounds for each individual point of the judgment.

7. The court states clearly and exhaustively which facts it considers proven or not proven, as well as the grounds for this. The court also, in particular, makes 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 offense and the criminal liability of the accused, as well as in applying specific provisions of criminal law to the accused and his offense.

8. If the accused has been sentenced to a punishment, the statement of grounds indicates the circumstances the court considered in determining the punishment. The court, in particular, explains 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, 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 offense.

9. If the indictment lists specified property subject to confiscation or if the state prosecutor has notified the parties of new specified property discovered after the filing of the indictment pursuant to Article 278 paragraph 5 of this Code, or if the court has ordered the confiscation of value substitution property pursuant to Article 273 of this Code, the judgment indicates whether the specified property and/or value substitution property is confiscated or not. The judgment provides reasoning for the confiscation of each item that is ordered to be confiscated, and the judgment provides reasoning for each asset which is not being ordered to be confiscated.

10. If the accused is acquitted of a charge, the statement of grounds states, in particular, on which of the reasons provided for in Article 363 of the present Code it is acting.

11. In the statement of grounds for a judgment rejecting a charge, the court does not evaluate the principal matter but confines itself only to the reasons for the rejection of the charge.

12. For purposes of this Article, the term “personal data” includes following personal information: First Name, Last Name, Name of the Hometown or Town of Residence, Public Function of the defendant if any, and Personal Number. When the Personal Number is not available, date of birth, name of one parent and place of birth can be used instead. Additional personal data, as this term is understood by other laws, may be added only if necessary to explain contextual circumstances of the offenses.

13. Save for the Personal Number, date of birth and names of parents and place of birth, publication of other personal data from paragraph 12 of this Article is not deemed a breach of privacy due to the interest of the public in an open and public judiciary.

Article 370
Publication of Court decisions

1. In accordance with Law on Courts, courts are obliged to publish all judgments online within a period of sixty (60) days from the date of their issuance.

2. Exceptionally, judgments are not published in cases involving juveniles as parties, or in matters where alleged crimes are within a domestic relationship or cases of criminal offences against sexual integrity. If a special law grants confidentiality in a respective procedure, provisions of that law govern the publication of judgments rendered therein.

3. In cases where one or more hearings have been closed to the public for reason of sub-paragraphs 1.1, 1.4, 3.1 or 3.2 of Article 289 of this Code, references to testimony and other evidence adduced in such hearings will be redacted from the judgment prior to publication. References to juveniles and their testimony will be anonymized or redacted, regardless of whether their testimony was taken at a closed hearing. To facilitate such anonymization/redaction, judgments incorporating references to a juvenile, the testimony of a juvenile, or information that was developed in such closed hearings, will clearly identify, in their pre-publication form, which material in the judgment falls in one or more of these categories.

4. The published version of the judgment is, prior to publication, redacted to remove any reference to personal identity numbers. All other data described in paragraph 12 of Article 369 of this Code remain unredacted.

5. The judge who is authorized to sign the judgment under Article 368 of this Code is obliged to take all necessary measures to ensure that the legal obligation to publish judgments is fulfilled.

6. The court also publishes the rulings which conclude a criminal matter.

7. The Kosovo Judicial Council has the authority to issue bylaws to implement this Article.

Article 371
De Minimus Errors in Judgment

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 are corrected under a separate ruling of the single trial judge or presiding trial judge, on the motion of the parties, defense counsel or ex officio.

2. If de minimus or harmless errors in the judgment are the subject of an appeal, the court of appeals may correct the judgment under Article 403 of the present Code.

3. If the judgment as drawn up in writing and its original differ with respect to the data provided for in Article 364 paragraph 1 sub-paragraphs 1.1-1.4 and 1.6 and paragraph 2 sub-paragraphs 2.1 and 2.3 of the present Code, the ruling on corrections is served on persons referred to in Article 368 of the present Code. In such case, the prescribed period of time for filing an appeal against the judgment runs from the day of service of such ruling. No separate appeal may be permitted against this ruling.

Article 372
Execution of Penal Sanctions

1. If the court decides on extension or imposition of detention on remand following the announcement of judgment, or when the court imposes a punishment based on provisions of Article 368 paragraph 7 of the present Code, it is deemed that the accused is serving the sentence pursuant to provisions of the Law on Execution of Penal Sanctions.

2.When a final sentence is imposed with imprisonment, while the accused has fled Kosovo or

is avoiding serving his sentence, the single trial judge or presiding judge shall issue an arrest warrant for the accused in accordance with Article 173 of the present Code.

Article 373
Judgment against Legal Persons and Execution of Judgment

Investors, shareholders or lenders to a legal person shall not have standing to object to judgments and their execution against a legal person, unless that person is the representative of the defendant legal person under the respective Law on Liability of Legal Persons for Criminal Offenses.

CHAPTER XXI
LEGAL REMEDIES

SUB – CHAPTER I
LEGAL REMEDIES

Article 374
Types of Legal Remedies

1. Unless otherwise provided for under the present code, a party may seek legal remedies from a court of higher instance through:

1.1. an appeal against the judgment of the Basic Court to the Court of Appeals;

1.2. an appeal against the judgment of the Court of Appeals to the Supreme Court of Kosovo under Article 407 paragraph 1 of the present Code;

1.3. an appeal against a ruling or order of the Basic Court to the Court of Appeals;

1.4. an appeal against a ruling of the Court of Appeals to the Supreme Court, when the Court of Appeals amends the decision of the Basic Court regarding the detention on remand or when the detention on remand is imposed for the first time at the Court of Appeals;

1.5. an objection against the Basic Court decision as foreseen by this Code;

1.6. an application for extraordinary legal remedies filed against the decision of the Basic Court or Court of Appeals to the competent court.

2. If authorized under the current Code, an order of a pre-trial judge may be reviewed by a review panel of Basic Court judges. An order reviewed by a review panel under this paragraph is reviewable by the Court of Appeals only during an appeal against the judgment.

3. Unless otherwise provided for in the present Chapter, the provisions on the main trial before the court of first instance apply mutatis mutandis to proceedings for legal remedies.

4. The judgment of the Basic Court may not be appealed on procedural grounds if the appellant has not challenged in the Basic Court the legal or factual decision upon which the appeal is based, unless the appellant can demonstrate extraordinary circumstances that justify such an appeal.

SUB – CHAPTER II
GENERAL RULES REGARDING THE LEGAL REMEDIES

Article 375
Fairness in Legal Remedies

1. No party or person authorized to file legal remedies shall be permitted to have ex parte communication with the review panel, Court of Appeals or the Supreme Court regarding an objection or legal remedy that is pending before the review panel, Court of Appeals or the Supreme Court, or which the party intends to file before the review panel, Court of Appeals or the Supreme Court.

2. No judge of the review panel, Court of Appeals or Supreme Court shall engage in an ex parte communication, regarding an objection or the legal remedy, with a party or the authorized person to file legal remedy to which the party has an interest which is pending before the court of appeals or the Supreme Court, or which the party intends to file before the review panel, court of appeals or the Supreme Court.

3. The judge with whom the party or person authorized to file legal remedies attempts to have ex parte communications in violation of paragraph 1 or 2 of this Article shall immediately refuse the communication and shall inform the other parties of the attempted ex parte communication.

Article 376
Content of Legal Remedy

1. As a general rule, a legal remedy must contain:

1.1.the file number of the case;

1.2. the name of the defendant;

1.3. a description of the legal status of the case, including whether the legal remedy was filed within the period of time allowed;

1.4. a description of the relevant facts contained in the record;

1.5. a description of the legal remedy being requested;

1.6. a description of the legal basis for the legal remedy.

2. The legal remedy must clearly identify the information which complies with paragraph 1 of the present Article.

3. The legal remedy is filed with the Basic Court, which serves the legal remedy upon the other party.

4. No legal remedy shall be considered which does not comply with this Article.

Article 377
Content of Reply to Legal Remedy

1. A reply to a legal remedy must contain:

1.1. the file number of the case;

1.2. the name of the defendant;

1.3. a description of the legal status of the case, including whether the reply was filed

within the period of time allowed;

1.4. a description of the relevant facts contained in the record;

1.5. a description of the legal remedy;

1.6. a description of the legal basis for the legal remedy.

2. The reply must clearly identify the information which complies with paragraph 1 of the present Article.

3. The reply is filed with the Basic Court, which serves the reply upon other party.

4. No reply shall be considered which does not comply with this Article.

Article 378
Time Limits for Legal Remedy and Replies

1. The objection being adjudicated by the review panel must be filed within forty-eight (48) hours of the receipt of the decision.

2. The legal remedy being adjudicated by the Court of Appeals must be filed within five (5) days of the receipt of the decision.

3. The legal remedy being adjudicated by the Supreme Court of Kosovo must be filed within ten (10) days of the receipt of the decision.

4. The reply to the objection must be filed within twenty-four (24) hours of the receipt of the objection which is being adjudicated by the review panel.

5. The reply to the legal remedy adjudicated by the Court of Appeals must be filed within five (5) days of the receipt of the legal remedy.

6. The reply to the legal remedy adjudicated by the Supreme Court of Kosovo must be filed within ten (10) days of the receipt of the legal remedy.

7. Timelines foreseen in the present Article apply only if there is not a specific deadline for legal remedies and replies in a specific Article of the present Code.

Article 379
Respecting the Rules Governing the Content of Legal Remedies and Replies

Any legal remedy and reply must comply with the requirements of Articles 376 to 378 of the present Code by a judge of the Basic Court, review panel, Court of Appeals or Supreme Court of Kosovo.

SUB – CHAPTER III
APPEALS AGAINST JUDGMENT

Article 380
Filing Appeals against Judgment

1. Authorized persons may file an appeal against a judgment rendered by the single trial judge or trial panel of the Basic Court within thirty (30) days of the day the copy of the judgment has been served.

2. Until the Court of Appeals renders its decision on the appeal, the appellant may withdraw his

appeal. The withdrawal of an appeal may not be revoked.

3. An appeal filed in due time by an authorized person stays the execution of the judgment.

Article 381
Persons Authorized to File Appeals against Judgment

1. An appeal may be filed by the state prosecutor, the defense counsel, the accused, the legal representative of the accused, the injured party or victim and victim advocate or victim's representative.

2. The state prosecutor may file an appeal either to the detriment or to the benefit of the accused.

3. An injured party or victim may challenge a judgment only with respect to the court's decision on the penal sanctions for trafficking in human beings, domestic violence, criminal offenses committed against life or body, against sexual integrity, against the security of public traffic, and on a property claim when the defendant has been found guilty, as well as on the cost of criminal proceedings as it relates to him.

4. An appeal may also be filed by a person whose property has been confiscated.

Article 382
Content of the Appeal against Judgment

1. The appeal against judgment shall comply with Article 376 of the present Code, but shall additionally include:

1.1. an indication of the judgment against which the appeal is filed;

1.2. the grounds for challenging the judgment under Article 383 of the present Code;

1.3. a motion to reverse the challenged judgment in whole or in part, or to modify it;

1.4. the reasoning of the appeal; and

1.5. the signature of the applicant of the appeal.

2. If an appeal is filed by an accused or an injured party who are not represented by counsel, and the appeal is not drawn up in accordance with the provisions of paragraph 1 of the present Article, the single trial judge or presiding trial judge requests the appellant to supplement it within a certain prescribed period of time by a written submission. If the appellant does not comply with the request under Article 376 of the present Code or paragraph 1 of the present Article, the single trial judge or presiding trial judge dismisses it.

3. 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 shall indicate the facts which he intends to prove by that evidence.

4. If the appellant asserts grounds for appeal but did not raise those grounds with the Basic Court during the initial hearing or main trial, the appellant may not raise those grounds unless he can assert an extraordinary reason or new evidence or facts under paragraph 3 of the present Article.

Article 383
Grounds for Exercising an Appeal against the Judgment

1.A judgment may be challenged:

1.1. on the ground of a substantial violation of the provisions of criminal procedure;

1.2. on the ground of a violation of the criminal law;

1.3. on the ground of an erroneous or incomplete determination of the factual situation; or

1.4. on account of a decision on penal sanctions, confiscation, 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 there is a plea agreement or when the accused has pleaded guilty to all counts or some of the counts of the indictment and the trial panel has accepted such plea.

Article 384
Substantial Violation of the Provisions of Criminal Procedure

1. There is a substantial violation of the provisions of criminal procedure which shall be recognized ex-officio or upon motion of the parties if:

1.1. the court was not properly constituted or the participants in the rendering of the judgment included a judge who did not attend the main trial or was excluded from adjudication under a final decision;

1.2. a judge who pursuant to Articles 38-42 of the present Code should be excluded from participation in the main trial participated therein;

1.3. the main trial was conducted in the absence of persons whose presence at the main trial is required by law;

1.4. the main trial was conducted in a language that the accused person does not understand and no interpretation was provided;

1.5. the public was excluded from the main trial in violation of the law;

1.6. the court violated the provisions of the criminal procedure relating to the issue of whether exists a charge by an authorized state prosecutor, a motion of the injured party or the approval of the competent public authority;

1.7. the judgment was rendered by a court which lacked subject matter jurisdiction to hear the case;

1.8. the accused, when asked to enter his plea, pleaded not guilty on all or certain counts of the charge and was examined before the presentation of evidence;

1.9. the judgment was rendered in violation of Article 395 of the present Code; or

1.10 the judgment lacks completely a reasoning.

2. Substantial violation of provisions of criminal procedure is considered upon motion of the parties only if it influenced the rendering of a lawful and fair judgment in the following cases:

2.1. omission or incorrect application of the present Code;

2.2. violation of the rights of the defense;

2.3. a judge who should be excluded from participation in the main trial participated therein, if the existence of grounds for disqualification became known to the appellant

only after the conclusion of the main trial;

2.4. the court in its judgment did not fully adjudicate the substance of the charge or did not adjudicate the request for confiscation;

2.5. the judgment was based on inadmissible evidence;

2.6. the judgment exceeded the scope of the facts charged; or

2.7. the judgment was not drawn up in accordance with Article 369 of the present Code.

Article 385
Violation of the Criminal Law

1. There is a violation of the criminal law when:

1.1. the offense for which the accused is prosecuted is not a criminal offense;

1.2. circumstances exist which preclude criminal liability;

1.3. circumstances exist which preclude criminal prosecution and, in particular, if 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;

1.4. an inapplicable law was applied to the criminal offense;

1.5. in rendering a decision on punishment, alternative punishment or judicial admonition, or in ordering a measure of mandatory rehabilitation treatment or the confiscation the court exceeded its authority under the law; or

1.6. provisions were violated in respect of crediting the period of detention, house arrest, any period of deprivation of liberty and an earlier served sentence related to the criminal offense subject to the criminal proceedings.

Article 386
Erroneous or Incomplete Determination of the Factual Situation

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 387
Appeal Against the Judgment Related to the Decision on Penal Sanction and Other Decisions

1. A judgment may be appealed in respect of a decision on a penal sanction on the grounds that the court, while not exceeding its authority under the law, has nevertheless failed to determine the penal sanction correctly.

2. 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.

3. A decision on a measure of mandatory rehabilitation treatment of persons addicted to drugs or alcohol or on confiscation may be challenged on the grounds that the court, while not violating Article 385 sub-paragraph 1.5 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 even though there were legal grounds for this.

4. 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.

5. A decision on a property claim or 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.

Article 388
Procedure of Filing Appeals against Judgments

1.The appeal against judgment is filed with the court which rendered it.

2.The presiding judge of the court of first instance or pre-trial judge dismisses an appeal with a ruling:

2.1. as belated if it establishes that it was filed after the expiration of the period of time prescribed by law;

2.2. as impermissible 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 the appeal was withdrawn, or after withdrawal the appeal was filed again or if the appeal was not permitted under the law.

3. This court serves a copy of the appeal on the other parties, which may file a reply to the appeal within eight (8) days of service. Upon receipt of the reply, the court will proceed in accordance with Article 377 paragraph 3 of the present Code.

4. This court transmits the appeal, the reply, and related files to the court competent to hear the appeal.

5. Any appeal or reply under this Article is filed with a sufficient number of copies for the court and for the other parties.

6. An appeal may be filed against the ruling from paragraph 2 of this Article at the Court of Appeals.

Article 389
Procedure related to the appeal against a judgment at the Court of Appeals

1. Upon receiving the files, the Secretary of the Court of Appeals will send the files to the state prosecutor within the Appellate Prosecution Office who examines and returns them to the court without delay at latest within seven (7) days with the proposal or declares that he will file it at the appellate panel session.

2. After the appellate state prosecutor has returned the files, the case is assigned to the reporting judge.

3. The reporting judge may, when necessary, secure a report on violations of provisions of criminal procedure from the Basic Court, and he 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 may secure the necessary reports or documents from other agencies or legal persons.

4. Upon the review of the case, the reporting judge will inform the presiding judge who will schedule a session of the appellate panel.

5. If the accused is in detention on remand, the reporting judge examines ex officio whether reasons for detention on remand still exist within five (5) days upon receiving the case file.

Article 390
Session before Appeal Panel

1. When an imprisonment sentence has been imposed on the accused or when there are allegations presented for hearing the facts and law to do the evaluation regarding the guiltiness or innocence, the notification for the session of the panel shall be sent to the Appellate Prosecutor, to the injured party and his defense counsel or to the representative of the victims, to the accused and his defense counsel.

2. If an accused held in detention on remand or serving his sentence wishes to attend the session he will be allowed to do so.

3. The session of the panel opens with the report of the reporting judge on the facts. The panel may ask the parties, the defense counsel, or other appellants who are present at the session to provide necessary explanations concerning allegations in the appeal. They 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 and their written submission.

4. If parties or other appellants who were duly notified of the session fail to appear, this does not prevent the holding of the panel 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.

6. The record of the session is enclosed with the court file.

7. Rulings under Articles 399 and 400 of the present Code may be rendered without informing the parties or other appellants about the session of the panel.

Article 391
Decisions of Appeals Panel Made in Session or in Hearing

1. The Court of Appeals takes its decision in a session of the panel or in a hearing.

2. The Court of Appeals decides in a session of the panel whether to conduct a hearing.

Article 392
Grounds for Holding a Hearing at the Court of Appeals

1. A hearing before the Court of Appeals is 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 Basic Court for retrial.

2. A summons to appear at the hearing before the Court of Appeals is served on the accused and his defense counsel, the appellate state prosecutor, the injured party, the victim advocate or victim’s representative, 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 sentence, the presiding judge of the Court of Appeals takes the necessary steps for the accused to be brought to the hearing.

Article 393
Hearing before Appeal Panel

1. The hearing before the Court of Appeals starts with the report of the reporting judge who presents the factual situation without giving his 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, is read upon a motion or ex officio.

3. After that the appellant is called to set out his appeal and the opposing other party to give his reply. The accused and his defense counsel shall always have the last word.

4. The parties may present new evidence and new facts during the hearing.

5. The appellate state prosecutor may, having regard to the outcome of the hearing, withdraw the indictment completely or a part thereof or he may amend it in favour of the accused.

Article 394
Scope of Appeal Review by the Court of Appeals

1. The Court of Appeals examines the part of the judgment which is challenged by the appeal. In addition, when an appeal is filed, the court examines ex officio whether there exists a violation of the provisions of criminal procedure under Article 384 paragraph 1 of this Code or whether the criminal law was violated to the detriment of the accused.

2. If an appeal is filed to the detriment of the accused, the court examines ex officio whether there has been a violation regarding the penal sanction as to the type of sanction provided by the law. The court always examines ex officio whether the law has been violated to the detriment of the accused.

Article 395
Reformatio in Peius

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 offense and the penal sanction imposed.

Article 396
Additional Effect of the Appeal Based on the Erroneous and Incomplete Determination or Violation of Criminal Law

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 includes an appeal against the decision on punishment, mandatory rehabilitation treatment and confiscation.

Article 397
Beneficium Cohaesionis

If upon an appeal the Court of Appeals 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 proceeds ex officio as if such appeal was also filed by the co-accused.

Article 398
Decision of the Court of Appeals on the Appeal against Basic Court Judgment

1. The Court of Appeals may in a session of the panel or on the basis of a hearing:

1.1. dismiss an appeal as belated or inadmissible;

1.2. reject an appeal as unfounded and affirm the judgment of the Basic Court;

1.3. annul the judgment and return the case to the Basic Court for retrial and decision; or

1.4. modify the judgment of the Basic Court.

2. The Court of Appeals may direct the Basic Court to assign, based on an objective and transparent case allocation system, a new single trial judge, presiding trial judge or trial panel if the Court of Appeals determines that the assigned single trial judge, presiding trial judge or trial panel has consistently failed to apply the law correctly, grossly mischaracterized evidence or the failure to reassign the judge or panel would result in a miscarriage of justice or conflict of interest.

3. The Court of Appeals determines all appeals of the same judgment by a single decision.

4. A decision of the Court of Appeals is signed by all the judges in the panel, except for a decision issued under Article 399 or 400 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 399
Dismissal of Late Appeals

The Court of Appeals dismisses an appeal as belated by a ruling if it establishes that it was filed after the expiry of the legal deadline.

Article 400
Dismissal of Impermissible Appeal

The Court of Appeals dismisses 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 401
Rejection of Unfounded Appeals and Affirmation of Judgment of Basic Court

The Court of Appeals rejects by a judgment an appeal as unfounded and affirms the judgment of the Basic Court if it establishes that there are no grounds to challenge the judgment and no violations of the law under Article 384 paragraph 1 of the present Code.

Article 402
Annulment of Judgment of Basic Court

1. The Court of Appeals, in exceptional cases, annuls by a ruling the judgment of the Basic Court and returns the case for retrial if:

1.1. there exists a substantial violation of provisions of criminal procedure, and the Court of Appeals cannot proceed under Article 403 of the present Code; or

1.2. a new main trial before the Basic Court is necessary because of an erroneous or

incomplete determination of the factual situation and the Court of Appeals cannot proceed under Article 403 of the present Code.

2. The ruling shall contain clearly the reasons and grounds for which the Court of Appeals cannot proceed under Article 403 of the present Code.

3. The Court of Appeals annuls by a ruling the judgment of the Basic Court and rejects the indictment, if it is established that the circumstances under Article 357 paragraph 1 of the present Code apply. The Court of Appeals proceeds in the same way if it finds that the Basic Court lacked subject matter jurisdiction to adjudicate the case, except where the appeal was filed only in favour of the accused.

4. The Court of Appeals may annul the judgment of the Basic Court partially if particular parts of the judgment can be addressed separately without prejudice to a correct adjudication.

5. If the accused is in detention on remand, the Court of Appeals examines whether there are still grounds for detention on remand and extends or terminates detention on remand by a ruling. No appeal is permitted against this ruling.

Article 403
Modification of Judgment of Basic Court

1. Upon the request of the parties or ex officio, the Court of Appeals modifies by a judgment the judgment of the Basic Court if it determines that the Basic Court had made erroneous or incomplete determination of facts, and for this purpose:

1.1. upon the request of the parties or acting ex officio, may hold a hearing to take new evidence or to repeat evidence in order to properly determine and assess the material facts; or

1.2. may properly determine and assess the material facts without a hearing, if there is no need to take new evidence or to repeat evidence.

2. The Court of Appeals modifies the judgment in case of substantial violation of the provisions of Criminal Procedure foreseen in Article 384 paragraph 2 of this Code if:

2.1. the enacting clause does not entirely correspond or is in contradiction with the reasoning but there is no erroneous or incomplete determination of the factual situation; or

2.2. the enacting clause does not entirely correspond or is in contradiction with the reasoning and the Court of Appeals determined and assessed the material facts pursuant to paragraph 1 of this Article.

3. The Court of Appeals modifies the judgment in case of substantial violation of provisions of criminal procedure foreseen in Article 384 paragraph 2 of this Code raised by the parties if the Court of Appeals is able to rectify it.

4. If the Court of Appeals finds that there are legal grounds for a judicial admonition, it modifies the judgment of the Basic Court by a judgment and render a judicial admonition.

5. Where due to a modification of the judgment of the Basic Court there are grounds for ordering or cancelling detention on remand, the Court of Appeals renders a separate ruling thereon. No appeal against this ruling is permitted.

Article 404
Reasoning of Appeals Court Decisions

1. In the statement of grounds for its judgment or ruling the Court of Appeals assesses the contentions which are the subject of the appeal and indicates the violations of law which it has recognized ex officio.

2. If the judgment of the Basic Court is annulled on grounds of a substantial violation of provisions of criminal procedure the statement of grounds contains an indication of the provisions which were violated and the nature of the violation in accordance with Article 384 of the present Code.

3. If the judgment of the Basic Court is annulled on grounds of an erroneous or incomplete determination of the factual situation, the statement of grounds indicates 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 405
Decisions Returned to Basic Court for Service

1. The Court of Appeals returns all files to the Basic Court 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 Appeals sends its decision and the files to the Basic Court no later than three (3) months from the day it has received the files from this court.

Article 406
Retrial Proceedings at the Basic Court Based on a Ruling of the Court of Appeals

1. The Basic Court to which a matter has been referred for adjudication proceeds on the basis of the prior indictment. If the judgment of the Basic Court has been partly annulled the court takes as its basis only that part of the indictment which refers to the annulled part of the judgment. The retrial thus commences from the main trial stage.

2. The parties are entitled to introduce new facts and present new evidence at the new main trial.

3. The Basic Court undertakes all procedural actions and examines all contentious points indicated in the decision of the Court of Appeals.

4. In rendering a new judgment, the Basic Court is bound by the prohibition provided for by Article 395 of the present Code.

5. If the accused is in detention on remand the trial panel of the Basic Court proceeds as provided for in Article 190 paragraph 2 of the present Code.

Article 407
Appeal against Judgment from Court of Appeals to Supreme Court

1.An appeal against a judgment of Court of Appeals may be filed with the Supreme Court of Kosovo if:

1.1. The Court of Appeals imposes a punishment of life long imprisonment or it upholds a Basic Court judgment imposing such a punishment;

1.2. After the hearing the Court of Appeals makes different determination of the factual situation from that of the basic court and bases its judgment in such determined factual situation; or

1.3. The Court of Appeals modified the judgment of acquittal by the Basic Court and rendered instead a judgment of conviction for the accused.

2. The Supreme Court of Kosovo shall decide on appeals against the judgment of the Court of Appeals in a session of the panel of judges pursuant to provisions that apply for appellate procedure in the second instance. There shall be no hearings at 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. Provisions of Article 397 of the present Code shall also apply against the co-accused who has no right to file an appeal against Court of Appeals Judgment.

SUB – CHAPTER IV
APPEAL AGAINST RULING

Article 408
Rulings and Orders that can be Appealed

1. An appeal against a ruling or order of a pre-trial judge and against other rulings or orders rendered in the Basic Court may be filed by the parties and persons whose rights have been violated in accordance with Article 411 of the present Code, unless an appeal is explicitly prohibited by the provisions of the present Code.

2. No appeal is permitted against a ruling or order rendered by the review panel in the pre-trial stage of the proceedings, unless otherwise provided for by the present Code.

3. A ruling or order 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 is permitted against a ruling rendered by the Supreme Court of Kosovo.

Article 409
Deadline for Appealing the Ruling or Order

1. An appeal is filed with the court which has rendered the ruling or order.

2. Unless otherwise provided for by the present Code, an appeal against a ruling or order is filed within three (3) days of the service of the ruling or order.

Article 410
Effect of the Appeal on a Ruling or Order

Unless otherwise provided for by the present Code, the filing of an appeal stays the execution of the ruling or order being challenged.

Article 411
Procedure of Filing Appeals against the Ruling or Order

1. An appeal against a ruling or order may be filed by the state prosecutor, defense counsel, defendant, injured party or victim, victim advocate or victim's representative, and any person for whom the ruling or order contains an obligation. An authorized party seeking an appeal complies with this Chapter.

2. An appeal that does not comply with this Chapter may be summarily dismissed by the Court of Appeals after ensuring that it does not raise an important issue of constitutionally protected rights.

3. An appeal against a decision of the Basic Court is filed by the appellant with the Basic Court.

4. The Basic Court proceeds in accordance with Article 376 paragraph 3 and Article 377 paragraph 3 of the present Code.

5. The Basic Court transmits the appeal, the reply and the related files to the Court of Appeals.

6. An appeal on the ruling of the Court of Appeals is filed by an authorized party with the Court of Appeals.

7. The Court of Appeals proceeds in accordance with Article 376 paragraph 3 and Article 377 paragraph 3 of this Code.

8. The Court of Appeals transmits the appeal, the reply and the related files to the Supreme Court.

9. An appeal filed under paragraph 6 of the present Article that does not comply with this Chapter may be summarily dismissed by the Supreme Court after ensuring that it does not raise an important issue of constitutionally protected rights.

10. In instances under paragraph 2 or paragraph 9 of the present Article where an appeal raises an important issue of constitutionally protected rights, but does not comply with this Chapter, the appellant is given the opportunity to correct the appeal.

11. Any appeal or reply under this Article is filed with a sufficient number of copies for the court and for the other party.

Article 412
The Procedure on the Appeal against the Ruling in the Court of Appeals

1. The Court of Appeals, upon receiving the files with the appeal, sends the files to the competent state prosecutor within the Appellate Prosecution Office who examines and returns them to the court without delay.

2. The state prosecutor may file his motion in returning the files, or may declare that he will file it during the session of the appellate panel.

3. After the state prosecutor has returned the files, the presiding judge of the appellate panel schedules the session of the panel.

Article 413
Rulings of Appeals Panel based on Filings or Made in Session

1. The Court of Appeals takes its ruling based on the appeal and motions filed or in a session of the panel.

2. The Court of Appeals makes a ruling based on the appeal and motions filed only:

2.1. when there is no disputed legal or factual dispute, or

2.2. when the panel determines that a ruling or order is so clear that a session is unnecessary.

3. A ruling by a panel of the Court of Appeals in compliance with paragraph 2 of the present

Article includes reasoning that supports the ruling under paragraph 2 of the present Article.

Article 414
Session before Appeal Panel

1. When the Court of Appeals receives an appeal against the ruling or order, the panel may decide to hold a session in which it notifies: the appellate state prosecutor, the injured party or victim, victim advocate or victim's representative, the accused and his defense counsels, and the other persons who appealed. The session opens with the report of the facts by the presiding judge.

2.The session before the appeal panel is not public if the panel decides on appeal against ruling or order rendered, before the commencement of the main trial.

3.Article 390 of the present Code applies mutatis mutandis to the procedure of appeal against rulings or orders.

Article 415
Basis of Appeal on Ruling or Order

1. A ruling or order may be challenged:

1.1. on the ground of a violation of the provisions of criminal procedure;

1.2. on the ground of a violation of the criminal law; or

1.3. on the ground of an erroneous or incomplete determination of the factual situation.

2. The party appealing the ruling of the Basic Court must demonstrate that the violation of the right causes an irreparable harm to the party.

3. If the basis of an appeal does not comply with paragraphs 1 and 2 of the present Article, the Court of Appeals may dismiss the appeal. An appeal subject to dismissal under this paragraph may be reasserted on an appeal against judgment under Article 380 of the present Code.

Article 416
Decisions on Appeals against Ruling or Order

1. An appeal against a ruling or order of the Basic Court is decided by the Court of Appeals in a session of the panel, unless otherwise provided for by the present Code.

2. 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 order, or annul it and return it for reconsideration where necessary.

3. 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.

4. In examining an appeal, the court inquires ex officio into whether the Basic Court had the subject matter jurisdiction to render the ruling or order and whether the ruling or order was rendered by the authority empowered to render it.

5. The ruling of the Court of Appeals is signed by the presiding judge of the appellate panel.

6. Unless otherwise provided under the present Code, the session on the appeal against the ruling or order is scheduled within thirty (30) days after the state prosecutor has returned the files, unless extended by the President of the Court of Appeals upon the request of the presiding judge of the panel.

7. Unless otherwise provided under the present Code, the ruling under this Article, is drawn up in writing within fifteen (15) days after the session, unless extended by the President of the Court of Appeals upon the request of the presiding judge of the panel.

8. Article 380 paragraph 3, Article 385 paragraph 1 sub-paragraphs 1.1 through 1.4, Articles 386, 395 and 397, Article 404 paragraphs 1 and 3, and Article 405 paragraph 1 of the present Code apply mutatis mutandis to appeal against ruling or order.

Article 417
The Procedure on the Appeal against the Ruling in the Supreme Court

The procedure applicable in the Court of Appeals against a ruling of the Basic Court applies mutatis mutandis to the procedure before the Supreme Court to decide on appeal against a ruling of the Court of Appeals.

Article 418
Authorizations of Review Panel of Basic Court

1. An objection against an order of the pre-trial judge is decided by the review panel of the same court if provided for by the present Code.

2. The president of the Basic Court appoints a review panel of three (3) judges. The three (3) judges are competent to review the objection. The pre-trial judge is not permitted to participate on the review panel.

3. Unless otherwise determined under the present Code, the review panel issues a ruling on the objection from the parties within one (1) week of the filing of the objection.

4. Unless otherwise determined under the present Code, a ruling on the objection by the review panel is reviewed by the Court of Appeals and the Supreme Court only upon an appeal of the judgment.

5. The review panel decides on the objection based on the written submissions.

6. Unless otherwise provided for by the present Code, filing of an objection does not stay execution of the order.

7. Article 380, paragraph 3, Article 404 paragraphs 1 and 3, Article 415, Article 416, paragraphs 2, 4 and 5 of the present Code apply mutatis mutandis to the proceedings of the review panel.

8. If the order is annulled or returned for reconsideration, in rendering a new order, the pretrial judge will be bound by prohibition provided for by Article 395 of the present Code.

SUB – CHAPTER V
EXTRAORDINARY LEGAL REMEDIES

Article 419
Extraordinary Legal Remedies

1. 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. The request for the reopening of the criminal proceedings is filed with the Basic Court that rendered the decision.

2. A party may request the extraordinary mitigation of punishment at any time during the period being served in imprisonment. The party files the request with the Basic Court where the first

instance judgement was issued, which transmits all case files to the Supreme Court.

3. A party may request protection of legality within three (3) months from the day of filing the final judgment or final ruling against which protection of legality is sought. The party files the request with the Basic Court where the first instance decision was issued which transmits all case files to the Supreme Court.

4. Articles 375, 376, 377, 378 and 379 of the present Code applies to all requests made under this Article.

A. REOPENING OF CRIMINAL PROCEEDINGS

Article 420
Modification of a Final Judgment without Reopening Criminal Proceedings

1. A final judgment may be modified even without reopening criminal proceedings:

1.1. when, in two (2) 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 offenses;

1.2. when, in imposing an aggregate punishment by the application of provisions on concurrent criminal offenses, a punishment already included in a punishment imposed under an earlier judgment in accordance with provisions on concurrent criminal offenses was also taken into consideration; or

1.3. when a final judgment in which an aggregate punishment was imposed for several criminal offenses is partly unenforceable due to an amnesty, pardon or other reasons.

2. In a case under paragraph 1 sub-paragraph 1.1 of the present Article, the court modifies by a new judgment the earlier judgment in respect of the punishments imposed therein and imposes an aggregate punishment. The rendering of a new judgment falls within the jurisdiction of the Basic Court 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 is rendered by the court in which the most severe punishment was imposed, and where the punishments are equal the judgment is passed by the court which imposed the punishment last.

3. In a case under paragraph 1 sub-paragraph 1.2 of the present Article, the court which in imposing an aggregate punishment erroneously included a punishment already comprised in an earlier judgment modifies its judgment.

4. In a case under paragraph 1 sub-paragraph 1.3 of the present Article, the court which adjudicated in first instance modifies the earlier judgment in respect of the punishment and imposes a new punishment, or it determines what part of the punishment imposed in the earlier judgment should be enforced.

5. The new judgment is passed at a session of the panel upon a motion of the state prosecutor if the proceedings were initiated at his request or upon that of the accused, but after hearing the other party.

6. In a case under paragraph 1 sub-paragraph 1.1 or 1.2 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 is sent to those courts.

7. When by a final judgment there has been ordered the seizure of the items and their demolition, upon the reasoned request of the competent prosecutor, the final judgment may be changed, only regarding the demolition of the items for which the order has been given. Upon the change of the final judgement, the confiscated items are given for use to the public institutions that have

been proposed in the request of the prosecutor, if the request is reasonable. The party the items of whom have been confiscated has the right to file an appeal.

Article 421
Resumption of Proceedings

If the indictment was dismissed under Article 248 paragraph 1 sub-paragraph 1.2 or Article 357 of the present Code, proceedings shall be resumed upon the request of the state prosecutor as soon as the reasons for the rendering of such ruling cease to exist.

Article 422
Reopening of Criminal Proceedings Dismissed by a Final Ruling

1. Criminal proceedings which were dismissed in a final form before the main trial can be reopened if the state prosecutor withdrew the indictment and it is proven that this withdrawal was a result of the criminal offense committed by the state prosecutor. While proving this criminal offense, provisions of Article 423, paragraph 3 of the present Code apply.

2. If the indictment was dismissed based on insufficient evidence to support a well-grounded suspicion that the defendant has committed the criminal offense as described in the indictment and if new facts and evidence are discovered and obtained, a new indictment can be filed if the review panel determines that new evidence and facts justify this.

Article 423
Reopening Criminal Proceedings Terminated by Final Judgment

1. Criminal proceedings terminated by a final judgment may only be reopened if:

1.1. it is proven that the judgment rests on a forged document or a false statement of a witness, expert witness or interpreter;

1.2. it is proven that the judgment ensued from a criminal offense committed by a judge or a person who undertook investigative actions;

1.3. 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 conviction under a less severe criminal provision;

1.4. a person was tried more than once for the same offense or several persons were convicted of the same offense which could have been committed only by a single person or only by some of them; or

1.5. in the case of conviction for a continuous criminal offense, or some other criminal offenses which under the law include 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 offense, of which he 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 sub-paragraphs 1.1 and 1.2 of the present Article have been a result of a criminal offense committed by the defendant or a person acting on his behalf against a witness, expert witness, interpreter, state prosecutor, 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 to the detriment of the defendant is only permissible within five (5) years of the time the final judgment was rendered.

3. In cases under paragraph 1 sub-paragraphs 1.1 and 1.2 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 offenses 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 sub-paragraphs 1.1. and 1.2. or paragraph 2 of the present Article may be proven by using other evidence.

Article 424
Persons Authorized to Request Reopening of Criminal Proceedings

1. The reopening of criminal proceedings may be requested by the parties and defense counsel. After the death of the convicted person, the reopening may be requested by the state prosecutor or by the spouse, the extramarital spouse, a blood relation person 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 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, upon learning of the existence of grounds to reopen criminal proceedings, notifies thereof the convicted person or another person authorized to file the request.

Article 425
Content of the Request for Reopening Criminal Proceedings and the Court Deciding Thereupon

1. A request for reopening criminal proceedings is decided by the review panel of the Basic Court which adjudicated 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 asks 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 426
Basis and Procedure for Dismissing the Request to Reopen Criminal Proceedings

1. The court dismisses the request by a ruling on the basis of the request itself and the files of previous proceedings if it finds that:

1.1. the request has been filed by an unauthorized person;

1.2. there are no legal grounds for reopening of proceedings;

1.3. 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;

1.4. the facts and evidence obviously do not provide grounds to grant the reopening of proceedings; or

1.5. the person who requests the reopening of proceedings did not abide by the provisions under Article 425 paragraph 2 of the present Code.

2. If the request is not dismissed, the court serves a copy of the request on the state prosecutor or the other party who are entitled to reply within eight (8) days. After the court has received the reply to the request, or after the time limit for the reply has expired, the presiding judge of the review panel orders that the facts and evidence indicated in the request and the reply thereto be produced and examined.

Article 427
Decisions of the Panel on the Request for Reopening Proceedings

1. On the basis of the results of the examination of the facts and evidence indicated in the request and the reply, the court either grants the request and allows the reopening of criminal proceedings or rejects 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 proceeds 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 orders 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 orders that the execution of the judgment is postponed or interrupted if, having regard to the evidence filed, the court considers that:

4.1.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 would have to be released;

4.2. he may be acquitted of the charge; or

4.3. the charge against him may be rejected.

5. When a ruling granting the reopening of criminal proceedings becomes final, the enforcement of punishment is stayed. However, if grounds provided for in Article 184 paragraph 1 of the present Code exist, the court orders detention on remand.

Article 428
Rules on New Reopening Proceedings

1. New proceedings, held on the basis of a ruling which grants the reopening of criminal proceedings, is conducted in accordance with the provisions applying to the original proceedings. In the new proceedings, the court is not 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 is annulled by a ruling on termination.

3. In rendering a new judgment, the court either annuls the earlier judgment or a part thereof or affirms the earlier judgment. In the punishment imposed by the new judgment, the court gives 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, the court imposes a new aggregate punishment in accordance with the provisions of criminal law.

4. In new proceedings, the prohibition under Article 395 of the present Code is binding on the court.

B. REQUEST FOR EXTRAORDINARY MITIGATION OF PUNISHMENT

Article 429
Permission of Extraordinary Mitigation of Punishment

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 430
Persons Authorized to Request Extraordinary Mitigation of Punishment and Consequences

1. An extraordinary mitigation of punishment may be requested by the state prosecutor, if proceedings were initiated at his request, by the convicted person or by his defense counsel.

2. A request for an extraordinary mitigation of punishment shall not stay the execution of the punishment.

Article 431
The Procedure on the Request for Extraordinary Mitigation of Punishment and the Supreme Court Decisions

1. A request for an extraordinary mitigation of punishment is decided by the Supreme Court of Kosovo.

2. A request in compliance with Article 376 of the present Code for an extraordinary mitigation of punishment is filed at the Basic Court which pronounced the judgment.

3. The Basic Court serves the request upon the state prosecutor, who files a reply in accordance with Article 377 of the present Code.

4. The single trial judge or presiding trial judge of the Basic Court dismisses requests that are not compliant with Article 376 of the present Code by a ruling.

5. The ruling in paragraph 4 of this Article may be appealed to the Court of Appeals.

6. The Basic Court examines whether there are grounds for an extraordinary mitigation of punishment, then refers the files together with its reasoned recommendation to the Supreme Court of Kosovo.

7. The Supreme Court of Kosovo rejects the request if it finds that there are no legal grounds for an extraordinary mitigation of punishment. When approving the request, the court modifies by a ruling the final judgment in respect of the decision on punishment.

C. REQUEST FOR PROTECTION OF LEGALITY

Article 432
Grounds for Filing a Request for Protection of Legality

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:

1.1. on the ground of a violation of the criminal law;

1.2. on the ground of a substantial violation of the provisions of criminal procedure provided for in Article 384 paragraph 1 of the present Code; or

1.3. 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 Chief State Prosecutor 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 proceeding which have not been completed in a final form only against final decisions ordering, extending, or terminating detention on remand.

Article 433
Persons Authorized to File Requests for Protection of Legality

1. A request for protection of legality may be submitted by the Office of the Chief State Prosecutor, the defendant and his defense counsel. After the death of the defendant, a request for protection of legality on his behalf may be submitted by the persons provided in Article 424 paragraph 1 of this Code.

2. The Office of the Chief State Prosecutor, the defendant and his defense counsel and the persons listed in Article 424 paragraph 1 of the present Code may file a request for protection of legality within three (3) months of the service of the final judicial decision. If no appeal has been filed against the decision of the Basic Court, the time is counted from the day when that decision becomes final.

3. 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 is counted from the day the decision of the European Court of Human Rights was served on the defendant.

4. Notwithstanding the provision under Article 432 paragraph 2 of the present Code, a request for protection of legality under paragraph 3 of the present Article is also possible against a decision of the Supreme Court of Kosovo.

Article 434
Filing the Request for Protection of Legality at the Basic Court

1. A request for protection of legality is filed with the Basic Court which rendered the decision.

2. The competent pre-trial judge, single trial judge or presiding trial judge of the Basic Court dismisses a request for protection of legality by a ruling if:

2.1. the request was filed against a decision of the Supreme Court of Kosovo under Article 432 paragraph 2 of the present Code, except in cases referred to in Article 433 paragraph 4 of the present Code;

2.2. the request was filed by a person not entitled thereto under Article 433 paragraph 1 of the present Code; or

2.3. the request is belated under Article 433 paragraph 2 of the present Code.

3. This ruling may be appealed in the Court of Appeals.

4. Depending on the content of the request, the Basic Court may order that the enforcement of the final judicial decision be postponed or terminated.

Article 435
Consideration of Request for Protection of Legality by Panel of Supreme Court

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 dismisses a request for protection of legality by a ruling if the request is prohibited or the conditions under Article 434 paragraph 2 of the present Code are met. Otherwise it sends a copy of the request to the other party who may reply thereto within fifteen (15) 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 436
Benefits of the Defendant Regarding the Request for Protection of Legality

1. When deciding on a request for protection of legality the Supreme Court of Kosovo confines itself to examining those violations of law which the requesting party alleges in his 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 proceeds 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 is bound by the prohibition under Article 395 of the present Code.

Article 437
Rejection of Request for Protection of Legality

The Supreme Court of Kosovo, by a judgment, rejects 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 under Article 386 and Article 432 paragraph 2 of the present Code.

Article 438
Judgment on Request for Protection of Legality

1. If the Supreme Court of Kosovo determines that a request for protection of legality is well-founded it renders a judgment by which, depending on the nature of the violation, it shall:

1.1. modify the final decision;

1.2. annul in whole or in part the decision of both the Basic Court and the higher court or the decision of the higher court only, and return the case for a new decision on the merits or retrial to the Basic Court or the higher court; or

1.3. 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 only determines that the law was violated but without interfering in the final decision, unless if the final decision is manifestly inappropriate or based on serious error.

3. If the Court of Appeals 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 annuls or alters the decision of the Court of Appeals as well, even though the law has not thereby been violated.

Article 439
Annulment of Final Judgment

1. If a final judgment is annulled and the case returned for retrial, proceedings are based on the earlier indictment or the part thereof which relates to the annulled part of the judgment.

2. The court is 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 are entitled to present new facts and evidence before the Basic Court or Court of Appeals.

4. In rendering a new decision, the court is bound by the prohibition under Article 395 of the present Code.

5. If the decision of the Court of Appeals is annulled as well as the decision of the Basic Court, the case is returned to the Basic Court through the Court of Appeals.

Article 440
Protection of Rights Under the Constitution of the Republic of Kosovo, European Convention on Human Rights and European Court of Human Rights

The extraordinary legal remedies under the present Chapter may be filed on the basis of rights available under this Code which are protected under the Constitution of the Republic of Kosovo or the European Convention on Human Rights and its Protocols, as well as any decision of the European Court of Human Rights.

PART THREE
ADMINISTRATION OF PROCEDURE

CHAPTER XXII
SUBMISSIONS

Article 441
Method of Filing Submissions

1. Indictments, motions for prosecution, rulings by prosecutors, legal remedies and other statements and communications are filed in writing or given orally on the record.

2. A submission filed under paragraph 1 of the present Article may be filed electronically if the court or prosecution registry is capable of administrating electronic submissions. The Kosovo Judicial Council and Kosovo Prosecutorial Council determines the capacity of the courts and prosecutions to administer electronic submissions and issues a directive permitting such electronic submissions and providing regulations upon such submissions.

3. A submission filed under paragraph 1 of the present Article must be comprehensible and

must contain everything necessary for it to be acted upon.

4. 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 summons the person making the submission to correct or supplement the submission; and if he does not do so within a specified period of time, the court rejects the submission.

5. 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 442
Filing Submissions in Sufficient Copies

1. A submission which under the present Code is given to the other party in the proceedings is 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 orders 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 makes the necessary number of copies at the expense of the person making the submission.

Article 443
Punishments for Written Submissions or Verbal Submissions that Contain Insults

The court imposes a fine of up to two hundred and fifty (250) EUR on a defense counsel, an injured party or victim or victim advocate or victim's 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 renders 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 state prosecutor insults someone else, the chief state prosecutor of the respective prosecution office is so informed. The Kosovo Bar Association is informed of the punishment imposed on a lawyer or a lawyer in training.

CHAPTER XXIII
PRESCRIBED PERIODS OF TIME

Article 444
Prescribed Periods of Time

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 defense 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 submission is related to 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 submission is sent by post, registered mail or electronic mail or telegram, or by other means, such as telex, telefax, or similar means, the date of mailing or sending 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 submission has not exceeded the prescribed period of time when the person who is intended to receive the submission 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 submission 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 submission on the administration of the facility in which he is an inmate. The day when such record was compiled or when the submission 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 445
Calculation of Prescribed Periods of Time

1. A prescribed period of time is 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, is not included in the prescribed period of time, but the next hour or next day is taken as commencement of the prescribed period of time. Twenty-four (24) 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 expires 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 expires 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 expires at the end of the next working day.

Article 446
Petition to Return to Status Quo Ante

1. If the defendant for justified reasons does not within the prescribed period of time file an appeal against a judgment or against a ruling to confiscate, the court allows a return to the status quo ante for filing the appeal if, within eight (8) 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 appeal simultaneously with the petition.

2. A petition for a return to the status quo ante may not be filed if three (3) months have passed from the date when the prescribed period of time expired.

Article 447
Ruling to Return to Status Quo Ante

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

2. No appeal is 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, or the appeal of the judgment or ruling to confiscate, the response to the appeal and all other parts of the record to the higher court for a decision.

Article 448
Effect of Petition to Return to Status Quo Ante

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

CHAPTER XXIV
COSTS OF CRIMINAL PROCEEDINGS

Article 449
Type of Criminal Proceedings Costs

1. The costs of criminal proceedings are the costs incurred during the criminal proceedings and the costs related to those proceedings.

2. The costs of criminal proceedings include the following:

2.1. costs of witnesses, expert witnesses, interpreters, specialists, stenography and technical recordings as well as the cost of a site inspection;

2.2. costs of transporting the defendant;

2.3. costs of escorting the defendant or person in detention on remand;

2.4. transportation and travelling expenses of official persons;

2.5. 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;

2.6. a scheduled amount;

2.7. remuneration and necessary expenses of defense counsel;

2.8. necessary expenses of the injured party or victim and victim advocate or victim's representative and remuneration and necessary expenses of his authorized representative;

2.9. the Crime Victim Compensation Program fee; and

2.10. mediation.

3. The scheduled amount shall be within a range provided for in an Administrative Direction issued by the Kosovo Judicial Council which takes into consideration the duration and complexity of proceedings and the financial condition of the person required to pay the amount.

4. The expenses under sub-paragraphs 2.1 through 2.5 of paragraph 2 of the present Article and remuneration and the necessary expenses of an appointed defense counsel under Article 56 paragraphs 2 and 3 or Article 57 of the present Code and an appointed authorized representative of an injured party is paid in advance from the funds of the police, the state prosecutor or the court conducting criminal proceedings and they will 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 is 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 are not 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 defense counsel appointed under Article 56 paragraph 2 or 3 or Article 57 of the present Code are paid from budgetary resources and are not be paid by the defendant.

Article 450
Decision on Covering Costs of Criminal Proceedings

1. Every judgment or ruling which terminates 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 is rendered by the recording clerk of the court and approved by the single trial judge or the presiding judge when such data is obtained. The request with the data on the amount of costs may be filed within three (3) 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 is decided by a panel.

Article 451
Payment of Costs due to Fault of a Person that Caused Them

1. The defendant, the injured party or victim, the defense counsel, the victim advocate or victim's representative, the witness, the expert witness, the interpreter, and the specialist, 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 is rendered concerning the costs under paragraph 1 of the present Article, unless the matter of costs to be paid by the defendant is decided in a decision on the main issue.

Article 452
Effect of Guilty Verdict on Reimbursement of Costs

1. When the court finds the defendant guilty, it decides in the judgment that he must reimburse the costs of criminal proceedings.

2. A person who has been charged with several criminal offenses is not ordered to reimburse costs related to a criminal offense of which he has been acquitted if those costs can be determined separately from the total costs.

3. In a judgment finding several defendants guilty, the court specifies what portion of the costs shall be paid by each of them; but if this is not possible, it orders that all the defendants be jointly and severally liable for the costs. Payment of the scheduled amount is 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 449, paragraph 2, sub-paragraphs 2.1 through 2.6, and sub-paragraph 2.9 of the present Code, if their payment would jeopardize the support of the defendant or of the persons whom he is required to support. If these circumstances are ascertained after the decision on costs has been rendered, the single trial judge or presiding trial 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 453
Effect of Other Decisions on Reimbursement of Costs

1. When criminal proceedings are terminated or when a judgment is rendered which acquits the defendant or rejects the charge, the court states in the ruling or judgment that the costs of criminal proceedings under Article 449 paragraph 2, sub-paragraphs 2.1 through 2.5 of the present Code, the necessary expenses of the defendant and the remuneration and necessary expenditures of defense counsel are 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 pays the costs of criminal proceedings.

3. 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.

Article 454
Remuneration and the Necessary Costs for Defense Counsel or Victim's Representative

1. The remuneration and necessary costs of defense counsel or victim's representative of an injured party or victim 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 defense counsel is appointed under Article 56 paragraph 2 or 3 or under Article 57 of the present Code.

2. A defense counsel or victim's representative is not entitled to remuneration if they are not members of the Kosovo Bar Association. They are entitled to necessary expenses, while the members of the Kosovo Bar Association are also entitled to income lost.

Article 455
Final Decision on Duty to Pay Costs

1. The final decision concerning the duty to pay costs which arise in the Basic Court is made by the competent judge or panel of the Basic Court in accordance with this Chapter.

2. The final decision concerning the duty to pay costs which arise in the Court of Appeals is made by the presiding judge of the Court of Appeals panel in accordance with this Chapter.

3. The final decision concerning the duty to pay costs which arise in the Supreme Court is made by the presiding judge of the Supreme Court panel in accordance with this Chapter.

4. The terms of this Chapter apply mutatis mutandis to the costs incurred during the proceedings related to extraordinary legal remedies.

Article 456
Regulations on Costs

The Kosovo Judicial Council issues a sub – legal act which regulates in more detail the issues of payment of costs of criminal proceedings incurred before the court, which may be adjusted annually.

CHAPTER XXV
PROPERTY CLAIMS

Article 457
Property Claims

1. A property claim arising from the commission of a criminal offense is 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 action.

Article 458
Persons Authorized to File a Motion for Realization of Property Claims

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 offense 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 459
Filing of Motion to Realize Property Claims

1. A motion to realize a property claim in criminal proceedings is 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 Basic Court.

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

4. If the authorized person has not filed the motion to realize his property claim in criminal proceedings before the indictment is brought, he shall be informed that he may file that motion up to the end of the main trial. If a criminal offense has caused damage to publicly-owned, state-owned or socially-owned property and no motion has been filed, the court so informs the body or competent authority under Article 458 paragraph 2 of the present Code. The party is informed that failure to file the motion may disqualify the injured party from Victim Compensation Program even if the party would meet other eligible criteria under the applicable law.

5. If a criminal offense has caused damage to publicly-owned, state-owned or socially-owned property and no motion has been filed, the court so informs the body or competent authority under Article 458 paragraph 2 of the present Code.

Article 460
Withdrawal and Abandonment of Motion to Realize Property Claims

1. Authorized persons 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 is summoned to declare whether or not he stands by the motion. If he does not appear when duly summoned, it is taken that he has abandoned the motion.

Article 461
Review of the Motion to Realize Property Claims

1. The court conducting the criminal proceedings examines the motions of the parties and when necessary examines the defendant concerning the facts alleged in the motion. The court may also request from the parties or relevant institutions additional information important to making a decision on the claim.

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

Article 462
Decision on Motion to Realize Property Claims

1. The court decides 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 part of the property claim and refer him 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 instructs the injured party that he may pursue the entire property claim in civil litigation or file a request for Victim Compensation Program if eligible under the Program.

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 instructs the injured party that he may pursue the property claim in civil litigation. When a court is declared not competent for the criminal proceedings, it instructs the injured party that he may present his property claim in the criminal proceedings commenced or continued by the competent court.

Article 463
Recovery of Object

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 offense or in the possession of a person to whom they gave it for safekeeping, it orders in the judgment that the object be handed over to the injured party.

Article 464
Annulment of Specific Legal Action

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

Article 465
Amendment of the Final Judgment Regarding the Property Claim

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 heirs may seek amendment of a final judgment of a criminal court which contains a decision on a property claim only in civil litigation, provided that there are grounds for a revision under the provisions applicable on contested procedure.

Article 466
Temporary Measures to Ensure Property Claim

1. Temporary measures securing a property claim arising out of the commission of a criminal offense may be ordered in criminal proceedings according to the provisions that apply to enforcement proceedings upon a motion from authorized persons under Article 458 of the present Code or from the state prosecutor.

2. The ruling under paragraph 1 of the present Article is rendered during the pre-trial proceedings by the pre-trial judge. After the indictment has been filed, the ruling is rendered by the single trial judge or presiding trial judge in cases outside the main trial, and it is rendered in the main trial by the entire trial panel.

3. No appeal is permitted against the ruling of the trial panel concerning temporary measures ensuring the claim. In other cases, an appeal is ruled on by the three (3) judge panel. An appeal does not suspend execution of the ruling.

Article 467
Return of Property to Injured Party

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 are handed over to the injured party even before proceedings are completed.

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

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

Article 468
Measures for Ensuring Temporary Realization of the Motion for Property Claims against Third Persons

1. If an injured party has a claim against a third person because he is in possession of items obtained through the commission of a criminal offense or because he realized a material benefit because of a criminal offense, the court in criminal proceedings, upon the motion of authorized persons and according to the provisions which apply to enforcement proceedings, may order temporary measures ensuring the claim against that third party. The provisions of Article 466 paragraphs 2 and 3 of the present Code apply also in this case.

2. In a judgment pronouncing the accused guilty, the court either revokes the measures under paragraph 1 of the present Article if they have not already been revoked or refers the injured party to civil litigation, in which case those measures are revoked unless civil litigation is initiated within the period of time determined by the court.

CHAPTER XXVI
RENDERING AND PRONOUNCING DECISIONS

Article 469
Types and Rendering Decisions

1. Decisions are rendered in criminal proceedings in a form of judgments, rulings and orders.

2. A judgment may be rendered only by a court, while ruling may also be rendered by the

state prosecutor, whereas the order may be rendered by other public bodies that participate in criminal proceedings.

3. An order may be rendered and pronounced in line with provisions of the present Code.

Article 470
Procedure to Render Decisions at the Deliberation and Voting Session of the Trial Panel

1. A decision of a panel of judges is 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 trial judge directs the deliberation and the voting and votes last. It is his 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 are separated and the voting is repeated until a majority is reached. If a majority is not reached in this manner, a decision is taken whereby the votes which are most unfavourable to the defendant are 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 trial 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 is not obliged to vote on the penalty. If he does not vote, it shall be taken that he consented to the vote which was most favourable to the accused.

Article 471
The Sequence for Reviewing Matters which are Subject to Voting

1. When rendering a decision, a vote is first 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 is first taken on whether the accused has committed the criminal offense and whether he is criminally liable, and thereafter a vote is 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 offenses, a vote is taken on criminal liability and punishments for each criminal offense, and thereafter a vote is taken on a single punishment for all the criminal offenses.

Article 472
Closed Deliberation and Voting Session

1. Deliberation and voting are conducted in a closed 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 473
Communication of Decision

1. Unless otherwise provided for by the present Code, decisions are 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 is indicated in the record or on the document and the person receiving the decision confirms this by his signature.

3. Copies of decisions against which an appeal is permitted are served along with instructions

on the right of appeal.

CHAPTER XXVII
SERVICE OF DOCUMENTS

Article 474
Manner of Service of Documents

1. Documents are as a rule served by mail or as otherwise provided in this Article. 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 serve a summons to a main trial or other summonses on the parties in accordance with the content set out in Article 172 of this Code. The Court may also communicate the summonses orally to the person who is in court, accompanied by instructions as to the consequences of failure to appear. A summons issued in this manner is noted in the record which is 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.

3. A court or state prosecutor may direct the Kosovo Police to serve documents if, after the first attempt under paragraph 1 or 2 of the present Article, service is unsuccessful, it is unclear whether service was successful, or the person summoned does not appear as directed. The Court may also direct the Kosovo Police to serve a summons without resorting to paragraph 1 or 2 of the present Article if it believes that the person is unlikely to comply with service under paragraphs 1 and 2 of the present Article.

4. Irrespective of other provisions of the present Article, after the initial hearing, the court may serve summonses to appear in subsequent court hearings, or other proceedings, on the electronic contact addresses pursuant to Article 172 paragraph 5 of the present Code. The court may likewise serve other documents.

Article 475
Personal Service and presumption of personal service of Documents

1. 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 476 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 476 paragraph 1 of the present Code and it shall be assumed that the service has thereby been effected.

2. Service accomplished by transmission to an electronic contact point provided by a party is deemed personal service on that party, if the conditions of Article 172 of this Code are met. The fact that the contact information provided may be to an account registered to the party's family member or some other person is irrelevant. There shall be a presumption of service if the requirements of Article 479 paragraph 2 of this Code are met.

Article 476
Alternatives to Personal Service

1. A document for which the present Code does not specify obligatory personal service is 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 household, who must accept the document. If they are not found at

home, the document is left with a guardian or a neighbour, if he 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 consents to accept the document.

2. If a document cannot be served on persons under paragraph 1 of the present Article, a note is 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 on time, the document is returned with an indication of where the absent person is located.

4. Paragraphs 1 to 3 of this Article have no application to the circumstances of electronic service of summons or other documents.

Article 477
Documents to be Personally Served

1. The summons to the first examination in pre-trial proceedings and to the initial hearing are personally served on the defendant. Summons to subsequent appearances may be served electronically pursuant to Article 172 of this Code.

2. The indictment, the judgment and other decisions in which the prescribed period of time for appeal commences on the date of service, including the appeal of other party that is being served for an answer, are personally served on a defendant who does not have defense counsel. At the request of the defendant, the judgment and other decisions are served on a person designated by him.

3. If a defendant who does not have a defense counsel is to be served a judgment in which a prison sentence has been imposed on him and the judgment may not be served at his previous address, the court automatically appoints defense counsel for the defendant, who performs that duty until the new address of the defendant is ascertained. The appointed defense counsel is given the necessary period of time to acquaint himself with the files, whereupon the judgment is served on the appointed defense counsel and proceedings resumes. 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 other party which is being served for a reply, if the sender has been unable to ascertain the new address or electronic address of the defendant, the decision or appeal is displayed on the bulletin board of the court and, at the expiry of eight (8) days from the date of display, it is assumed that valid service has been effected.

4. If the defendant has a defense counsel, a document under paragraph 2 of the present Article is served on the defense counsel and the defendant in accordance with the provisions of Article 476 of the present Code. In such case, the prescribed period of time for pursuing a legal remedy or answering an appeal commences on the date when the document is served on the defendant. If the decision or appeal cannot be served on the defendant because he has failed to report his current address or an electronic address, it shall be displayed on the bulletin board of the court and, at the end of eight (8) days from the date of display, it is assumed that valid service has been effected.

5. If a document is to be served on defense counsel of the defendant, and the defendant has more than one defense counsel, it shall be sufficient to effect service on the lead counsel. In cases where the service has been effected pursuant to Article 172 of this Code, the service is considered effected if it was sent to the electronic address of the defense counsel which was

provided to the court.

6. The final judgment shall, besides the accused, be delivered to the institution or supervisory body where the accused is employed.

Article 478
Procedure of Service

1. The recipient and the sender sign the receipt confirming that service has been effected. The recipient himself indicates 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 name, the sender signs for him, indicating the date of the service, and making a note as to why he signed for the recipient.

3. If the recipient refuses to sign the receipt, the sender makes a note to that effect on the receipt and indicates the date of service, the service being considered thereby effected.

4. In instances where service of summons or a document is accomplished electronically, receipt and the date thereof is established as follows:

4.1. a response on the same electronic medium originating from the contact address the summons or document was sent to;

4.2. by a delivery receipt generated automatically by an electronic application;

4.3. evidence that the transmission was read is not required to establish receipt; or

4.4. the court may find that actual receipt did not occur if the party to whom it was directed can establish that the transmission in question was not received at the electronic contact address that he provided to the court pursuant to Article 172 of this Code. Where the circumstances of sub-paragraph 4.1. or 4.2. of this Article are satisfied, the burden will be on the party claiming service did not occur to rebut the presumption of service.

Article 479
Electronic service procedure

1. Electronic notification may only be employed in the circumstances provided for in Article 172 of this Code.

2. Subject to the provisions of Article 478 paragraph 4 of this Code, summons or other documents transmitted electronically are considered served at the time transmitted.

3. A document electronically served after 4:00 p.m. CET, or on a Saturday, Sunday, or official holiday, is deemed to have been served on the next business day.

4. Paragraph 2 of the present Article shall not apply if the recipient proves that the document has not been received or was received at a later date.

5. Should the notice be illegible, the recipient may ask the respective court to resend the notice in another form.

6. An intended recipient who provides proof that a summons had not been received in a timely manner may motion the court to reschedule the hearing if the court is satisfied that such delay in summoning adversely impacted the parties' ability to present their case at the originally scheduled hearing.

7. The Kosovo Judicial Council issues the necessary acts and provides for the implementation of the electronic transmission of summonses and documents in compliance with the present

Code. The matters to be determined by the Council include but are not limited to:

7.1. the identification and approval of messaging applications that are sufficiently reliable to be employed in electronic transmission of summonses and other documents;

7.2. determining the format and any authentication protocol for summons and other documents served electronically;

7.3. defining exceptional circumstances, such as those involving confidential documents, under which electronic service will not be allowed under this Code;

7.4. defining the circumstances under which a summons or other document served electronically will be deemed "illegible" and any remedies beyond substitution on demand, such as the designation of a later service date, for purposes of paragraph 5 of this Article.

8. The Kosovo Judicial Council may, in its discretion, issue necessary acts providing for:

8.1. the electronic filing of documents on the court; and

8.2. the electronic service of documents by parties on one another.

Article 480
Refusal to Accept Service

If the addressee or an adult member of his 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 481
Service of Documents in Special Circumstances

1. Police officers, guards in institutions where persons deprived of their liberty are held, and land, maritime, and air transport employees are 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 is served on a prisoner through the court or through the institution where he is an inmate.

3. Persons who enjoy the right of immunity in Kosovo, unless otherwise specified by international agreement, are served summonses in accordance with the provisions of the present Chapter. No personal service of a summons may be made at the premises of an international organization protected by international law or agreement.

Article 482
Service on State Prosecutor

1. Decisions and other documents are served on the state prosecutor through the registry office of the state 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 submission of the document to the registry office of the state prosecutor shall be taken as the date of service.

3. When the state prosecutor so requests, the court serves on him 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 state

prosecutor must return the file.

Article 483
Service according to Civil Litigation Procedure

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

Article 484
Service of Documents through Other Participants in the Procedure

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 received the summons or decision in time and was made aware of the consequences of a failure to take action.

CHAPTER XXVIII
ENFORCEMENT OF DECISIONS

Article 485
Finality and Enforceability of Decisions

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 is 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 is 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 serves 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 are set forth in separate legislation.

Article 486
Enforcement of a Punishment of Fine

If a fine imposed by the present Code cannot be collected even by compulsion, the court executes it by applying Article 43 of the Criminal Code.

Article 487
Enforcement of Judgment Related to Expenditures of Criminal Proceedings, Confiscation and Property Claims

1. With respect to the costs of criminal proceedings, respective fee for crime victim compensation, confiscation and a property claim, the judgment is executed by the competent court under the applicable provisions in enforcement proceedings.

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

3. If a judgment contains an order for confiscation of property, such property automatically becomes the property of the State. A certified copy of the final judgment shall immediately be sent to the Agency of Management of Sequestered and Confiscated Property which may sell the objects or place them in the use of the Government. The monetary proceeds from sale of such objects will be credited to the budget.

4. 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 488
Enforcement of Ruling and Order

1. Unless otherwise provided for in the present Code, a ruling is executed when it becomes final. An order is 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 are 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 487 paragraphs 1 and 2 of this Code.

Article 489
Hesitation in Enforcement of Decision and its Corrections

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 pretrial 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 is rendered by the presiding judge of the panel of the court which tried the case in the first instance. An appeal does 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 decides on it.

Article 490
Issuance of Certified Transcript of the Decision Regarding the Property Claim

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 a certified transcript of the decision, indicating that the decision can be executed.

Article 491
Record Keeping on Convicted Persons

Criminal records and records of convicted persons are kept by the competent public authority and the manner of keeping the records is established by law.

CHAPTER XXIX
OTHER PROVISIONS

Article 492
Immunity under International Law

1. The rules of international law apply for exclusion from criminal prosecution of foreign persons, who enjoy immunity.

2. If there is a doubt as to the immunity enjoyed by a person, based on paragraph 1 of the present Article, the body that conducts the procedure addresses the issue to the Ministry of Foreign Affairs for clarification.

PART FOUR
SPECIAL PROCEEDINGS

CHAPTER XXX
PROCEEDINGS FOR THE ISSUANCE OF A PUNITIVE ORDER

Article 493
Request for Punitive Order

1. For criminal offenses which come to the knowledge of the state prosecutor on the basis of credible evidence from a criminal report and are punishable by imprisonment of up to three (3) years or a fine, except for the criminal offense of Domestic Violence provided for in the Criminal Code, the state prosecutor may request in an indictment that the court issue a punitive order imposing by it a certain punishment on the accused without holding a main trial.

2. The state prosecutor may request the imposition of one or more of the following criminal sanctions: a fine or accessory punishments as provided by Article 59 of the Criminal Code or a judicial admonition. Additionally, the state prosecutor requests the confiscation of specified property.

Article 494
Dismissal of Request for Punitive Order

1. A single trial judge dismisses a request to issue a punitive order if it concerns a criminal offense for which such request may not be filed or if the state prosecutor requests the imposition of a punishment which is not permitted under the law. The review panel decides within a prescribed period of forty-eight (48) hours on the state prosecutor's appeal from a ruling on dismissal.

2. If the single trial judge considers that the information in the 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 state prosecutor can be expected, he, upon receipt of an indictment, schedules a main trial.

Article 495
Punitive Order Issued by Judgment

1. If the single trial judge agrees with the request, he issues a punitive order by a judgment.

2. The punitive order states that the state prosecutor's request is satisfied and that the punishment in the request is imposed on the defendant whose personal data is clearly indicated. The enacting clause of the judgment on a punitive order contains the necessary information under Article 364 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 states 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 496 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 496
Service of judgment for punitive order and its objection

1. The punitive order is served on the defendant and his defense counsel, if he or she has one, and the state prosecutor.

2. The defendant or his defense counsel may, within a term of eight (8) 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 defense. The defendant may waive his right to submit an objection, but he 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 is not 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 446 and 447 of the present Code 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 schedules the main trial on the state prosecutor's indictment.

5. A review panel of three (3) judges decides on an appeal from the ruling on the dismissal of the objection against the punitive order within the deadline set forth in paragraph 1 of Article 494 of the present Code.

Article 497
Single Trial Judge Not Bound by Request for Punitive Order

When rendering a judgment following an objection, a single judge is not bound by the state prosecutor's request under Article 493 paragraph 2 of the present Code, nor by the prohibition under Article 395 of the present Code.

CHAPTER XXXI
RENDERING OF A JUDICIAL ADMONITION

Article 498
Judicial Admonition

1. A judicial admonition is 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 apply mutatis mutandis to a judgment on judicial admonition.

Article 499
Announcement and Content of Enactment Clause of the Judgment for Judicial Admonition

1. The judgment on judicial admonition is announced immediately upon the conclusion of the main trial, together with the essential reasons.

2. The enacting clause of the judgment on judicial admonition contains the personal data of the accused, an indication that the judicial admonition against the accused has been rendered for the offense alleged in the indictment and the legal name of the criminal offense. The enacting clause of the judgment on judicial admonition also contains the necessary data under Article 364, paragraph 1 sub-paragraphs 1.4 and 1.6 of the present Code.

3. In the statement of grounds for the judgment, the court states the reasons which guided it in rendering the judicial admonition.

Article 500
Grounds for Appeal against the Judgment on Judicial Admonition

1. The judgment on judicial admonition may be appealed on grounds provided for in Article 383 paragraph 1 sub-paragraphs 1.1, 1.2 and 1.3 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 offense, 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 offense or that its decision on the costs of criminal proceedings or on the property claim was rendered contrary to legal provisions.

Article 501
Prohibition from Exceeding Judicial Powers Foreseen by the Law

Aside from the violations of criminal law referred to in Article 385 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 offense.

Article 502
Effect of Appeal

1. Where a judgment on judicial admonition is appealed by the state prosecutor to the detriment of the accused, the court of appeals may render a judgment by which the accused is found guilty and is punished or by which an alternative punishment is imposed on him, if it finds that the basic court 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 appeals may render a judgment dismissing the indictment, or acquitting the accused of the charge, if it finds that the basic court has determined the material facts correctly but that correct application of the law requires the rendering of one of the aforesaid judgments.

3. When grounds specified in Article 401 of the present Code exist, the Court of Appeals renders a judgment by which it rejects the appeal as unfounded and affirms the judgment on judicial admonition rendered by the basic court.

CHAPTER XXXII
PROCEEDINGS REGARDING PERSONS WHO HAVE COMMITTED CRIMINAL OFFENSES UNDER THE INFLUENCE OF ALCOHOL OR DRUG ADDICTION

Article 503
Imposition of Measure for Mandatory Rehabilitation Treatment

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 offense under the influence of alcohol or drug addiction, by a judgment of conviction, in accordance with Articles 54 and 87 of the 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 sentence of imprisonment.

3. The court decides upon the application of a measure under paragraph 1 of the present Article after obtaining an expert analysis and hearing the state prosecutor and the defense. 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 504
Oversight of Mandatory Rehabilitation Treatment by Court

1. The court which imposed the measure of mandatory rehabilitation treatment in a health care institution, ex officio or on the motion of the heath care institution and on the basis of the opinion of psychiatric experts, takes all further decisions in respect of the duration and modification of the measure referred to in Article 87 of the Criminal Code.

2. The decisions under the previous paragraph are taken by a review panel after a hearing. Notification of the hearing is sent to the state prosecutor and defense counsel. Before taking the decision the court hears 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 defense counsel.

4. Every two (2) months the court in accordance with paragraph 2 of the present Article ex officio determines 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, conducts an expert analysis and submits his findings in writing and, if necessary, he gives testimony at the court.

5. The court discontinues the implementation of the measure under the paragraph 1 of the present Article if treatment or rehabilitation is not necessary any more or the period of time prescribed in Article 87 of the Criminal Code has expired.

Article 505
Mutatis Mutandis application of other provisions of the present Code

Unless otherwise provided for by the present Chapter, other provisions of the present Code apply mutatis mutandis to persons who have committed a criminal offense under the influence of alcohol and drug addiction.

CHAPTER XXXIII
CRIMINAL PROCEEDINGS INVOLVING PERPETRATORS WITH A MENTAL DISORDER

Article 506
Definitions

For the purposes of this chapter:

1. ‘’Mental disorder” means any disability or disorder of mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning;

2. “Mental incompetence” has the meaning set forth in paragraph 1 of Article 18 of the Criminal Code;

3. “Diminished mental capacity” has the meaning set forth in paragraph 2 of Article 18 of the Criminal Code; and

4. “Measure of mandatory psychiatric treatment” means a measure of mandatory psychiatric treatment and custody in a health care institution or a measure of mandatory psychiatric treatment at liberty.

Article 507
Measures of Mandatory Treatment under Criminal Code

1. A perpetrator with a mental disorder, or a person being treated as such, is accorded the rights and measures of mandatory treatment under Chapter V of the Criminal Code.

2. Against a perpetrator who committed the criminal offence in a state of mental incompetence or substantially diminished mental capacity, the state prosecutor, in addition to filing the proposal or indictment, submits a written confirmation that no other criminal proceeding is conducted against the perpetrator for a criminal offence committed in a state of mental incompetence or diminished mental capacity. If other proceedings are being conducted, the state prosecutor submits in the proposal or indictment a motion to join the proceedings conducted in that court against the perpetrator.

3. When several proceedings are ongoing against the defendant, the court, according to the motion of the state prosecutor or ex officio, joins such proceedings and conducts a single criminal proceeding, in which the court decides with one ruling and imposes on the perpetrator the punishment or measure pursuant to the legal provisions.

4. If the criminal offence committed by a perpetrator in a state of mental incompetence or substantially diminished mental capacity has been committed in co-perpetration with other perpetrators who are not in such a state of mental disorder, the state prosecutor orders the severance of criminal proceedings and separate proceedings is conducted against the perpetrator with mental disorders.

5. If an indictment has been filed against an accused with substantially diminished mental capacity, the court holds a main trial. Whereas, if the state prosecutor files a proposal, no main trial is held.

Article 508
Conduct of Psychiatric Examination

1. At any time during the proceedings including during the main trial, if there is a suspicion that the defendant was in a state of mental incompetence or diminished mental capacity at the time of the commission of the criminal offense or if he has a mental disorder, a court may, ex officio or upon the motion of a state prosecutor or defense counsel, appoint an expert under Article 144

of the present Code to conduct a psychiatric examination of a defendant in order to determine whether:

1.1. at the time of the commission of the criminal offense, the defendant was in a state of mental incompetence or diminished mental capacity; or

1.2. the defendant is incompetent to stand trial.

2. The order states the time by which the psychiatric examination is to be completed, which shall be within two (2) weeks of the issuance of the order. If the defendant does not already have a defense counsel the court issues an order appointing defense counsel at public expense for the defendant.

3. The defense counsel may attend a psychiatric examination conducted to determine the competence of the defendant to stand trial, unless the expert determines that such attendance would impede a fair assessment of the defendant.

4. If the expert determines that the psychiatric examination of the defendant requires observation at a health care institution or if the defendant refuses to comply with the psychiatric examination, the expert submits a reasoned request for a ruling on custody in a health care institution to the court. The court may, after hearing the state prosecutor and the defense counsel, issue a ruling to hold the defendant in the custody of a health care institution for up to two (2) weeks. An appeal against this ruling does not stay its execution.

5. If the expert determines that the psychiatric examination of the defendant pursuant to paragraph 1 of the present Article or observation at a health care institution pursuant to paragraph 4 of the present Article requires more time, he submits a reasoned request for an extension to the court. The court may order the extension for up to two (2) weeks.

6. If observation at a health care institution pursuant to paragraph 4 of the present Article is imposed on a person already subject to detention on remand, the time spent in a health care institution is included in the period of detention on remand.

7. In the case of a psychiatric examination ordered pursuant to paragraph 1 sub-paragraph 1.1 of the present Article, the expert indicates in the opinion the following elements: the nature, type, degree and duration of the mental disorder of the defendant; the kind of influence this mental disorder has had and still does have on the comprehension and actions of the defendant, and whether and to what degree this mental disorder existed at the time when the criminal offense was committed.

8. In the case of a psychiatric examination ordered pursuant to paragraph 1, sub-paragraph 1.2 of the present Article, the expert indicates in the opinion the following elements: the nature, type, degree and duration of the mental disorder of the defendant and the kind of influence this mental disorder has on the comprehension and actions of the defendant, in particular, on his ability to defend himself, to consult with others including defense counsel and to understand the charge.

9. When the court orders a psychiatric examination under this Article, and the defendant is at liberty, the order for psychiatric examination may stipulate that the defendant be held in custody in order to be examined by the health care institution, if such examination may not be performed with the defendant at liberty. The time spent in examination counts towards the duration of the imposed measure or punishment.

Article 509
Detention on Remand of Persons with a Mental Disorder

1. Apart from cases in Article 184 of the present Code where detention on remand may be ordered, the court may order detention on remand against a person if:

1.1. there is a grounded suspicion that such person has committed a criminal offense;

1.2. according to a psychiatric examination ordered under Article 508 of the present Code, the person was in a state of mental incompetence or diminished mental capacity at the time of the commission of the criminal offense; and

1.3. the person currently has a mental disorder and as a result, there are grounds to believe that he will endanger the life or health of another person.

2. Detention on remand is served in a heath care institution and may last for as long as the defendant is dangerous but does not exceed the prescribed periods of time for detention on remand set forth in Article 187 of the present Code.

3. If the defendant is already in detention on remand and is subsequently determined to have been in a state of mental incompetence at the time of the commission of the criminal offense, the court orders the defendant to serve the detention on remand in a health care institution if he currently has a mental disorder.

4. The court renders a ruling pursuant to paragraph 1 or 3 of the present Article only after hearing the state prosecutor, the defense counsel and the defendant, if his condition permits, and after reviewing the opinion of an expert. Such ruling is served on the state prosecutor, defendant and his defense counsel, the health care institution and the detention facility. The appeal does not stay the execution of the order.

5. The health care institution decides upon measures to ensure public safety and security and the security and safety of the defendant after consultation with the competent detaining authority, taking into account both security and therapeutic needs.

6. Provisions under the present Code on detention on remand shall apply mutatis mutandis to detention on remand served in a health care institution.

Article 510
Ruling on Competence to Stand Trial

1. The court, ex officio or upon the motion of the defense counsel or state prosecutor, issues a ruling on the competence of the defendant to stand trial after reviewing the report of the expert issued pursuant to Article 508 of the present Code and hearing the state prosecutor, the defense counsel and the defendant.

2. The court rules that the defendant is incompetent to stand trial if he currently has a mental disorder and owing to such mental disorder, he is unable to defend himself, to consult with defense counsel or to understand the proceedings.

3. A ruling on the competence of the defendant to stand trial may be appealed.

Article 511
Dismissal or Suspension of Proceedings due to Ruling on Incompetence to Stand Trial

1. If the court rules that a defendant is incompetent to stand trial during the course of proceedings due to a permanent mental disorder, it issues a decision to dismiss the proceedings.

2. If the court rules that a defendant is incompetent to stand trial during the course of proceedings because he has become afflicted by a temporary mental disorder after committing the criminal offense, the investigation is suspended or the main trial is adjourned, in accordance with the present Code.

3. If proceedings were suspended pursuant to paragraph 2 of the present Article, proceedings shall be resumed upon the request of the state prosecutor as soon as the reasons for the

rendering of such ruling cease to exist.

4. If the court rules that a defendant is incompetent to stand trial pursuant to the present Article, it may request the initiation of proceedings for his committal to a health care institution pursuant to the applicable Law on Out Contentious Procedure. In such case, the court may rule that the defendant be detained in a health care institution for a maximum period of fourty-eight (48) hours pending the initiation of proceedings for committal to a health care institution under the applicable Law on Out Contentious Procedure, if as a result of the person's mental disorder there are grounds to believe that he will endanger the life or health of another person.

Article 512
Motion by the Prosecutor for a Measure of Mandatory Psychiatric Treatment

1. Prior to the opening of the main trial, the state prosecutor files a motion that the court impose a measure of mandatory psychiatric treatment, if the defendant has committed a criminal offense in a state of mental incompetence and the grounds for imposing such a measure exist, as provided in Articles 85 and 86 of the Criminal Code.

2. During the main trial, the state prosecutor amends the indictment and files a motion that the court impose a measure of mandatory psychiatric treatment, if the evidence presented at the main trial suggests that the defendant has committed a criminal offense in a state of mental incompetence and if the grounds for imposing such a measure exist, as provided in Articles 85 and 86 of the Criminal Code.

3. The defendant must have defense counsel once the motion referred to in paragraph 1 or 2 of the present Article has been filed.

Article 513
Conduct of Proceedings to Impose Measure of Mandatory Psychiatric Treatment

1. A measure of mandatory psychiatric treatment is imposed after a main trial is held by the court which is competent to try the case in the first instance.

2. In addition to the persons who must be summoned to the main trial, an expert or psychiatrist shall also be summoned from the health care institution entrusted with conducting the psychiatric examination of the mental capacity of the defendant. The spouse of the defendant and his parents or foster parents shall be notified of the main trial.

3. The decision to impose a measure of mandatory psychiatric treatment is based on the examination of the persons summoned and the findings and opinions of the expert. In making the decision as to which measure to impose, the court is not bound by the state prosecutor's motion.

4. If the court imposes a measure of mandatory psychiatric treatment at liberty but the perpetrator abandons such a measure, or when from the report of the health care institution it results that there is a risk that the perpetrator may repeat the criminal offence despite the completion of treatment, the court, upon the motion of the state prosecutor or ex officio, schedules a court hearing and apply mutatis mutandis the provisions of paragraph 2 of this Article. If the conditions from Article 85, paragraph 1, sub-paragraphs 1.1 to 1.4 of the Criminal Code are met, the court decides by a ruling to replace the measure of mandatory psychiatric treatment at liberty with mandatory psychiatric treatment in custody.

Article 514
Decisions of the Court

1. The court shall issue a ruling to dismiss the proceedings to impose a measure of mandatory psychiatric treatment if the grounds for imposing a measure of mandatory psychiatric treatment, as provided in Articles 85 and 86 of the Criminal Code, do not exist.

2. The court shall render a judgment to acquit the defendant, if the defendant was mentally incompetent at the time of the commission of the criminal offense and if the state prosecutor did not file a motion to impose a measure of mandatory psychiatric treatment, pursuant to Article 512 of the present Code.

3. The court shall issue a ruling to impose a measure of mandatory psychiatric treatment, if the grounds for imposing a measure of mandatory psychiatric treatment, as provided in Articles 85 and 86 of the Criminal Code, exist and if the state prosecutor filed a motion to impose a measure of mandatory psychiatric treatment, pursuant to Article 512 of the present Code. The ruling shall state:

3.1. the offense which the defendant was determined to have committed, the legal qualification of the offense and the provisions of the criminal law applied;

3.2. the decision that the defendant committed the offense in a state of mental incompetence; and

3.3. the measure of mandatory psychiatric treatment imposed on the defendant.

4. All persons who have the right to appeal a judgment, except the injured party, have the right to file an appeal against the ruling of the court within eight (8) days of the receipt of the ruling.

5. In cases where the court decided to dismiss proceedings pursuant to paragraph 1 of the present Article because it determined that the defendant was not mentally incompetent at the time of committing the criminal offense, the state prosecutor may waive the right to appeal this decision and may immediately file an indictment. The indictment is filed within eight (8) days from waiving the right to appeal.

6. In cases referred to in paragraph 5 of the present Article the main trial is reopened before the same panel and the proceedings continue on the basis of the new indictment subject to the following conditions:

6.1. the court may recess the main trial for the preparation of the defense; and

6.2. evidence presented earlier is not presented again except in cases provided under Article 307 of the present Code or if the panel finds that it is necessary for individual items of evidence to be presented again.

Article 515
Imposition and Calculation of Measure of Mandatory Psychiatric Treatment

1. When a court renders a judgment on a person who has committed a criminal offense in a state of diminished mental capacity, it shall also in that judgment impose a measure of mandatory psychiatric treatment if the grounds for imposing such a measure exist under Articles 85 and 86 of the Criminal Code.

2. The measures from paragraph 1 of the present Article may be imposed regardless of whether the defendant is at liberty or the sentence of imprisonment was imposed.

3. The time spent in a health care institution pursuant to Article 508 of the present Code, by an order for detention on remand pursuant to Article 509 of the present Code or a measure of mandatory psychiatric treatment in custody, shall be included in the imposed sentence.

Article 516
Notification of Decision Imposing a Measure of Mandatory Psychiatric Treatment

Once it has become final, the decision imposing a measure of mandatory psychiatric treatment

in custody or a measure of mandatory psychiatric treatment at liberty shall be filed with the court which is competent to render a decision on the deprivation of the capacity to act. The competent Center for Social Welfare shall also be notified of the decision.

Article 517
Right to Defense Counsel

The perpetrator shall have defense counsel during proceedings to modify or terminate a measure of mandatory psychiatric treatment.

Article 518
Execution of the Measure of Mandatory Psychiatric Treatment

The execution of the measure of mandatory psychiatric treatment under this chapter shall be governed by the Law on Execution of Criminal Sanctions.

CHAPTER XXXIV
PROCEDURE FOR THE REVOCATION OF ALTERNATIVE SENTENCES

Article 519
Conditions for Revocation of Alternative Sentences

1. Where a suspended sentence is conditioned on the performance of one of the obligations provided for in Articles 48, 50, 51, 52, 54, 55 and 56 of the Criminal Code and the accused fails to perform that obligation within the period of time determined by the court, the basic court shall initiate proceedings to revoke the suspended sentence upon the motion of the state prosecutor or the injured party or ex officio.

2. The judge assigned to the case shall examine the convicted person if he can be reached and shall conduct the necessary inquiries to determine facts and collect evidence material to adjudication, whereupon he shall send the files to the panel.

3. The presiding trial judge shall schedule a session of the panel, of which he shall notify the state prosecutor, the convicted person and the injured party. The panel shall hold a session, whether the duly summoned parties and the injured party or victim 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 by the judgment, it shall render a judgment in accordance with Articles 50 and 52 of the Criminal Code.

CHAPTER XXXV
PROCEEDINGS FOR RENDERING A DECISION ON THE EXPUNGEMENT OF SENTENCE

Article 520
Expungement of Sentence

1. Where the law provides for a sentence to be expunged pursuant to Article 96 of the Criminal Code, the competent public authority in the field of judicial affairs shall render a ruling expunging the sentence ex officio.

2. Prior to rendering the ruling on judicial expungement, the necessary inquiries shall be made and, in particular, information shall be gathered as to whether the convicted person has been reconvicted for any criminal offense committed before the expiry of the period of time prescribed for the expungement of the sentence.

Article 521
Procedure for Expungement of Sentence when the Administrative Body Fails to Act

1. If the competent public authority in the field of judicial affairs fails to render the ruling expunging the sentence ex officio, the convicted person may request a determination that the expungement of the sentence has been made in accordance with the law.

2. The competent public authority in the field of judicial affairs shall issue a ruling expunging the sentence within thirty (30) days from the filing of the request of the convicted person.

3. Such request shall be handled in line with the respective Law on Administrative Procedure.

Article 522
Expungement of Alternative Sentences

If an alternative sentence is not revoked one (1) year after the expiry of the verification period, the competent public entity in the field of judicial affairs shall, ex officio or upon request render a ruling expunging the sentence. The respective Law on Administrative Procedure applies.

Article 523
Proceedings to Expunge Sentence Based on a Judicial Decision

1. Proceedings to expunge a sentence on the basis of a judicial decision under Article 97 of the 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 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 has resided after serving his sentence and may request a similar report from the administration of the institution in which he served the sentence.

5. After completing the inquiries and upon hearing the state prosecutor when proceedings were conducted upon his 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 sentence may be appealed by the petitioner or the state prosecutor.

7. If the court rejects the petition on the ground that the conduct of the petitioner does not warrant the expunging of the sentence, the petitioner may renew the petition two (2) years after the day the ruling rejecting the petition became final.

Article 524
Effect of Expungement on Criminal Records

An expunged sentence shall not be mentioned in certificates issued on the basis of criminal records for the exercise of rights of individuals.

CHAPTER XXXVI
PROCEEDINGS FOR COMPENSATION, REHABILITATION AND EXERCISE OF OTHER RIGHTS OF PERSONS WHO HAVE BEEN CONVICTED OR ARRESTED WITHOUT JUSTIFICATION

SUB – CHAPTER I
PROCEEDINGS FOR DAMAGE COMPENSATION OF PERSONS WHO HAVE BEEN CONVICTED OR ARRESTED WITHOUT JUSTIFICATION

Article 525
Persons who Have the Right to Compensation for Unjustified Conviction

1.A person shall be entitled to damage compensation for an unjustified conviction if a penal sanction has been imposed in a final form on him or if he 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 was acquitted of the charge by a final judgment or the charge against him was rejected, except in the following instances:

1.1. where the proceedings were terminated or a judgment rejecting the charge was rendered because in the new proceedings the injured party withdrew the motion as a result of the agreement with the defendant; or

1.2. where in the reopened proceedings the charge was dismissed by a ruling because the court did not have competence and the authorized state 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 deliberately brought about his conviction, except where he was compelled to do so.

3. In the case of conviction for concurrent offenses, the right to compensation for damages exists for the criminal offense for which conditions for recognition of compensation have been fulfilled.

Article 526
Petition for Compensation and its Statutory Limitations

1. The right to compensation for damages shall be statute-barred three (3) years from the entry into force of the judgment in the first instance acquitting the accused of the charge or rejecting the charge, or 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 be statute-barred three (3) 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 authority in the field of judicial affairs to reach agreement on the existence of the damages and the type and extent of compensation.

3. In the instance referred to in sub-paragraph 1.2, paragraph 1 of Article 525 of the present Code the request may only be processed if the state prosecutor fails to initiate prosecution at the competent court within three (3) months of receipt of the final ruling. If the state prosecutor initiates prosecution at the competent court after the expiry of that period of time, proceedings for compensation for damages shall be suspended until criminal proceedings have been concluded.

Article 527
Claim for Compensation

1. If the petition for compensation for damages is not granted or the competent public authority in the field of judicial affairs and the injured party do not reach agreement within three (3) 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 526, paragraph 1 of the present Code, shall not apply for as long as the proceedings under the paragraph 1 of the present Article are pending.

3. The claim for compensation for damages shall be filed against the competent public authority in the field of judicial affairs.

Article 528
Compensation after Death of Claimant

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 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 529
Persons with Right to Compensation for Ungrounded Deprivation of Liberty

1. The right to compensation for damage shall also be enjoyed by:

1.1. a person who was held in detention on remand and criminal proceedings against him were not initiated or the proceedings were terminated by a final ruling or he was acquitted of the charge by a final judgment or the charge was rejected;

1.2. 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 was sentenced to a punishment of the deprivation of liberty shorter than the one he has already served or to a criminal sanction not involving deprivation of liberty, or if he was found guilty and punishment was waived;

1.3. 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 correctional institution for serving a punishment or a measure; and

1.4. a person who was held in detention on remand for longer than the term of imprisonment imposed on him.

2. A person who without legal basis was arrested under Article 161 of the present Code shall be entitled to compensation for damage if detention on remand was not ordered against him or the time he spent under arrest was not counted in the punishment imposed on him for a criminal offense or a minor offense.

3. The right to compensation shall not be enjoyed by a person whose arrest was caused by his own reprehensible conduct. In instances under paragraph 1 sub-paragraphs 1.1 and 1.2 of the present Article, the right to compensation shall be precluded if circumstances exist as provided for in Article 525, paragraph 1, sub-paragraphs 1.1 and 1.2 of the present Code.

4. In proceedings for compensation for damage under paragraphs 1 and 2 of the present Article, the provisions of the present Chapter shall apply mutatis mutandis.

SUB – CHAPTER II
REHABILITATION

Article 530
Announcement of the Media Release which Indicates that the Previous Trial was Ungrounded

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 employer. After the death of the convicted person the right to file such request shall be held by his spouse, or his or her extramarital partner, and by his 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 525 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 offense 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 paragraphs 1, 2 or 3 of the present Article shall be filed within six (6) months under Article 526, paragraph 1 of the present Code with the court which adjudicated in criminal proceedings in the first instance. The request shall be decided upon by a panel of the court of appeals. When deciding upon the request, Article 525 paragraphs 2 and 3 and Article 529 paragraph 3 of the present Code shall apply mutatis mutandis.

Article 531
Ruling to Annul Unjustified Conviction

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 authority in the field of judicial affairs. Data from the annulled entry must not be communicated to anybody.

Article 532
Restrictions to Inspection and Photocopying of the Case Files

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 be harmful to 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.

SUB – CHAPTER III
PROCEEDINGS FOR THE REALIZATION OF OTHER RIGHTS

Article 533
Realization of Other Rights

1. A person who by virtue of an unjustified conviction or groundless arrest has lost employment

or social insurance under the social welfare system shall be entitled to benefit for the period of time lost as an unemployed or insured person in that way counted as if he 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 or victim may request that the court referred to in Article 527, 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 authority 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 XXXVII
PROCEEDINGS FOR ISSUING WANTED NOTICE AND PUBLIC ANNOUNCEMENTS

Article 534
Search for the Address of the Defendant

When the permanent or current residence of a defendant is not known, whenever so required by the provisions of the present Code, the state prosecutor or the court shall, request the police to locate the defendant and inform the state prosecutor or the court of his address.

Article 535
Conditions for Issuance of a Wanted Notice

1. Wanted notice may be ordered when the defendant against whom proceedings have been initiated for an offense prosecuted ex officio and punishable by imprisonment of two (2) or more years is in flight and when an order for his arrest or a ruling on the determination of his detention on remand has been issued.

2. Wanted notice shall be ordered by the court conducting criminal proceedings. During the pre-trial proceedings such wanted notice shall be ordered by the pre-trial judge on the motion of the state prosecutor.

3. Wanted notice shall also be ordered in cases when a defendant has escaped from the institution in which he is serving his punishment, irrespective of the amount of punishment, or when he escapes from the institution in which he is serving a measure of mandatory treatment which consists of the deprivation of liberty. In this case the order shall be issued by the director of the institution.

4. International wanted notice may be requested in any of the situations provided for by the present Article, by the respective authority when the wanted person is not in Kosovo or when there is evidence that such person resides outside of Kosovo.

5. The request of the court or director of the institution for issuing international wanted notice

should be sent to the competent authority for issuing and dissemination thereof.

6. The order of the court or the director of the institution for issuing a wanted notice shall be sent to the police for execution.

7. 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 536
Public Announcements

1. Where information is needed about particular objects connected with a criminal offense 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 an announcement requesting 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 offense.

Article 537
Revocation of Wanted Notice or Public Announcement

1. The authority which has ordered the issuance of a wanted notice, an international 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.

2. The order for revocation of wanted notice, international wanted notice or public announcement shall be sent to the competent authority which should ensure their immediate annulment.

Article 538
Announcement of the Wanted Notice or Request for Information from the Public

1. The wanted notice and public announcement shall be announced by the competent public authority 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. The competent authority may also announce an international wanted notice through international channels.

4. Upon the request of a foreign authority, the competent authority in the field of internal affairs may disseminate a wanted notice for a person suspected of being in Kosovo, provided the foreign authority states in the request that it will request the extradition of such person if he is found.

5. The provisions of the present Article shall apply mutatis mutandis to cases when police announce the search for persons or objects.

CHAPTER XXXVIII
PROCEEDINGS FOR THE SUSPENSION OF OFFICIAL PERSON FROM DUTY AND FOR COMPENSATION IN CASE OF ACQUITTAL OR TERMINATION OF PROCEEDINGS

Article 539
Suspension of Official Person from Duty

1. The court shall suspend the defendant, who is an official person in the meaning of Article 113 paragraph 2 of the Criminal Code, from his duty, if:

1.1. there is a grounded suspicion that the defendant has committed a criminal offense under Chapters XIV, XVI, XX, XXIV, XXXIII, Articles 164, 165, 248, 302, 311 or 323 of the Criminal Code; and

1.2. there is a reason to believe that, if he remains in office, the official person will destroy, conceal, alter or falsify the evidence of the criminal offense, or when specific circumstances indicate that he will obstruct the course of the criminal proceedings by influencing witnesses, the injured party or in the accomplices.

2.The court shall decide on the measures under this Article with a reasoned decision. The ruling contains the reasoning that stipulates that the conditions from paragraph 1 of this Article have been met and that the measure is necessary.

3. The court determines in the ruling that during the suspension, the official person shall not have access to the official premises of his office, he will not have the right to undertake official duty and will refrain from contacting employees in his office.

4. The ruling shall be delivered to the defendant and his direct supervisor.

5. If the direct supervisor of the defendant does not take action in the execution of the ruling on the suspension, the court shall punish him by a fine as provided for in Article 443 of this Code.

6.The court shall order detention on remand if the defendant does not comply with the ruling. The defendant shall always be informed in advance of the consequences of non-compliance.

7. Article 171 paragraphs 2, 3 and 5 of this Code introducing the principle of proportionality shall apply mutatis mutandis.

8. Unless otherwise provided in this Article, Articles 182-190 of this Code shall apply mutatis mutandis to the ordering, duration, extension, termination and applicable appeals procedures of the measure under this Article.

9. The decisions regarding this measure shall be made upon the request of the state prosecutor by the pre-trial judge before the indictment has been filed and by the presiding trial judge after the indictment has been filed.

Article 540
Payment of Salary for the Period of Suspension

1. After the suspension of an official person is ordered pursuant to Article 539 of this Code, the immediate superior of that person shall, without delay, notify the court which has ordered the measure, on the steps taken in compliance with the order.

2. During the entire period of the suspension from duty based on Article 539 of this Code, the official person is entitled to receive fifty percent (50%) of his basic salary.

3. In case of acquittal or termination of proceedings, the period of suspension under Article 539 of this Code shall be treated as serving on duty for all purposes and the official person

shall receive the full pay and other applicable allowances, which would have been paid if the suspension from service had not been imposed.

4. The decision referred to in paragraph 3 of this Article shall be taken ex officio by the court which has rendered the final judgment of acquittal that is not subject to further appeal or by the court which has rendered the decision terminating the proceedings.

PART FIVE
TRANSITIONAL AND FINAL PROVISIONS

CHAPTER XXXIX
TRANSITIONAL AND FINAL PROVISIONS

Article 541
Application of the Provisions of the Present Code

1. Upon the commencement of the application, the provisions of the present Code shall apply mutatis mutandis to any criminal proceeding irrespective of its current stage.

2. Orders or decisions issued in the investigative stage before the commencement of the application of this Code shall be considered lawful as to the authority that issued them.

3. Extension or renewal of orders or decisions from paragraph 2 of this Article after the commencement of the application of this Code shall be done by the authority that has competence to order them pursuant to this Code.

4. If the orders or decisions from paragraph 2 of this Article set forth a shorter time limit than the time limits provided under the present Code, their time limits shall be extended ex lege in accordance with the time limits provided by the provisions of the present Code.

5. The provisions of this Code concerning audio or video recording of testimonies in the proceedings begin to apply within one (1) year from the entry into force of this Code.

Article 542
Application of Time Limits

If, upon the commencement of the application of the present Code, any period of time is running, including the time limits of investigation and the filing of indictment, such period shall be counted pursuant to the provisions of the present Code, except if the previous period of time was longer or if the provisions of the present Chapter provide otherwise.

Article 543
Application of Law upon Rehearing

After the commencement of the application of the present Code, if upon an appeal or an extraordinary legal remedy the decision is annulled, the new proceedings shall be conducted under the provisions of this Code.

Article 544
Implementation of Present Code

The Kosovo Judicial Council, the Kosovo Prosecutorial Council, and the Ministry of Justice shall issue sublegal acts for the implementation of the present Code in the areas of their competencies.

Article 545
Repeal of legal acts

Upon the entry into force of this Code, there shall be repealed the Code No. 04/L-123 of the Criminal Procedure amended and supplemented by Law No. 04/L-273, Law No. 06/L-091 and Law No.08/L-002.

Article 546
Entry into Force

This Code shall enter into force six (6) months after the publication in the Official Gazette of the Republic of Kosovo, except Article 25, paragraphs 3 and 4 of this Code that shall begin to be implemented two (2) years after the entry into force of this Code.

Code No. 08/L-032
14 July 2022

Promulgated by Decree No. DL-251/2022 dated 01.08.2022 President of the Republic of Kosovo Vjosa Osmani-Sadriu