THE CRIMINAL PROCEDURE CODE

(Official Gazette of Montenegro, no. 57/09 and 49/10)

Part one

GENERAL PROVISIONS

Chapter I
BASIC RULES

Scope and Objective of the Code
Article 1

The present Code sets forth the rules with the objective to enable a fair conduct of the criminal proceedings and ensure that no innocent person be convicted and that a criminal sanction be imposed on a criminal offender under the conditions provided for in the Criminal Code and on the basis of legally conducted proceedings.

Principle of Legality
Article 2

(1) A criminal sanction may be imposed on the perpetrator only by the competent Court in the proceedings initiated and conducted in compliance with the present Code.
(2) Freedom and other rights of the accused person may be limited prior to the rendering of the final judgment, only under the conditions set forth in the present Code.

Presumption of Innocence and *in dubio pro reo*
Article 3

(1) A person shall be considered innocent of a crime until his/her guilt has been established by the final judgment.
(2) Public authorities, media, associations of citizens, public figures and other persons shall respect the rule referred to in paragraph 1 of the present Article and shall not violate other procedural rules, rights of the accused person and the injured party and the principle of independence of judiciary by their public statements regarding the criminal proceedings that is in progress.
(3) The court shall render a decision that is more favourable for the accused person if once all available evidence are provided and presented in the criminal proceedings, only a suspicion remains with respect to the existence of a significant feature of a criminal offence or as regards facts on which depends an application of a provision of the Criminal Code or the present Code.

Rights of Suspects i.e. Accused Persons

Article 4

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

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

(3) During the first hearing, the suspects and the accused parties shall be informed that they are not obliged to give any statements whatsoever nor answer the questions they are asked and that all statements they make may be used as evidence.

Rights of Detained Persons

Article 5

(1) Persons deprived of liberty by a competent public authority shall be immediately informed in their language or in a language they understand about the grounds for their apprehension and, at the same time, informed that they are not obliged to make a statement, that they have a right to a defence attorney of their own choice and to request that a person of their choosing be informed on their deprivation of liberty as well as a diplomatic consular representative of a state whose nationals they are or a representative of appropriate international organization if they are stateless persons or refugees.

(2) Persons deprived of liberty without a judgment shall be brought immediately before the competent State Prosecutor with the exception of cases provided for in the present Code.

Ne bis in idem

Article 6

(1) No person shall be tried again for a criminal offence s/he has already been convicted or acquitted of by a final judgment with the exception of cases provided for in the present Code.

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

Official Language in Criminal Proceedings

Article 7

(1) In criminal proceedings, the official language shall be the Montenegrin language.

(2) In courts having jurisdiction over the territory in which members of minority nations and other minority ethnic communities

(hereinafter: minorities) constitute a substantial part of inhabitants, their respective language shall be in the official use in criminal proceedings in accordance with law.

Right to Use One's Own Language in Criminal Proceedings

Article 8

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

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

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

(4) Interpretation shall be entrusted to an interpreter.

Language Used for Presenting Submissions to Courts and for Remitting Submissions by Courts

Article 9

(1) Complaints, appeals and other submissions shall be filed to the court in the Montenegrin language.

(2) Persons deprived of liberty may file submissions to the court in their language or in the language they understand.

(3) Court shall issue summonses, decisions and other writs in the Montenegrin language.

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

(5) An accused person in detention, a person serving a sentence or a person against whom a security measure in a medical institution is being enforced, shall also receive a translation of the writs referred to in paras. 1 and 3 of this Article in the language used by this person during the proceedings.

Communication between Courts of Law in the Language That Is in Official Use in Courts

Article 10

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

Prohibition of Use of Force and Extortion of a Confession

Article 11

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

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

Right to Defense

Article 12

(1) Accused persons shall have the right to defend themselves in person or with the professional assistance of a defence attorney of their own choice from the ranks of attorneys-at-law.

(2) Accused persons shall have the right to have a defence attorney present during their hearing.

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

(4) If the accused persons do not retain a defence attorney by themselves, they shall be appointed an *ex officio* defence attorney by the court, when stipulated so by the present Code.

(5) Accused persons shall be ensured enough time and possibilities to prepare their defence.

(6) The suspects shall have the right to a defence attorney in accordance with the present Code.

Right to Rehabilitation and Compensation of Damages

Article 13

Persons who have been unlawfully or unjustifiably deprived of liberty of unjustifiably convicted shall have the right to

rehabilitation, the right to compensation of damages from the state, as well as other rights as stipulated by law.

Instruction on the Rights of Accused Persons or Other Participants in the Proceedings
Article 14

The court, the State Prosecutor and other public authorities participating in the proceedings shall instruct the suspects i.e. accused persons or other participants in the proceedings, who are likely to omit to perform an action in the proceedings or fail to exercise their rights because of that, of the rights they are entitled to pursuant to the present Code as well as of the consequences of the failure to act.

Right to a Prompt Trial
Article 15

(1) The accused persons shall have the right to be brought before the court in the shortest possible time and to a prompt trial.
(2) The court shall be obliged to conduct the proceedings without delays and to prevent all abuses of rights that are vested in participants in the proceedings.
(3) The duration of detention and other forms of restrictions of freedom shall be reduced to the shortest necessary time.

Principle of Truth and Fairness
Article 16

(1) The court, State Prosecutor and other public authorities participating in the criminal proceedings shall truthfully and completely establish all facts relevant to render a lawful and fair decision, as well as examine and establish with equal attention facts that incriminate the accused person and the ones in his/her favour.
(2) The court shall ensure equal terms to the parties and to the defence attorney as regards the offering, accessing and presenting of evidence.

Free Evaluation of Evidence and Legally Invalid Evidence
Article 17

(1) Courts and State Prosecutors shall appraise the existence or non-existence of facts on which to base their decisions at their discretion.
(2) Judgments may not be founded on evidence that have been obtained by violating human rights and fundamental freedoms guaranteed by the Constitution or by ratified international

treaties or on evidence obtained by violating the criminal proceedings provisions as well as other evidence obtained therefrom, nor may such evidence be used in the proceedings.

Accusatory Principle
Article 18

(1) Criminal proceedings shall be initiated and conducted in line with the indictment of an authorised prosecutor.
(2) For criminal offences that are prosecuted *ex officio*, the authorised prosecutor shall be the State Prosecutor whereas for criminal offences prosecuted upon a private action, the authorised prosecutor shall be a private prosecutor.
(3) If a State Prosecutor determines that there are no grounds for the institution or conduct of criminal proceedings, the injured party acting as a subsidiary prosecutor may assume his/her role, under the terms stipulated by the present Code.

Principle of Legality of Criminal Prosecution
Article 19

Unless otherwise prescribed by the present Code, the State Prosecutor shall initiate prosecution when there is reasonable suspicion that a certain person has committed a criminal offence that is prosecuted *ex officio.*

Adjudication by a Panel
Article 20

(1) In the criminal proceedings a panel shall adjudicate in courts.
(2) An individual judge shall adjudicate in the first instance court when prescribed so by the present Code.

Restrictions of Certain Rights Caused by the Initiation of a Criminal Proceedings
Article 21

When it is prescribed that the initiation of criminal proceedings entails the restriction of certain rights, such restrictions, unless otherwise provided for by law, shall commence when the indictment enters into force, and for criminal offences for which the principal penalty prescribed is a fine or imprisonment up to five years, those consequences shall commence as of the day the sentence is rendered, regardless of whether it has become final or not.

Definition of Terms
Article 22

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

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

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

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

4) *convicted* persons are persons whose criminal liablility for a particular criminal offence was established by a final verdict or a final ruling on punishment;

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

6) *prosecutors* are State Prosecutors, private prosecutors and subsidiary prosecutors;

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

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

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

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

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

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

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

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

f) that activities of the criminal organization, i.e. criminal group include the use of money laundering or unlawfully acquired gain;

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

Chapter II
JURISDICTION OF COURTS
1. SUBJECT MATTER JURISDICTION AND COMPOSITION OF COURTS

Subject Matter Jurisdiction
Article 23

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

Composition of Court and Effective Court Jurisdiction
Article 24

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

(2) For criminal offences for which the prescribed principal punishment is a fine or imprisonment for a term of up to ten years, a single judge shall adjudicate in the first instance, with the exception of offences of the organized crime or unless otherwise prescribed by law.

(3) The second instance courts shall adjudicate in a panel composed of three judges.

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

(5) Preliminary investigation and investigation shall be participated by an investigative judge of a first instance court in line with this Code.
(6) The President of the Court and the Chair of the Panel shall decide in cases prescribed by the present Code.
(7) The first instance courts, adjudicating in a panel composed of three judges shall decide on appeals against rulings of the investigative judge and other rulings if so prescribed by the present Code, render decisions in the first instance out of main hearing, conduct the proceedings and render a verdict on the request for execution of a foreign court verdict, and make proposals in cases set forth in the present Code or other law.
(8) If the panel referred to in paragraph 7 of this Article can not be established in a court adjudicating only in first instance due to an insufficient number of judges, affairs under the jurisdiction of that panel shall be conducted by the panel of immediately superior court.
(9) Provisions of the present Code which refer to the rights and duties of the Chair of Panel and its members shall also be applied accordingly to an individual judge when s/he is adjudicating a case under the rules proscribed by the present Code.
(10) When deciding on a motion for the protection of legality the court shall adjudicate in a panel composed of three judges, whereas when deciding on a motion for the protection of legality against a decision of a panel of the same court for violation of law, the court shall adjudicate in a panel composed of five judges.
(11) Unless otherwise prescribed by the present Code, higher instance courts shall also adjudicate in a panel composed of three judges when deciding cases not specified in paras. 3, 4 and 10 of this Article.

2. TERRITORIAL JURISDICTION

General Rules of Determining Territorial Jurisdiction
Article 25

(1) As a rule, the court within whose territory criminal offence was committed or attempted shall have the territorial jurisdiction.
(2) A private action may be filed with the court within the territory of which the accused person has a permanent or a temporary residence.
(3) If the criminal offence was committed or attempted within the territory of several courts or on the border of those territories, or if it is uncertain within which territory the offence has been committed or attempted, the court which on the indictment of the authorized prosecutor has first instituted the procedure shall have

jurisdiction, whereas in preliminary investigation and investigation the competent court is the one that was the first to undertake an action on basis of the prosecutor‘s motion.

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

Article 26

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

Territorial Jurisdiction for an Offence Committed by Means of Media

Article 27

(1) If a criminal offence is committed by means of press, the competent court shall be the one within whose territory the newspaper was printed. If this location is unknown or if the newspaper was printed abroad, the competent court shall be the one within whose territory printed newspaper is distributed.
(2) If according to law the compiler of the text is responsible, the competent court shall be the one within whose territory the compiler has permanent residence or the court within whose territory the event to which the text refers to took place.
(3) Provisions of paras. 1 and 2 of this Article shall also be applied accordingly to cases where the statement or text was released by radio, television or other mass media.

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

Article 28

(1) If the place of the commission of a criminal offence is unknown or if this place is not in the territory of Montenegro, the competent court shall be the one within whose territory the accused person has temporary or permanent residence.
(2) If the procedure is already pending before the court of the accused person’s temporary or permanent residence, when the place of the commission has been determined, this court shall retain its jurisdiction.

(3) If neither the place of the commission of the criminal offence nor the temporary or permanent residence of the accused person is known, or if both of them are outside the territory of Montenegro, the competent court shall be the one within whose territory the accused person is deprived of liberty or turned himself/herself in.

Territorial Jurisdiction in Cases of Criminal Offences Committed in Montenegro and Abroad
Article 29

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

Set Territorial Jurisdiction *(Forum ordinatum)*
Article 30

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

3. JOINDER AND SEPARATION OF PROCEEDINGS

Joinder of Proceedings
Article 31

(1) Where an individual is accused of having committed several criminal offences some of which fall within jurisdiction of a lower, and some of a higher court, the competent court shall be the higher court. If the competent courts are of the same level, the competent court shall be the one that, based on the indictment of an authorized prosecutor, first initiated the procedure. In preliminary investigation and investigation, the competent court shall be the one that was the first to undertake an action based on the motion of the prosecutor.
(2) The provision of paragraph 1 of this Article shall also be applied to determine which court has jurisdiction when the injured party at the time of the commission of the criminal offence has simultaneously perpetrated a criminal offence against the accused person.
(3) As a rule, co-perpetrators shall fall within the jurisdiction of the court which, being competent to try one of them, has first initiated the procedure.

(4) The Court having jurisdiction over the perpetrator of the criminal offence shall, as a rule, also have jurisdiction over the accomplices, accessories by virtue of concealment, persons who aided the perpetrator after the commission of a criminal offence and persons who failed to report the preparation of a criminal offence, the commission of a criminal offence or the identity of the perpetrator.
(5) In cases referred to in paras. 1 to 4 of this Article shall, a single criminal procedure shall be conducted as a rule and a single judgment shall be rendered.
(6) The court may also decide to conduct a single procedure and to render a single judgment also in the case when several persons are charged with several offences, provided that the offences are interconnected and that the evidence pertaining to each of the offences are the same. If some of these criminal offences fall within the jurisdiction of a higher court and some to that of a lower court, the joint procedure may be conducted only before the higher court.
(7) The court may decide to conduct a single procedure and to render a single judgment if separate procedures are conducted against the same person before the same court for several criminal offences or against several persons for the same criminal offence.
(8) A decision on joinder of procedures shall be decided by the court having jurisdiction to conduct the single procedure. An appeal against the ruling ordering the joinder of procedures or rejecting a motion for the joinder of procedures shall not be allowed.
(9) The provisions governing joinder of procedures shall also be applied accordingly when preliminary investigation and investigation are conducted by the State Prosecutor who shall decide on the conduct of a single procedure.

Separation of Procedure
Article 32

(1) Before the main hearing is completed and upon the motion of the parties, injured party or virtue of office, the court having jurisdiction according to Article 31 of the present Code may, for important reasons or for reasons of expediency order the procedure for some offences or against some accused persons to be separated and separately completed or referred to another competent court.
(2) The provisions governing the separation of procedures shall also be applied accordingly when preliminary investigation and investigation are conducted by the State Prosecutor who shall decide on the conduct of a single procedure.

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

4. TRANSFER OF TERRITORIAL JURISDICTION

Necessary Transfer of Territorial Jurisdiction
Article 33

(1) When a competent court is prevented from acting due to legal or factual reasons, it shall notify immediately the directly superior court thereon, which shall designate another court with subject matter jurisdiction in its territory.
(2) An appeal shall not be allowed against the ruling referred to in paragraph 1 of this Article.

Transfer of Competence for Reasons of Expediency
Article 34

(1) The Supreme Court may designate another court having subject matter jurisdiction to conduct the procedure if it is obvious that the procedure will be thereby facilitated or if there are other important reasons.
(2) The ruling within the meaning of paragraph 1 of this Article may be rendered upon the motion of the parties, a single judge or the Chair of the Panel.

5. CONFLICT OF JURISDICTIONS

Assessment of Jurisdictions
Article 35

(1) The court shall examine its subject matter and territorial jurisdiction, and as soon as it determines a lack of its jurisdiction, it shall declare that it lacks competence and, after the ruling becomes final, it shall refer the case to a competent court, with the exception of cases referred to in paras. 2 and 3 of this Article.
(2) If the court determines after the commencement of the main hearing that a lower court has jurisdiction for the hearing, it shall continue the procedure and render a decision.
(3) Once the indictment comes into effect, the court may not declare that it lacks territorial jurisdiction nor may the parties raise the objection of territorial jurisdiction.
(4) The court lacking jurisdiction shall undertake such procedural actions with respect to which there is a risk of delay.

Initiation of a Procedure for Resolving the Conflict of Jurisdiction

Article 36

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

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

Resolving the Conflict of Jurisdiction

Article 37

(1) A decision on the conflict of jurisdiction between courts shall be rendered by their mutually immediately superior court.

(2) Prior to rendering a ruling in relation to the conflict of jurisdiction, the court shall request the opinion of the State Prosecutor competent for proceeding before that court, when the criminal procedure is conducted upon the indictment of a State Prosecutor.

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

(4) When rendering a decision on the conflict of jurisdiction, the court may simultaneously, by virtue of office, render a decision on the transfer of territorial jurisdiction if terms referred to in Article 34 of the present Code are met.

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

Chapter III
RECUSATION

Reasons for Recusation

Article 38

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

1) if they are personally injured by the offence;

2) if the accused persons, their defense attorney, the prosecutor, the injured party, their legal representative or proxy is the judge's spouse, former spouse or extramarital partner or

direct blood relative to any degree whatsoever, collateral blood relative to the fourth degree, or relative by marriage to the second degree;

3) if s/he is a guardian, ward, adopted child, adoptive parent, foster-parent or foster-child of the accused person, his/her defense attorney, the prosecutor or the injured party;

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

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

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

Procedeeding of a Judge in Cases of Petition for Recusation
Article 39

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

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

Persons Who May Request the Recusation of a Judge
Article 40

(1) Recusation of a judge may be requested by the parties, defense attorney and injured party.

(2) The parties, defense attorney and injured party may submit a petition for the recusation of a judge until the commencement of the main hearing, and if they learn about the reason for the recusation later, they may submit the petition immediately after that realization.

(3) The petition for recusation of a higher court judge may be submitted by the parties, defense attorney and injured party

immediately after learning about the recusation reason, and at the latest by the commencement of the panel session or hearing.
(4) The parties, defense attorney and injured party may request only the recusation of an individually designated judge exercising his/her judicial power in that particular case.
(5) The parties, defense attorney and injured party shall specify in the petition the circumstances which they deem to represent legal grounds for recusation referred to in Article 38 of the present Code. Reasons mentioned in the previous petition for recusation that has been rejected may not be specified again in the petition.

Deciding on a Petition for Recusation
Article 41

(1) The President of the Court shall decide on the petition for recusation referred to in Article 40 of the present Code.
(2) If the recusation requested concerns only the President of the Court or the President of the Court and a judge, the decision on recusation shall be rendered by the President of the immediately superior court and if the recusation requested concerns only the President of the Supreme Court, the decision on recusation shall be rendered by plenary session of that court.
(3) Before rendering the ruling on recusation, a statement of the judge or of the President of the Court shall be taken and where appropriate, further inquires shall be carried out.
(4) An appeal shall not be allowed against the ruling upholding a petition for recusation. The ruling rejecting a petition for recusation may be refuted by a separate appeal, but if such ruling was rendered after the indictment was presented, than only by an appeal against the judgment.
(5) If the petition for recusation was submitted in contravention to the provisions of Article 40 of the present Code, the petition shall be dismissed entirely or partially. An appeal shall not be allowed against the ruling rejecting a petition for recusation. The ruling rejecting the petition shall be rendered by the President of Court, and at the main hearing it shall be rendered by the panel. The judge whose recusation is requested may participate in rendering that ruling at the main hearing.

Proceeding of Judges Pending the Rendering of a Decision on Recusation
Article 42

When judges learn that a petition for their recusation has been submitted, they shall immediately discontinue work on the case and in the case of recusation referred to in Article 38, item 6 of

the present Code, they may, pending the rendering of the ruling on the petition, undertake only those actions whose delay poses a risk.

Recusation of a State Prosecutor and Other Participants in the Procedure

Article 43

(1) Provisions on the recusation of judges shall also be applied accordingly to State Prosecutors and persons who are authorized under law to represent the State Prosecutor in the procedure, court reporters, interpreters and experts, as well as expert witnesses whose recusation might also be requested for reasons referred to in Article 139 and Article 148, paragraph 2 of the present Code.
(2) By way of exception from paragraph 1 of this Article, State Prosecutors shall not be recused if they have performed evidentiary actions in the same case, or participated in the procedure as prosecutors or if they participated in the same case in the procedure before a lower instance court within the meaning of Article 38, paras. 4 and 5 of the present Code.
(3) State Prosecutors shall decide on the recusation of persons who are authorized under law to represent them in the criminal procedure. Immediately superior State Prosecutor shall decide on the recusation of a State Prosecutor. Provisions of a separate law shall be applied in the case of recusation of the Supreme State Prosecutor.
(4) The Panel, the Chair of the Panel or a judge shall decide on the recusation of a court reporter, interpreter, expert and expert witness.
(5) When authorized police officers undertake evidentiary actions pursuant to this Code, the competent State Prosecutor shall decide on their recusation. The person acting in an official capacity who undertakes the action shall decide on the recusation of a court reporter participating in these actions.

Chapter IV
STATE PROSECUTOR

Rights and Duties

Article 44

(1) The basic right and the main duty of the State Prosecutor shall be the prosecution of criminal offenders.
(2) For criminal offences prosecuted by virtue of office, the State Prosecutor shall be competent to:

1) issue binding orders or directly manage the activities of the administrative authority competent for police affairs (hereinafter: the police authorities) in the preliminary investigation;

2) render decisions on the postponement of criminal prosecution, when envisaged so by the present Code and reject criminal charges for reasons of fairness;

3) order the investigation to be conducted, conduct the investigation and perform urgent evidentiary actions during the preliminary investigation;

4) conclude agreements on the admission of guilt with accused persons, in line with the present Code, after having collected evidence in line with the present Code;

5) present and represent indictments, i.e. bills of indictment before competent courts;

6) lodge legal remedies against judgments and

7) undertake other actions provided for by this Code.

(3) In order to exercise powers referred to in paragraph 2, item 1 of this Article, police and other public authorities shall notify the competent State Prosecutor before taking any action, except in cases of emergency. The police and other public authorities in charge of revealing criminal offences shall proceed upon the request of the competent State Prosecutor.

(4) During the investigation the State Prosecutor shall establish with equal attention the facts which are exculpatory and inculpatory for the accused.

Subject Matter Jurisdiction

Article 45

The subject matter jurisdiction of the State Prosecutor in the criminal procedure shall be established in line with a separate law.

Territorial Jurisdiction

Article 46

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

Actions Undertaken by a State Prosecutor Lacking Jurisdiction

Article 47

The procedural actions shall be also undertaken by the State Prosecutor lacking jurisdiction when risk of delay exists and s/he shall immediately notify the competent State Prosecutor thereon.

Undertaking Actions
Article 48

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

Conflict of Jurisdiction
Article 49

The conflict of jurisdiction between State Prosecutors shall be resolved by their mutually immediately superior State Prosecutor.

Dropping Charges
Article 50

State Prosecutors may drop charges before the end of the main hearing before a first instance court, and they may do so before a superior court in cases envisaged by this Code.

Chapter V
PRIVATE PROSECUTOR AND THE INJURED PARTY

Deadline for Filing a Private Action
Article 51

(1) As regards criminal offences prosecuted upon a private action, the complaint shall be filed within three months as of the day when the private prosecutor, i. e. person referred to in Article 54 of the present Code, learned about the criminal offence and the perpetrator.
(2) If a private action has been filed for the criminal offence of defamation, the accused person may, until the completion of the main hearing and after the expiration of the deadline referred to in paragraph 1 of this Article, file a complaint against the private prosecutor who committed defamation in return on the same occasion (counter-charge). In this case, the court shall render a single judgment.

Filing a Private Action
Article 52

(1) A private action shall be filed with the competent court.
(2) When the injured party has filed a criminal charge and in the course of the procedure it is ascertained that a criminal offence subject to private prosecution is involved, the charge shall be considered as timely private action if it was submitted within the deadline prescribed for a private action.

Private Action of a Minor and of a Person Deprived of Capacity to Practice

Article 53

(1) A private action on behalf of minors and persons fully deprived of capacity to practice shall be filed by their legal representative.
(2) Exceptionally, minors who have reached sixteen years of age may also file a private action by themselves.

Succession of a Private Prosecutor

Article 54

If a private prosecutor dies within the deadline prescribed for submitting a private action or in the course of procedure, his/her spouse, extramarital partner, children, parents, adopted children, adoptive parents and siblings may, within three months after his/her death, file a complaint or make a statement that they will continue the procedure.

Several Injured Persons and Prosecution by a Private Action

Article 55

If several persons are injured by the criminal offence, prosecution shall be initiated or continued upon a private action from any of the injured persons.

Withdrawal of a Private Action and Consequences Thereof

Article 56

(1) By virtue of his/her own statement to the court before which procedure is being conducted, a private prosecutor may withdraw private action until the completion of the main hearing.
(2) In case referred to in paragraph 1 of this Article, the private prosecutor shall lose the right to file a private action again.

Presumed Withdrawal of a Private Action and Return to *status quo ante*

Article 57

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

(2) The Chair of the Panel shall grant return to *status quo ante* to the private prosecutors who, for valid reasons, failed to appear at the main hearing or notify the court in due time about changes of address or residence, provided they file a petition for reinstatement within eight days after the cessation of impediment.
(3) No return to *status quo ante* may be claimed after a lapse of three months from the day of failure to file a petition referred to in paragraph 2 of this Article.
(4) An appeal shall not be allowed against the ruling upholding the return to *status quo ante*.
(5) The decision on the cancellation of proceedings adopted in case referred to in paragraph 1 of this Article shall enter into legal force upon the expiration of deadlines referred to in paras. 2 and 3 of this Article, if a private prosecutor does not lodge a petition within those deadlines for return to *status quo ante* or when the decision rejecting the petition becomes final.

Right to Be Informed about Evidence and Right to Offer Evidence

Article 58

(1) In the course of investigation, injured parties shall be entitled to call attention to all facts and to offer evidence important for the criminal case and for their claim under property law.
(2) At the main hearing, the injured party and the private prosecutor shall be entitled to offer evidence, to examine the defendant, witnesses and expert witnesses and to put forward remarks and explanations as regards their statements as well as to make other statements and proposals.
(3) The injured party, the subsidiary prosecutor and the private prosecutor shall be entitled to inspect files and objects serving as evidence. The inspection of the files may be denied to the injured party until an order on the conduct of investigation has been made or until s/he has been examined as a witness.
(4) The injured party who is the victim of a criminal offence against sexual freedom shall have the right to be heard and to have the procedure be conducted by a judge of the same sex, if so allowed by the staff composition of the court.
(5) The State Prosecutor and Chair of the Panel shall inform the injured party and the private prosecutor of the rights referred to in paras. 1 to 4 of this Article.
(6) In cases when the criminal procedure is conducted for a criminal offence punishable by an imprisonment sentence exceeding three years and the injured party can not bear representation expenses according to his/her financial standing, s/he may be appointed a proxy at his/her request if the

representation of the injured party by the proxy is in the interest of fairness. If the injured party is a minor, during the entire criminal procedure the court shall by virtue of office assess whether s/he needs to be appointed a proxy.
(7) The right to legal assistance shall be exercised by the injured party in line with a separate law.

Injured Party as a Prosecutor (Subsidiary Prosecutor)
Article 59

(1) When a State Prosecutor establishes that there is no basis for prosecution for a criminal offence that is prosecuted by virtue of office or that there is no basis to prosecute someone of reported accomplices, s/he shall inform the injured parties thereon within eight days, instruct them that they may take over the prosecution themselves and deliver them a decision on the rejection of the criminal charge, with the exception of cases referred to in Article 272, paragraph 5 and Article 273 of the present Code.
(2) State Prosecutors shall proceed in the manner referred to in paragraph 1 of this Article when they issue an order on the cessation of investigation, whereas the court shall do so when they render a decision on the cessation of procedure due to the State Prosecutor's withdrawal of accusation.
(3) The injured party shall have the right to undertake, i.e., continue prosecution, within 15 days as of the receipt of notification referred to in paragraph 1 of this Article.
(4) If the State Prosecutor has withdrawn the indictment, the injured party may, when assuming the prosecution, abide by the existing indictment or file a new one.
(5) The injured party who has not been notified that the State Prosecutor did not undertake prosecution or has withdrawn from prosecution may make his/her statement before the competent court specifying that s/he assumes or continues proceedings, within six months from the day the State Prosecutor rejected the charge or discontinued investigation, i.e. from the day the decision on the cessation of procedure was rendered.
(6) The notification of the State Prosecutor, i.e. of the court that the injured party may assume prosecution shall also contain an instruction as to which actions s/he may undertake in order to exercise that right.
(7) If the subsidiary prosecutor dies pending the term for assuming prosecution or pending the proceedings, his/her spouse, extramarital partner, children, parents, adopted children, adoptive parents, siblings may within three months after his/her death assume prosecution i.e. make the statement that they shall continue the proceedings.

(8) The ruling on cessation of proceedings rendered because the State Prosecutor has withdrawn from prosecution shall enter into force after the terms referred to in paras. 3, 5 and 7 of this Article have expired, if the injured party i.e. persons referred to in paragraph 7 have failed to assume prosecution within the prescribed deadlines.

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

Article 60

(1) When a State Prosecutor abandons prosecution at the main hearing, injured parties shall declare immediately whether they intend to continue prosecution.
(2) It shall be considered that the injured parties do not want to continue prosecution, if they fail to appear at the main hearing, although they were duly summoned or the summons could not have been served to them because they failed to notify the court about change of address or residence.
(3) The Chair of the Panel of the first instance court shall allow return to *status quo ante* to the injured party who was not duly summoned or who was duly summoned but for valid reasons failed to appear at the main hearing during which the judgment rejecting the charge has been rendered on grounds that the State Prosecutor had withdrawn from prosecution, provided that the injured party submits the petition for return to *status quo ante* within eight days as of the receipt of the judgment and if in this petition s/he states the intention to continue prosecution. In such a case the main hearing shall be rescheduled and the previous judgment shall be annulled by the new one rendered in the course of the new main hearing. If the duly summoned injured party as a subsidiary prosecutor fails to appear at the new main hearing, or states before the beginning of the main hearing that s/he is withdrawing from prosecution, the previous judgment shall remain in force.
(4) Provisions of Article 57, paras. 3 and 4 of the present Code shall be applied to return to *status quo ante referred to in paragraph 3 of this Article*.
(5) The judgment rejecting the charge rendered in the case referred to in paragraph 2 of this Article shall become final after the terms for submitting a petition for return to *status quo ante* have expired.

Forfeiture of the Right to Subsidiary Prosecution
Article 61

(1) If the injured party fails to assume or continue prosecution or if the subsidiary prosecutor fails to appear at the main hearing although s/he was duly summoned, or if the summons could not have been served to him/her due to his/her failure to report to the court changes of address or residence, it shall be assumed that s/he has withdrawn from prosecution.
(2) If the subsidiary prosecutor, having been duly summoned, fails to appear at the main hearing, provisions of Article 57, paragraphs 2 to 5 of the present Code shall be applied.

Rights of the Subsidiary Prosecutor and Assumption of Prosecution by the State Prosecutor
Article 62

(1) The subsidiary prosecutor shall have the same rights as the State Prosecutor, except for authorizations vested in the State Prosecutor as a state authority.
(2) In proceedings conducted upon the prosecution of a subsidiary prosecutor, the State Prosecutor shall be entitled to inspect criminal case files and to assume prosecution prior to the completion of the main hearing.

Legal Representative of the Injured Party Lacking the Capacity to Practice
Article 63

(1) If the injured party is a minor or a person that is completely deprived of capacity to practice, his/her legal representative shall be authorized to make all statements and perform all actions to which the injured party is entitled under this Code.
(2) By way of exception, an injured party who reached sixteen years of age shall be authorized to make statements and undertake procedural actions on his/her own.

Exercise of Rights through Proxies
Article 64

(1) The private prosecutor, the injured party and the subsidiary prosecutor, as well as their legal representatives may exercise their procedural rights through proxies as well.
(2) The court shall instruct the persons referred to in paragraph 1 of this Article as to their right to have a proxy.
(3) When the procedure is conducted under the charges of the subsidiary prosecutor for a criminal offence punishable under law by imprisonment for a term exceeding five years, the court

may upon the request of the subsidiary prosecutor appoint a proxy to him/her if that is to the benefit of the procedure and if the subsidiary prosecutor is financially unable to meet the expenses of legal representation. The Chair of the Panel shall decide on this request, and the President of the Court shall appoint a proxy among the members of the Bar.

Duty to Report to the Court on the Change of Address or Residence
Article 65

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

Chapter VI
DEFENSE ATTORNEY

Right to a Defense Attorney
Article 66

(1) Accused persons shall have the right to a defense attorney.
(2) The accused person's legal representative, spouse, direct blood relative, adoptive parent, adopted child, siblings or foster-parent as well as his/her extramarital partner may engage a defense attorney on behalf of the accused person.
(3) Only a member of the Bar may be engaged as defense attorney.
(4) Defense attorneys shall submit their power of attorney to the authority before which the procedure is being conducted. The accused person may also submit power of attorney to the defense attorney orally before the authority conducting the procedure.

Several Defense Attorneys and a Common Defense Attorney
Article 67

(1) Several accused persons may retain a common defense attorney unless that is contrary to the interests of their defense.
(2) One accused person may simultaneously retain at the most three defense attorneys in the procedure, and it is deemed that defense is provided for when one of the defense attorneys participates in the proceedings.

Persons Who May Not Act as Defense Attorneys
Article 68

(1) A defense attorney may not be the co-accused person, the injured party, spouse of the injured party, prosecutor or judge, or their direct blood relative to any degree or a collateral blood relative to the fourth degree or a relative by marriage to the second degree.
(2) A defense attorney may not be a person summoned as a witness at the main hearing, unless relieved of the obligation to testify under this Code and has declared that s/he would not testify.
(3) A defense attorney may not be the person who acted in the capacity of a judge or State Prosecutor in the same case or has undertaken actions in the preliminary investigation.

Cases When the Accused Person Shall Have a Defense Attorney
Article 69

(1) If the accused person is a person with special needs due to which s/he is uncapable to defend himself/herself, or if the procedure is conducted for a criminal offence punishable by the maximum term of imprisonment, the accused person shall have a defense attorney at his/her first hearing.
(2) When the indictment is brought for a criminal offence punishable under law by the imprisonment of ten years, the accused person shall have a defense attorney when the indictment is served on him/her.
(3) Accused persons against whom detention is ordered shall have a defense attorney while they are in detention.
(4) The accused persons which are tried in absence within the meaning of Article 324 paragraph 2 of the present Code shall have a defense attorney as soon as the court renders a decision on the trial in absence.
(5) If the accused persons in cases referred to in paras. 1, 2 and 3 of this Article fail to retain a defense attorney, the competent State Prosecutor shall render a decision on the appointment of a public defender to represent them up to the presentation of indictment, the President of the Court after the presentation of indictment until the judgement becomes final and in case the longest imprisonment sentence was imposed, for the procedure of filing extraordinary judicial remedies as well. In cases when a public defender is appointed to the accused persons after the indictment has been brought, the accused persons shall be informed thereon at the time the indictment is served on them. In cases of mandatory defense, if accused persons are left without a defense attorney in the course of procedure and they do not

retain another defense attorney, the President of the Court before which the procedure is being conducted shall appoint a public defender.
(6) Defense attorney from the list of the Bar Chamber of Montenegro (hereinafter referred to as: the Bar Chamber) shall be appointed to the accused persons according to their choice. If the accused persons do not use this right, the defense attorney shall be appointed by the order on the Bar Chamber's list.

Appointment of Defense Attorney Due to Adverse Financial Situation
Article 70

(1) When conditions for mandatory defense are not met, but it is required so by the interests of fairness, at the request of the accused persons, they may be appointed a defense attorney if they are not able to bear the costs of defense under their financial situation.
(2) The decision on the request shall be rendered by the competent State Prosecutor in the preliminary investigation and in the investigation and after the indictment is brought, the President of the Court in accordance with the order on the list of the Bar Chamber.

Dismissal of the Appointed Defense Attorney
Article 71

(1) If the accused person in cases referred to in Art. 69 and 70 of the present Code retains another defense attorney by themselves, the appointed public defender shall be released.
(2) The defense attorney appointed pursuant to Article 69, paragraph 3 of the present Code shall be released after the ruling on termination of detention becomes final.
(3) The appointed defense attorney may request to be released only for valid reasons.
(4) The decision on the release of the defense attorney in cases referred to in paragraphs 1 and 2 of this Article shall be rendered by the State Prosecutor before the indictment is brought, after the indictment is brought by the President of Panel, at the main hearing by the Panel, and in the appellate procedure by the President of the first instance Panel or the Panel having jurisdiction to decide on appeal. An appeal shall not be allowed against this ruling.
(5) The competent State Prosecutor or the President of the Court may release the appointed defense attorney who negligently carries out his duties. The competent State Prosecutor or President of the Court shall appoint another defense attorney in

lieu of the dismissed defense attorney. The Bar Chamber shall be notified of the dismissal of the defense attorney.

Right of the Defense Attorney to Inspect Files and Examine Objects

Article 72

(1) The defense attorney shall be entitled to inspect and copy files and to examine collected objects which serve as evidence.
(2) The defense attorney shall be entitled to be informed about the content of the criminal charge before the first hearing of the suspect.
(3) By way of exception, the defence attorney may be denied the right to inspect and copy certain files in the preliminary investigation or investigation, if the purpose of investigation, national security or the protection of witnesses would thereby be endangered, which may not compromise the right to defense in further proceeding.
(4) When defense attorneys establish that they were unlawfully deprived of the right to inspect and copy files, they may ask the investigative judge to render a ruling so as to allow the defense attorney to inspect and copy files. An appeal shall not be allowed against the ruling of the investigative judge.

Communication between the Accused Person in Detention and the Defense Attorney

Article 73

(1) If the accused persons are in detention, the defense attorney may correspond with them and have conversations without supervision.
(2) The defence attorney shall enjoy the right to have a private conversation with the suspect who is deprived of liberty even before the suspect is interrogated. The control of this conversation before the first hearing shall be allowed only by observing and not by listening.

Undertaking of Actions by the Defense Attorney

Article 74

(1) The defense attorney shall be authorized to undertake all actions in favor of the accused person that can be undertaken by the accused person, except those explicitly reserved for the accused person personally in line with the provisions of the present Code.
(2) The defense attorney shall not undertake actions against the expressly stated will of the accused person, except in the case referred to in Article 382, paragraph 6 of present Code.

(3) The rights and duties of defense attorneys shall cease when the accused persons revoke their power of attorney, when they are dismissed and upon the lapse of term of 15 days as of the day the power of attorney was denounced.

Chapter VII
EVIDENTIARY ACTIONS
1. SEARCH OF DWELLINGS, ARTICLES AND PERSONS

Reasons for Search of Dwellings, Other Premises, Movable Articles and Persons
Article 75

(1) Search of dwellings and other premises of the accused persons or other persons as well as their movable articles outside the dwellings may be carried out if grounds for suspicion exist that in the course of search the perpetrator would be caught or that traces of the criminal offence or objects relevant to the criminal procedure would be found.
(2) The search of movable articles within the meaning of paragraph 1 of this Article shall include the search of computers and similar devices for automatic data processing to which the computer is connected. At the request of the court, the person using a computer shall enable access to the computer and removable storage used for storing information relative to the object of the search (discs, USB flash discs, USB hard discs, diskettes, tapes and alike), as well as give necessary information on the use of the computer. Persons who refuse to do so although reasons referred to in Article 111 of the present Code do not exist may be punished pursuant to Article 85 paragraph 3 of the present Code.
(3) Search of persons may be carried out if grounds for suspicion exist that in the course of search traces and objects relevant to the criminal procedure would be found.

Search Warrant and Request for a Search Warrant
Article 76

(1) A search warrant shall be issued by the court at the request of the State Prosecutor or at the request of an authorized police officer granted authorization by the State Prosecutor, and it shall be enforced by the police.
(2) A request for the issuance of a search warrant shall be submitted in writing, and only exceptionally orally in line with Article 78 of the present Code.

Contents of the Request for a Search Warrant

Article 77

The request for issuing a search warrant shall contain:

1) the name of the applicant,

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

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

4) the first and the last name, and, if necessary, a description of the person to be apprehended during the search of dwellings or other premises, or expected traces and a description of objects that should be found by the search,

5) the designation of the location of the search, by indicating the address, information about the owner or the person in possession of the objects, dwellings or other premises and any other information of importance to establish the identity, and

6) signature of the applicant.

Verbal Request for a Search Warrant

Article 78

(1) A verbal request for issuing a search warrant may be filed when risk of delay exists.

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

(3) When a verbal request for issuing a search warrant has been submitted, the investigating judge shall record the further course of conversation. If a voice recording device has been used or stenographic records kept, a transcription thereof shall be made within 24 hours, the identity of which shall be certified and kept with the original records.

Search Warrant

Article 79

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

1) the information provided for in Article 77 of the present Code;

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

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

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

(2) If the investigating judge determines that the request for issuing a search warrant is not justified, s/he shall immediately request the panel referred to in Article 24, paragraph 7 of the present Code to decide on the request. The panel shall make a decision within 24 hours.

Search Upon a Court Order
Article 80

(1) Before the commencement of the search, the search warrant shall be given to the person to be searched or whose premises are to be searched. Before the search, the persons against whom the search warrant has been issued shall be asked to voluntarily hand over the wanted person or objects. Those persons shall be instructed that they are entitled to retain a lawyer i.e. a defense attorney who may be present during the search. If a person against whom a search warrant has been issued demands the presence of a lawyer or defense attorney, the commencement of the search shall be postponed until his/her arrival, but for no more than two hours.
(2) The search may commence without previously presenting a warrant or without a previous invitation to hand over the person or objects and without an instruction on the right to a defense attorney or lawyer, if it is necessary in order to prevent a criminal offence from being committed, for the purpose of outright capture of a criminal offender, saving of persons and property or if the search is to be carried out in public premises.
(3) The search shall be carried out by day from $6:00^{h}$ until $21:00^{h}$. The search may be carried out by night as well, if it was commenced during the day and was not completed or if it was explicitly ordered so by the court because of risk of delay or if reasons referred to in Article 83 paragraph 1 of the present Code exist.

Rules of Search
Article 81

(1) The occupants of a dwelling or other premises shall be summoned to attend the search, and if they are absent, their representative, adult members of his family or neighbors shall be summoned to attend.
(2) Premises that are locked, furniture and other things shall be opened by force only if their occupant is absent or if the occupant is refusing to open them voluntarily. Unnecessary damage shall be avoided in the course of opening.
(3) The search of a dwelling or person shall be attended by two citizens of age in the capacity of witnesses, unless reasons

referred to in Article 83 paragraph 4 of the present Code exist. The search of persons shall be carried out by a person of the same sex, and a person of the same sex shall be taken as a witness. Before the commencement of the search, witnesses shall be admonished to pay attention to the course of the search, as well as that they have the right to raise their objections before the signing of the record on the search, should they consider that the contents of the record are incorrect.

(4) When conducting a search of premises of state authorities, enterprises or other legal entities, a head of such authorities, enterprises or other legal entities shall be summoned to be present at the search.

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

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

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

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

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

Seizure of Other Objects on Basis of a Search Warrant
Article 82

(1) If a search of a dwelling or a person reveals objects that are unrelated to the criminal offence for which the search was ordered, but indicate the commission of another criminal offence

that is prosecuted by virtue of office, they shall be described in the record and provisionally seized, and a receipt confirming seizure shall be issued immediately.
(2) If the search was not attended by the competent State Prosecutor, s/he shall immediately be informed about the discovery of objects referred to in paragraph 1 of this Article for the purpose of initiating criminal procedure. These objects shall be returned immediately if the State Prosecutor establishes that there are no grounds to initiate criminal proceedings and if no other legal grounds for the seizure of these objects exist.
(3) If certain objects are seized during the search of computers and similar devices for automatic data processing, they shall be immediately returned to their users, if they are not needed for further procedure. Personal information obtained during the search may be used only for the purposes of conducting a criminal procedure and shall be erased as soon as that purpose ceases.

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

Article 83

(1) An authorized police officer may enter another person's dwelling or other premises without a search warrant and, if necessary, carry out the search, provided that the tenant so requires or if it is necessary or for the purpose of preventing the commission of a criminal offence or outright capturing a criminal offender or for the purpose of saving people and property.
(2) The tenant, if present, shall have the right to object to the procedure of the authorized police officer referred to in paragraph 1 of this Article. The authorized police officer shall inform the tenant about this right and shall include his/her objections in the receipt on entering the dwelling or in the search record.
(3) In case referred to in paragraph 1 of this Article, if another person's dwelling was only entered without search, the tenant shall be issued a receipt stating the reason for entering the dwelling or other premises as well as the tenant's objections. If search was also carried out in another person's dwelling or other premises, the procedure shall be the one referred to in Article 81, paras. 3, 7 and 8 and Article 82, paragraph 1 of the present Code.
(4) A search may be carried out without the presence of witnesses if it is not possible to arrange their presence immediately, and risk of delay exists. The reasons for the search without the presence of witnesses shall be specified in a record.

(5) Authorized police employees may, without a search warrant and without the presence of witnesses, carry out a search of persons when enforcing a warrant on compulsory apprehension or when depriving of liberty, if suspicion exists that the person owns weapons or dangerous tools, or if suspicion exists that the person would reject, hide or destroy the objects that need to be taken from him/her as evidence in a criminal procedure.
(6) If there are grounds for suspicion that criminal offence was committed that is prosecuted by virtue of office, authorized police employees may, without a court warrant and without the presence of witnesses, carry out the search of transport means, passengers, luggage and other movable objects, with the exception of things referred to in Article 75 paragraph 2 of the present Code.
(7) When conducting a search without a search warrant, authorized police officers shall immediately submit thereon a report to the investigative judge.

Legally Invalid Evidence
Article 84

If the search was conducted in contravention to the provisions of Article 76, Article 80 paragraph 1, Article 81 paragraph 3 and Article 83 of the present Code, search records and evidence collected during the search may not be used as evidence in the course of criminal procedure.

2. PROVISIONAL SEIZURE OF OBJECTS, PROPERTY GAIN AND PROPERTY

Provisional Seizure of Objects and Property Gain
Article 85

(1) Objects which have to be seized according to the Criminal Code or which may be used as evidence in the criminal procedure, shall, at the proposal of a State Prosecutor**,** and by way of a court ruling, be provisionally seized and delivered for safekeeping to the court or their safekeeping shall be secured in another way.
(2) The ruling on the provisional seizure of objects shall contain:
1) the name of the court rendering the ruling,
2) legal grounds for the seizure of objects,
3) indication and description of objects that are to be provisionally seized, and

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

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

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

(5) The following objects cannot be provisionally seized:

1) papers and other documents of public authorities, publication of which would violate the obligation to keep data secret in terms of regulations laying down data secrecy, until the competent authority decides otherwise;

2) the accused persons' letters to their defense attorney or the persons referred to in Article 109, paragraph 1, items 1, 2 and 3 of the present Code unless the accused decide to hand them over voluntarily;

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

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

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

(8) The panel referred to in Article 24, paragraph 7 of the present Code shall decide on the appeal against a ruling referred

to in paras. 2 and 3 of this Article. An appeal against the ruling on imprisonment shall not stay the execution.

(9) Authorized police employees may seize objects referred to in paragraph 1 of this Article when proceeding pursuant to Articles 257 and 263 of the present Code or when executing a court warrant.

(10) When seizing objects it shall be indicated where they were found and they shall be described, and where appropriate, their identity shall be established in another way as well. A receipt shall be issued for the seized objects.

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

(12) Provision of Article 481 of the present Code shall be applied on the provisional seizure of property gain.

Denial of Disclosure or Issuing of Files

Article 86

(1) State authorities may refuse to disclose or issue their files and other documents if they deem that disclosure of their contents would cause damage to the public interests, with the exception of case referred to in Article 90 of the present Code. If disclosure or handover of files and other documents was denied, the final decision shall be made by the panel referred to in Article 24, paragraph 7 of the present Code.

(2) Enterprises or other legal entities may request that data related to their business operations are not publicly disclosed. The panel referred to in Article 24 paragraph 7 of the present Code shall decide on the request.

Inventory and Sealing of Files

Article 87

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

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

(3) During the examination of files, attention shall be paid that their contents are not be disclosed to unauthorized persons.

Provisional Seizure of Letters, Telegrams and Other Parcels
Article 88

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

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

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

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

Obtaining Information from the Competent Public Authority for Temporary Suspension of Monetary Transactions
Article 89

(1) State Prosecutors may request that the competent public authority performs control over the financial operations of certain persons and to submit them documentation and information which can be used as evidence of a criminal offence or of the proceeds of crime, as well as information about suspicious monetary transactions.

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

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

(4) At the proposal of State Prosecutors, the court may issue a ruling ordering a temporary suspension of a certain monetary transaction when reasonable doubt exists that it constitutes a

criminal offence or that it is intended for the commission or concealment of a criminal offence or proceeds of crime.
(5) By way of the ruling referred to in paragraph 4 of this Article, the court shall order that funds in check or cash form be provisionally seized and deposited into a special account where they will be kept until the completion of the proceedings with final force and effect or until conditions for their return are met.
(6) An appeal against the ruling referred to in paragraph 4 of this Article may be filed by the parties and the defense attorney, or the owner of funds or his/her proxy or the legal person from whom the funds have been provisionally seized. Such an appeal shall be decided upon by the panel referred to in Article 24, paragraph 6 of the present Code.

Provisional Seizure of Property Gain and Financial Investigation for the Purpose of Extended Seizure of Property
Article 90

(1) In the procedure conducted for the criminal offence for which the Criminal Code provides for a possibility of extended seizure of property from the sentenced persons, their legal successors or persons to whom the sentenced persons have transfered their property who are not able to prove the legality of its origin, and grounds of suspicion exist that the property in question was illicitly acquired, the court may, at the proposal of a State Prosecutor, order the property to be provisionally seized.
(2) The State Prosecutor shall initiate a financial investigation by way of an order against the suspects or accused persons for the criminal offence referred to in paragraph 1 of this Article, their legal successors or persons to whom the suspects or accused persons have transfered certain property.
(3) During the financial investigation, evidence shall be collected on the property and revenues of suspects or accused persons, their legal successors or persons to whom the accused persons have transferred property that was acquired in the period prescribed by the Criminal Code.
(4) In the procedure of provisional seizure of property referred to in paragraph 1 of this Article, provisions of the law regulating enforcement proceedings shall be applied accordingly, if provisions of the present Code do not prescribe otherwise.

Contents of the Request and Decision Making on the Request for Ordering Seizure of Objects, Property Gain or Property

Article 91

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

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

(3) The request of the State Prosecutor referred to in paragraph 2 of this Article shall contain the following: a description of objects, property gain and property ; information on the person who is in possession of those objects, property gain or property; reasons for suspicion that the objects, property gain and property were illicitly acquired and reasons to believe that by the time criminal proceedings are completed it would be significantly difficult or hardly possible to confiscate objects or property gain or property obtained through the commission of a criminal offence.

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

Contents of the Ruling on the Provisional Seizure of Objects, Property Gain and Property and Appeal against the Ruling

Article 92

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

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

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

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

Scheduling a Hearing and Decisions on Appeal
Article 93

(1) When an appeal against the ruling on the provisional seizure of objects, property gain or property is filed, the panel referred to in Article 24, paragraph 7 of the present Code shall schedule a hearing and summon the person to whom the ruling relates to, his/her defense attorney and the State Prosecutor.
(2) The hearing referred to in paragraph 1 of this Article shall be held within 30 days from the date of the filing of the appeal. Summoned persons shall be heard at the hearing. Their failure to appear shall not preclude holding of the hearing.
(3) The panel shall revoke the ruling referred to in paragraph 1 of this Article if the suspect or the accused proves the lawfulness of the origin of objects, property gain or property by plausible documents, or if, in the absence of plausible documents, s/he presents *prima facie* evidence that the objects, property gain or property were lawfully acquired.
(4) The panel shall reverse the ruling referred to in paragraph 1 of the present Article if, in line with paragraph 3 of this Article, proof has been produced or *prima facie* evidence established that the object, a part of property gain or property that were provisionally seized are of lawful origin.

Duration of the Provisional Seizure of Objects, Property Gain and Property
Article 94

(1) The provisional seizure of objects, property gain or property may last at the most until the panel referred to in Article 24, paragraph 7 of the present Code renders a decision on the request of the State Prosecutor referred to in Article 486 of the present Code.
(2) If the provisional seizure referred to in paragraph 1 of this Article is ordered during the preliminary investigation, it shall be revoked *ex officio* if the investigation has not been instituted within a term of six months as of the date of issuing the ruling on provisional seizure.
(3) The ruling on the provisional seizure of objects, property gain or property may be revoked before the lapse of the period of time referred to in paragraphs 1 and 2 of this Article, by the court's virtue of an office or upon request of the State Prosecutor or the interested party if it is proved that the measure is not needed or justifiable taking into consideration the gravity of the criminal offence, financial situation of the person the measure is imposed on or the situation of persons s/he is legally bound to support, as well as the circumstances of the case which indicate that seizure of objects, property gain and property will not be prevented or

considerably aggravated until the completion of the criminal proceedings.

Enforcement of the Ruling on the Provisional Seizure of Objects, Property Gain and Property
Article 95

(1) The ruling on the provisional seizure of objects, property gain and property shall be enforced by the court competent for conducting the enforcement, in line with the law regulating the enforcement proceedings.
(2) The court referred to in paragraph 1 of this Article shall be competent to decide on disputes in connection with enforcement.
(3) On the date of opening of bankruptcy proceedings against a legal person who is in possession of objects, property gain or property that was provisionally seized, terms shall be met to file an interpleader in respect to these objects, property gain or property, as on mature amounts.

Temporary Administration of Property and Assets
Article 96

The competent public authority shall manage the provisionally seized property and assets in accordance with the law regulating the care on provisionally seized and confiscated property.

Return of Provisionally Seized Objects
Article 97

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

3. PROCEDURE OF DEALING WITH SUSPICIOUS OBJECTS

Advertising Suspicious Objects
Article 98

(1) If an object belonging to another person is found in the possession of the suspect or accused, and it is unknown who the object belongs to, the authority conducting the procedure shall describe that object and post a notice containing a description in the daily paper. The notice shall contain an invitation to the owner to appear within one year from the notice posting date,

with a remark that the object would otherwise be sold. The proceeds obtained by the sale shall be entered into a special budget allotment for the work of courts.
(2) If the object is perishable or its safekeeping would entail significant costs, the object shall be pursuant to the law regulating enforcement proceedings and the proceeds shall be delivered for safekeeping to the court deposit.
(3) Provision referred to in paragraph 2 of this Article shall also be applied when the thing belongs to a fugitive or to unknown criminal offender.

Deciding on Suspicious Objects
Article 99

(1) If in the course of one year no one comes forward and requires the objects or the proceeds obtained by the sale referred to in Article 98 of the present Code, a ruling shall be issued that the object shall become property of the state or that the proceeds shall be credited to the budget.
(2) The owner of the object shall be entitled to request in civil proceedings the recovery of the object or proceeds acquired from the sale of the object. The statute of limitations with respect to this right shall start running from the date of the posting or publication.

4. HEARING OF THE ACCUSED PERSON

Instruction on the Rights and the Manner of Hearing of the Accused Person
Article 100

(1) When the accused persons are interrogated for the first time, they shall be asked for their first name and surname, personal identification number, nickname if there is one, the first name and surname of their parents, the maiden name of their mother, place of birth, address, the day, month and year of birth, nationality, whether they understand the Montenegrin language and what their language is**,** occupation, family situation, whether they are literate, their educational background, what their financial situation is, whether they have ever been convicted and if so when and why, whether they have served the imposed sentence and when, whether criminal procedure against them for another criminal offence is in progress, and if they are minors, who their legal representative is.
(2) The accused persons shall be admonished that they are obliged to answer the summons and immediately notify of all changes of address or of intention to change their place of

residence and shall be warned of the consequences if they do not act accordingly. Thereafter, the accused persons shall be informed on the rights referred to in Article 8, paragraph 2 and Article 12 paragraph 3 of the present Code, of the offence they are charged with, grounds for suspicion against them, they shall be instructed that they are not obliged to present their defense or answer questions asked, and that their statement may be used as evidence in the procedure even without their consent and they shall be invited to present their defense.

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

(4) The accused person shall be interrogated verbally. During hearing, the accused persons shall have the right to use their notes.

(5) During hearing the accused person shall be enabled to present without hindrance on all incriminating circumstances against them and to present the facts serving for their defense.

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

(7) The accused persons shall be interrogated with full respect for their personalities.

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

(9) Accused persons may be interrogated in the absence of a defense attorney if they have expressly waived that right, provided that defense is not mandatory, if a defense attorney who has been informed on hearing in line with Article 282 of the present Code fails to appear and there is no possibility for the accused persons to choose another defense attorney, or if the accused person failed to secure the presence of a defense attorney at the first hearing even within 24 hours from the time they have been instructed of this right in line with Article 12, paragraph 3 of the present Code, except in the case of mandatory defense.

(10) In the case of a failure to comply with the provisions of paragraphs 8 and 9 of this Article or if the accused person has not been instructed of the rights referred to in paragraph 2 of this Article, or if the accused person's statements referred to in paragraph 9 of this Article on the need for the presence of a defense attorney have not been entered in the record, such a statement may not be used as evidence in the criminal procedure.

Manner of Hearing
Article 101

(1) Questions shall be put to the accused persons in a clear, comprehensible and precise manner so that they can fully understand them. The hearing may not be based on the assumption that the accused persons have confessed something that they have not confessed, nor should leading questions be asked.
(2) If the subsequent statements of the accused persons differ from previous ones, and especially if accused persons revoke their confession, the court may summon them to give an explanation why they have given different statements, that is, revoked their confession.

Confrontation
Article 102

(1) The accused person may be confronted with a witness or another accused person if their statements regarding relevant facts do not correspond.
(2) The confronted persons shall be placed one towards the other and shall be requested to repeat to each other their statements regarding each disputable circumstance and to argue whether their statements are true. The court shall enter in the record the course of confrontation as well as the final statements of the confronted persons.
(3) Confrontantion may be recorded in an audio or audiovisual form, in which case a transcript of audio recording shall be made.

Identification of Persons or Objects
Article 103

(1) If it is needed to establish whether the accused persons recognize a certain person or object that they have previously described, that person shall be presented to them, together with other unknown persons whose basic physical characteristics are similar to the ones they have described, or that object, together with other objects of the same or similar kind. Afterwards, the accused persons shall be asked to state whether they identify the person or object with certainty and if positive, to indicate the identified person or object.
(2) In the preliminary investigation and in the investigation, identification shall be conducted by the State Prosecutor who shall previously instruct the accused person on the rights referred to in Article 100 paragraph 2 of the present Code.

(3) Identification shall be conducted so that the person who is the object of identification may not see the accused person, nor may the accused person see that person before idetification commences.
(4) Record shall be composed on the course of identification and on the statements of the accused person and a joint photo taken of persons or objects being identified, and where appropriate, audio or audiovisual recording may be carried out.

Entering the Accused Person's Statements in the Record
Article 104

(1) The accused person's statement shall be entered in the record in a narrative form while the questions asked and answers shall be entered in the record only when they relate to the criminal case.
(2) The accused persons may be permitted to dictate their statement into the record themselves.
(3) The accused person's statement may be audio or audio-visually recorded, in which case a transcript of the audio record shall be made. A recording of the accused person's statement shall constitute an integral part of the record on the hearing of the accused person and it may be used as evidence. A copy of the record or recordings shall be given to the accused persons if they requests so.

Confession of the Accused Person and Further Collection of Evidence
Article 105

(1) In the case of confession of the accused person, the authority conducting the procedure shall continue collecting evidence on the criminal offence only if the confession is obviously false, incomplete, contradictory or unclear.
(2) By way of exception from paragraph 1 of this Article, the authority conducting the procedure may decide not to collect evidence on the criminal offence when the confession is full, clear and true.

Interrogation of the Accused Person through Interpreters
Article 106

(1) The hearing of the accused person shall be carried out through an interpreter in cases envisaged by this Code.
(2) If the accused person is deaf, the questions shall be asked in writing, and if s/he is mute, s/he shall be asked to answer in writing. If the hearing may be performed in such a manner, a

person with whom the accused person is able to communicate shall be summoned as an interpreter.
(3) If the interpreter has not previously taken an oath, s/he shall take the oath stating that s/he would faithfully communicate questions put to the accused person as well as statements given by the accused person.
(4) Provisions of the present Code referring to expert witnesses shall be applied accordingly to interpreters.

5. WITNESS

Persons Who May Be Heard as Witnesses
Article 107

(1) Persons who are likely to provide information regarding the criminal offence and the perpetrator and other relevant circumstances shall be summoned as witness.
(2) The injured party, subsidiary prosecutor and private prosecutor may be heard as witnesses.
(3) Every person summoned as witness shall answer the summons and, unless otherwise prescribed by this Code, shall testify as well.

Persons Who May Not Be Heard as Witnesses
Article 108

The following persons shall not be examined as witnesses:

1) persons who would by giving testimony violate the duty of keeping the data secret within the meaning of regulations prescribing data secrecy, until the competent authority releases them from that duty;

2) defense attorneys may not testify with regard to information accused persons have confided to them in their capacity as defense attorneys;

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

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

Persons Exempted from the Duty to Testify
Article 109

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

1) the accused persons' spouses and their extra-marital partners;

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

3) accused persons` adopted children or adoptive parents.

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

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

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

Testimonies on Which Judgments May Not be Based
Article 110

If a person who may not be heard as a witness within the meaning of Article 108 of the present Code or a person who is not obliged to testify in line with Article 109 of the present Code was heard as a witness but was not cautioned thereof or has not expressly waived that right, or if the caution and the waiver were not entered into the record or if a witness' testimony was obtained by torture or in a manner referred to in Article 154 paragraph 4 of the present Code, the judgment may not be based on such witness testimony.

Denial of Answer to Specific Questions
Article 111

Unless otherwise prescribed by this Code, witnesses have the right not to answer particular questions if it is likely that they would thus expose themselves or persons referred to in Article 109, paragraph 1 of the present Code to serious disgrace or

criminal prosecution, and the court shall inform the witness thereon.

Summoning of Witnesses
Article 112

(1) A witness shall be summoned by means of a written summons indicating the first name, surname and occupation of the person summoned, the time and place of appearance, the criminal case involved, a note that s/he is being summoned as a witness, and the instructions on the consequences of an unjustified failure to appear referred to in Article 119 of the present Code.
(2) The summoning of a minor under sixteen years of age as a witness shall be done through their parents or legal representatives, except where it is not possible due to a need to act urgently, or due to other circumstances.
(3) Witnesses who are in another country and witnesses who can not obey the summons due to their old age, illness or serious physical disabilities may be heard in their residence, and in exceptional cases by means of technical devices for the transmission of image or sound, so the parties can ask them questions even though they are not present in the same premises as the witness. For the needs of such a hearing, expert assistance referred to in Article 282, paragraph 8 of the present Code may be ordered.
(4) The summoning of witnesses may be done over the phone and other electronic communication devices, if the witness agrees to obey such a summon.

Manner of Hearing of Witnesses and Cautions by the Court
Article 113

(1) Witnesses shall be examined separately and in the absence of other witnesses. Witness shall give their testimony orally.
(2) Witness shall be previously warned that they are obliged to tell the truth and not to withhold anything, and also cautioned that giving false testimony constitutes a criminal offence. Witnesses shall be instructed of the right referred to in Article 111 of the present Code and such instruction shall be entered in the record.
(3) After the caution and warning referred to in paragraph 2 of this Article, witnesses shall be asked about their first name and surname, their father’s or mother’s name, occupation, place of residence, place and year of birth, and their relation to the accused and the injured party. Witnesses shall be admonished

that they are bound to notify the court of changes of their address or residence.
(4) When a minor is heard, especially if a minor was injured by the criminal offence, special care shall be taken in order to ensure that the hearing would not have an adverse effect on the minor's mental condition. When necessary, the minor shall be heard with assistance of a psychologist or another expert.
(5) Injured parties who are victims of a criminal offence against sexual liberty, as well as children being examined as witnesses, shall be entitled to testify in separate premises before a judge and a court reporter, whereas the Prosecutor, accused person and defense attorney shall be given the possibility to view the course of hearing from other premises and to put questions to the witness, after having been duly instructed by the court thereon. The instruction shall be entered in the record.
(6) The court may decide that the provision of paragraph 5 of this Article be also applied to the testimony of the injured party who is the victim of dicrimination.

Hearing and Confrontation of Witnesses
Article 114

(1) After general questions, witnesses shall be called upon to state everything known to them about the criminal case, whereupon questions shall be directed to them in order to check, complete or clarify the testimony. It shall be forbidden to deceive the witness or to ask leading questions during the hearing of witnesses.
(2) Witnesses shall always be asked how do they know the facts they are testifying about.
(3) Witnesses may be confronted if their statements do not match as regards important facts. Only two witnesses may be confronted simultaneously. Provisions referred to in Article 102, paragraphs 1 and 3 of the present Code shall be applied accordingly regarding the confrontation of witnesses.
(4) Injured parties heard in the capacity of witnesses shall be asked about their desires with respect to satisfaction of a property claim in the criminal proceedings.

Identification of Persons or Objects
Article 115

(1) If it is needed to establish whether witnesses recognize a certain person or object that they have previously described, that person shall be presented to them, together with other unknown persons whose basic physical characteristics are similar to the ones they have described, or that object, together with other

objects of the same or similar kind. Afterwards, witnesses shall be asked to state whether they identify the person or object with certainty and if positive, to indicate the identified person or object.
(2) In the preliminary investigation and in the investigation, identification shall be conducted by the State Prosecutor who shall previously warn and caution witnesses in line with Article 113 paragraph 2 of the present Code.
(3) Identification shall be conducted so that the person who is the object of identification may not see the witness, nor may the witness see that person before idetification commences.
(4) Record shall be composed on the course of identification and on the statements of witnesses and a joint photo taken of persons or objects being identified, and where appropriate, audio or audiovisual recording may be carried out.

Hearing of Witness Through an Interpreter
Article 116

If witnesses testify through an interpreter or if witnesses are deaf or mute, they shall testify pursuant to Article 106 of the present Code.

Taking an Oath
Article 117

(1) Witnesses may be required to take the oath before testifying.
(2) Before the main hearing, witnesses may take the oath only if concern exists that they will not be able to appear at the main hearing due to illness or other reasons. Reasons why the oath was taken then shall be entered into the record.
(3) The text of the oath is worded as follows: "I do swear to tell only the truth about everything I am asked before the court, and not to withhold anything which has come to my knowledge".
(4) Witnesses shall take an oath orally by reading its text or by answering affirmatively after the contents of the oath has been read to him by the authority before which the proceedings are conducted. Witnesses that are mute and literate shall sign the text of the oath, and those deaf or mute who are illiterate shall be sworn through an interpreter.
(5) The rejection of the witness to take an oath and the grounds thereof shall be entered into the record.

Persons Forbidden to Take an Oath
Article 118

The following persons shall not take an oath:

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

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

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

Measures to Provide for Appearance of Witnesses and Procedural Penalties

Article 119

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

(2) If witnesses appear and after being warned and cautioned in line with Article 113, paragraph 2 of the present Code, refuse to testify without a legal cause, they may be punished by a fine in an amount not exceeding €1.000, and if thereafter they still refuse to testify, they may be imprisoned. Imprisonment shall last until witnesses agree to testify or until their testimony becomes irrelevant or until the completion of the criminal procedure, but not longer than two months.

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

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

(5) The panel referred to in Article 24, paragraph 7 of the present Code shall decide on an appeal against the ruling ordering a fine or imprisonment. An appeal against a ruling on imprisonment shall not stay the enforcement.

Protection of Witnesses from Intimidation

Article 120

(1) If reasonable concern exists that by giving a statement or answering certain questions witnesses would put in danger their, their spouse’s, close relative’s or a close person's life, health, physical integrity, freedom or property of great value, witnesses may withhold from giving the data referred to in Article 113, paragraph 3 of the present Code, answering certain questions or giving the statement altogether until their protection is secured. If it finds that the refusal to give a statement is manifestly ill-founded, the authority conducting the proceedings shall caution

witnesses that fines specified in Article 119 of the present Code may be imposed on them.
(2) Witness protection shall consist of special ways of participating and hearing witnesses in the criminal procedure.
(3) Protection of witnesses and other persons referred to in paragraph 1 of this Article may be secured beyond the criminal procedure as well, in line with the law regulating witness protection.
(4) The court shall inform the witness on the rights referred to in paragraphs 1, 2 and 3 of this Article.

Special Ways of Participating and Hearing Protected Witnesses

Article 121

(1) Special ways of participating and hearing witnesses in the criminal procedure are: hearing of witnesses under pseudonym, hearing with assistance of technical devices (protective wall, voice simulators, devices for transmission of image and sound) and alike.
(2) If special way of hearing of witnesses in the procedure consists only of withholding data referred to in Article 113, paragraph 3 of the present Code, the hearing shall be done under pseudonym, while in other part of the procedure, the hearing shall be done in accordance with general provisions of the present Code on the hearing of witnesses.
(3) If special ways of participating and hearing witnesses in the procedure consists of withholding data referred to in Article 113, paragraph 3 of the present Code as well as of hiding the face of the witness, hearing shall be done through technical devices for transmission of image and sound. The specialist referred to in Article 282, paragraph 8 of the present Code shall operate a technical device. During the hearing, face and voice of the witness shall be changed. During the hearing, witnesses shall be in the room other than the one where the investigating judge and other persons present at the hearing are. The investigating judge shall ban all the questions which could lead to revealing the identity of witnesses.
(4) After the hearing has been completed, witnesses shall sign the record using pseudonym only in the presence of the investigative judge and court reporter.
(5) Persons who in whatever capacity, learn the details about the witness referred to in paragraphs 2 and 3 of this Article shall keep them secret.

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

Article 122

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

(2) The investigating judge shall, prior to issuing the ruling, ascertain as to whether the testimony of the witness is of such a relevance to be given the status of a protected witness. For the purpose of ascertaining these facts, the investigating judge may fix a hearing for the State Prosecutor and the witness to appear in court.

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

Probative Value of the Protected Witness's Statement

Article 123

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

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

Protection of the Injured Party while Giving a Statement

Article 124

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

Cooperative Witnesses

Article 125

(1) The State Prosecutor may put a motion to the court to examine as a witness a member of the criminal organization, i. e.

criminal group who consents to do so (hereinafter: cooperative witness) against whom criminal charges have been brought or criminal proceedings have been instituted for an organized crime offence referred to in Article 22 paragraph 8 of the present Code if it is certain that:

- their statement and evidence provided to the court will significantly contribute in proving the criminal offence in question and culpability of perpetrators or assist in revealing, proving and preventing other criminal offences of the criminal organization or criminal group and
- the significance of their statement as to proving these criminal offences and culpability of other perpetrators prevails over the harmful consequences of the criminal offence they have been charged with.

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

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

Admonishing Cooperative Witnesses
Article 126

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

(2) The State Prosecutor shall enter into a record the admonition and caution referred to in Article 113 paragraph 2 of the present Code, answers of the person proposed to be a cooperative witness and his/her statement that s/he would report everything known to him/her and that s/he would not withhold anything. The record shall be signed by that person. If the person proposed to be a cooperative witness does not speak the Montenegrin language, translation of the record shall be provided into his/her language, and s/he shall then sign the record. The record shall be enclosed with the motion referred to in Article 125, paragraph 1 of the present Code.

(3) If the State Prosecutor finds that grounds exist that an accused person in detention be proposed as cooperative witness,

the court will enable the State Prosecutor to establish a contact with the accused person, in order to perform the actions referred to in paragraphs 1 and 2 of this Article.

Deciding on the Proposal of the State Prosecutor
Article 127

(1) The panel referred to in Article 24, paragraph 7 of the present Code shall decide on the motion of the State Prosecutor referred to in Article 125 of the present Code during investigation and until the beginning of the main hearing, and at the main hearing - the panel before which the main hearing is held.
(2) The State Prosecutor, person proposed to be a cooperative witness and his/her defense attorney shall be invited to attend the session of the panel to decide whether prerequisites are met referred to in Article 125 of the present Code. The session shall be held behind closed doors. Statements made at this session may not be used in the criminal proceedings against the person proposed to be a cooperative witness as evidence for declaring that person guilty.
(3) The State Prosecutor may file an appeal against the ruling of the panel referred to in paragraph 1 of this Article by which the motion of the State Prosecutor has been rejected, within 48 hours from the receipt thereof. A superior court shall render a decision on the appeal within three days from receipt of the appeal and files from the first instance court.
(4) If the panel has granted the motion of the State Prosecutor, it shall order that records and official annotations regarding the previous statements made by the cooperative witness in the capacity of a suspect and accused person be separated from the files and they may not be used as evidence in the criminal proceedings, except in the cases referred to in Article 130 of the present Code.
(5) If the accused person is detained, and the panel decides pursuant to paragraph 4 of this Article, it shall simultaneously issue a ruling on termination of detention.

Ruling on Acknowledgment of Cooperative Witness Status
Article 128

(1) If after deliberation held pursuant to Article 127 of the present Code it is established that prerequisites are met referred to in Article 125, paragraph 1 of the present Code, the panel shall issue a ruling by which the suspect or the accused is acknowledged as a cooperative witness.
(2) If the panel is deciding on the motion for acknowledging the cooperative witness against whom a criminal charge has been

submitted or investigation initiated, the panel shall, before determining whether the conditions referred to in paragraph 1 of this Article have been meet, establish the existence of the conditions set forth by Article 22 item 8 of the present Code.
(3) The ruling shall state the following: that criminal proceedings shall not be instituted or continued against the cooperative witness; description of the act that constitutes the elements of the definition of the criminal offence and the statutory title of the criminal offence to which the prohibition of institution or continuation of criminal proceedings applies, the nature and contents of cooperation to be provided by the cooperative witness and conditions under which the ruling may be annulled.
(4) The ruling referred to in paragraph 1 of this Article shall be delivered to the State Prosecutor, cooperative witness and his/her defense attorney.

Impossibility of Criminal Prosecution
Article 129

(1) Cooperative witness who has made a statement before the court pursuant to the provisions of Article 126, paragraphs 1 and 2 of the present Code may not be prosecuted for the criminal offence of organized crime for which the proceedings are being conducted.
(2) When the court states in its ruling that has been entered into record at the main hearing that the cooperative witness has made a statement within the meaning of paragraph 1 of this Article, the State Prosecutor shall dismiss the criminal charge or refrain from prosecution of the cooperative witness at the latest until the completion of the main hearing being conducted against other members of the criminal organization, i.e. criminal group and the court shall render a decision by which the charges against the cooperative witness are rejected.
(3) In the case referred to in paragraph 2 of this Article the provisions of Article 59 of the present Code shall not be applied.

Annulment of the Ruling
Article 130

(1) If cooperative witnesses fail to make a statement pursuant to Article 126, paragraphs 1 and 2 of the present Code or if they commit a new criminal offence of organized crime before the final completion of the proceedings, the State Prosecutor shall propose that the ruling referred to in Article 128, paragraph 1 of the present Code be annulled and shall continue the prosecution or institute criminal proceedings for both offences.
(2) If during the proceedings a previous organized crime criminal offence committed by the cooperative witness is revealed, the

State Prosecutor shall proceed in accordance with the provisions of Article 125 of the present Code. Afterwards, the State Prosecutor may propose that the ruling referred to in Article 128, paragraph 1 of the present Code be annulled and continue prosecution, i.e. institute criminal proceedings for that offence and the one that was previously committed.
(3) If during the proceedings a previous criminal offence committed by the cooperative witness is revealed and it does not constitute organized crime offence, the State Prosecutor shall proceed in line with the general rules of the present Code.

Protection of Cooperative Witness
Article 131

(1) Unless the panel, upon a proposal by the State Prosecutor and with the consent of the cooperative witness, decides otherwise, examination of the cooperative witness shall be held behind closed doors.
(2) Prior to rendering the decision referred to in paragraph 1 of this Article, the Chair of the Panel shall, in the presence of the defense attorney, inform cooperative witnesses of the State Prosecutor's proposal and of their right to be examined behind closed doors. When cooperative witnesses make a statement concurring to be heard in the presence of public, that statement shall be entered into the record.
(3) The State Prosecutor may propose that the cooperative witnesses, their spouses, close relatives or close persons be provided special protection under Article 120 of the present Code.

Probative Significance of the Statements of Cooperative Witnesses
Article 132

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

6. CRIME SCENE INVESTIGATION AND RECONSTRUCTION

Conducting Crime Scene Investigation
Article 133

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

Reconstruction of Events
Article 134

(1) In order to verify the evidence presented or to determine the facts relevant to the clarification of the matter, the authority conducting the procedure may order a reconstruction of the event which shall be conducted by reproducing the acts or situations under conditions that, according to the evidence presented, existed at the time when the event took place. If acts or situations were described differently in the statements of certain witnesses or accused persons, the events shall, as a rule, be separately reconstructed with each of them.
(2) The action referred to in paragraph 1 of this Article may be carried out in whole or partially by using adequate technical means.
(3) Reconstructions may not be performed in such a manner to breach public peace order and offend morality or endanger human life or health.
(4) Where necessary, certain evidence may be presented again during the reconstruction.

Assistance of an Expert and Expert Witness
Article 135

(1) The authority conducting the crime scene investigation or reconstruction may ask for the assistance of an expert in forensics, traffic science or other expert who shall, where necessary, undertake measures to discover, secure or describe traces, execute the necessary measurements and recordings, make sketches or collect other data.
(2) Expert witnesses may also be summoned to be present at the crime scene investigation or reconstruction if their presence would be useful for providing findings and opinions.

7. FORENSIC EXAMINATION

Ordering Forensic Examination
Article 136

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

Order for Forensic Examination
Article 137

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

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

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

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

Duty of Expert Witnesses and Procedural Penalties
Article 138

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

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

(3) In the preliminary investigation and investigation, the penalties referred to in paragraph 2 of this Article shall be imposed by the court at the proposal of the State Prosecutor.
(4) The panel referred to in Article 24, paragraph 7 of the present Code shall decide on the appeal against the ruling ordering a fine.

Persons Who May Not be Appointed as Expert Witnesses
Article 139

(1) Persons who may not testify as witnesses in line with Article 108 of the present Code or persons exempted from the duty to testify within the meaning of Article 109 of the present Code may not be appointed an expert witness, neither may a person against whom the criminal offence was committed. If such a person is appointed, the court's decision may not be based on his/her findings or opinion.
(2) Persons who are employed by the injured party or the accused may not be appointed an expert witness, or if the injured party or the accused are employed by the expert witness or if the expert witness is together with them or with some of them employed by other employer.
(3) As a rule, a person heard as a witness shall not be appointed an expert witness.
(4) When an interlocutory appeal is allowed against the ruling rejecting the petition for the recusation of an expert witness within the meaning of Article 41, paragraph 4 of the present Code, this appeal shall stay the giving of the forensic examination if there is no risk of delay.

Procedure of Forensic Examination
Article 140

(1) Before the commencement of the forensic examination, experts shall be asked to thoroughly examine the object of their examination, to indicate accurately everything they notice and discover and to present their opinion without bias and in accordance with the rules of the science or skills. They shall be especially cautioned that giving a false expert witness opinion testimony constitutes a criminal offence.
(2) Expert witnesses may be required to take the oath before giving their testimony. Before giving an expert witness opinion testimony, experts enrolled in the Register shall only be warned about the oath they have already taken.
(3) The text of the oath is worded as follows: "I do swear to perform the examination conscientiously and impartially,

according to my best knowledge and to present my findings and opinion precisely and completely".
(4) The authority conducting the procedure shall make sure that through forensic examination all the relevant facts are determined and made clear, and for that purpose shows to expert witnesses the object to be examined, asks them questions and where appropriate, requires clarifications on the given findings and opinion.
(5) Expert witnesses may receive explanations and may be permitted to inspect the files as well. Expert witnesses may propose that some evidence be presented or objects and information be obtained which are of relevance for giving findings and opinions. If present at the crime scene investigation, reconstruction or other investigative action, expert witnesses may propose the clarification of certain circumstances or that person who is testifying be asked certain questions.

Examination of Objects of Forensic Examination
Article 141

(1) Expert witnesses shall examine the objects of the forensic examination in the presence of the authority conducting the procedure as well as the court reporter, unless lengthy examinations are necessary for the forensic examination or if the examinations are carried out in a specialized institution or public authority, or if this is required by moral considerations.
(2) If it is necessary for the purposes of performing forensic examination to carry out analysis of some substance, if possible, only part of this substance shall be made available to the expert witness while the rest shall be secured in a necessary quantity in case further analyses are needed.

Entering Findings and Opinions into the Record
Article 142

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

Forensic Examination by a Specialized Institution or Public Authority
Article 143

(1) If the forensic examination is assigned to a specialized institution or public authority, the authority conducting the procedure shall be admonished that persons who are not specialized in the appropriate field or persons referred to in Articles 139 and 148 of the present Code that may be recused

from forensic examination or within the meaning of Article 43 of the present Code may not participate in performing forensic examination and shall be subsequently warned about the consequences of giving false findings and opinions as well.
(2) The materials necessary for forensic examination shall be made available to the specialized institution or public authority and where necessary it shall be further proceeded pursuant to the provisions of Article 140, paragraph 5 of the present Code.
(3) The specialized institution or public authority shall deliver the written expert findings and opinion signed by the persons who made the forensic examination.
(4) The parties may request from the head of specialized institution or public authority to give them the names of the experts who will provide the forensic examination.
(5) The provisions of Article 140, paragraphs 1 to 4 of the present Code shall not apply when performance of forensic examination is assigned to a specialized institution or public authority. The authority conducting the procedure may request explanations regarding the presented expert findings and opinion from the specialized institution or public authority.

Record of Forensic Examination and the Right of Its Inspection
Article 144

(1) The record on the forensic examination or the written expert findings and opinion shall state who performed the examination as well as the occupation, educational background and expertise of the expert witness.
(2) When the forensic examination is performed in the absence of the parties, they shall be notified that forensic examination was performed and that they may inspect the record on the forensic examination and the written expert findings and opinion.

Repeated Forensic Examination
Article 145

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

Additional Forensic Examination
Article 146

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

Examination, Autopsy and Exhumation of a Corpse
Article 147

(1) Examination of a corpse and autopsy shall be performed whenever there is suspicion related to a death case, or if it is evident that death was caused by a criminal offence or that is related to the commission of a criminal offence. If the corpse has already been buried, an exhumation shall be ordered for the purpose of its examination and autopsy.
(2) While performing an autopsy, necessary measures shall be taken in order to establish the identity of the corpse. The external and internal physical characteristics of the corpse shall be described in detail for that purpose.
(3) When required, the following scientific and specialized methods of identification shall be used: taking fingerprints from corpses and comparing them, analyzing DNA samples and comparing found DNA profile with the DNA profile of a missing person or other person, blood relatives of the person presumed to be the subject of identification, and, where appropriate, carrying out other analyses and applying other scientific and specialized methods for the purpose of identifying a corpse.
(4) Taking biological samples for the purposes of DNA analyses in the criminal proceedings, packing of biological material, keeping, processing, keeping samples and results obtained through DNA analyses shall be conducted in the manner prescribed by a special law.

Forensic Examination Not Assigned to an Institution
Article 148

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

shall enter the findings and opinion of the expert witness into the record.
(2) A physician who treated the deceased person may not be appointed as an expert witness. The physician who treated the deceased person may testify as a witness at the autopsy in order to clarify the course and circumstances of the disease.

Contents of the Expert Witness' Opinion and Duties of Expert Witnesses During Examination and Autopsy of a Corpse
Article 149

(1) In their expert opinion witness testimony, the expert witnesses shall specifically indicate the immediate cause of death, what brought it about, and when the death occurred.
(2) If an injury is found on the corpse, it shall be determined whether it was inflicted by another person and if so, by what instrument, in which way, how long before the death occurred, as well as whether such an injury was the cause of death. If several injures are found on the corpse, it shall be established whether each particular injury was inflicted by the same instrument and which of them caused the death and if there is more than one lethal injury, which particular injury or which injuries in combination were the cause of death.
(3) In the case referred to in paragraph 2 of this Article it shall be specifically determined whether death was caused by the very sort and general nature of the injury or due to the peculiarity or the specific condition of the organism of the injured person or due to accidental circumstances or circumstances under which the injury was inflicted. In addition, it shall be established whether assistance provided in time would have prevented death.
(4) The expert witness shall scrutinize the biological material that was found (blood, spittle, sperm, urine etc.), to describe it and keep it for a biological forensic examination, if one is ordered.

Examination and Autopsy of a Fetus and a Newborn Infant
Article 150

(1) When performing examination and autopsy of a fetus, its age in particular shall be established as well as his capability of independent existence outside the uterus and the cause of death.
(2) In an examination and autopsy of the corpse of a newborn infant a specific determination shall be made as to whether the infant was born alive or stillborn, were it was capable to live, how long the infant lived, and the time and cause of death.

Toxicological Examination
Article 151

(1) If there is a suspicion of poisoning, the suspicious substances found in the corpse or elsewhere shall be sent for forensic examination to a specialized institution that performs toxicological tests.
(2) When examining suspicious substances, the expert witness shall especially ascertain the type, the quantity and the effects of the poison discovered, and if the substances examined were taken from the corpse, the quantity of poison used shall, if possible, also be established.

Forensic Examination of Bodily Injuries
Article 152

(1) Forensic examination of bodily injuries shall in principle be based on an examination of the injured party and if this is neither possible nor necessary it shall be based on medical records or other information available in the files.
(2) After providing an accurate description of the injures, the expert witness shall give his/her expert opinion particularly on the type and severity of each injury and their overall effect regarding their nature or particular circumstances of the case, what effect these injuries usually have and what effect they had in this specific case, by what instrument they were inflicted and in which way.
(3) In the course of performing forensic examination, the expert witness shall proceed pursuant to a provision of Article 149, paragraph 4 of the present Code.

Psychiatric Examination
Article 153

(1) If suspicion arises that the accused person's mental capacity is excluded or diminished due to mental illness, temporary mental disorder, mental deficiency or other serious mental disorder, a psychiatric examination shall be ordered.
(2) If, in the opinion of experts, a longer observation is needed, the accused person shall be committed for observation to a psychiatric institution. The investigating judge or the panel shall render a ruling thereon. The observation may be prolonged for more than two months only upon a substantiated motion from the head of the psychiatric institution and with a previously obtained opinion of the expert witness, but it may not exceed the term of six months under no circumstances.
(3) Accused persons and their defense attorneys may appeal the ruling referred to in paragraph 2 of this Article within 24 hours

following the receipt of the ruling by the accused, i.e. defense attorney. The panel referred to in Article 24, paragraph 7 of the present Code shall decide on the appeal within 48 hours, and if the challenged ruling was rendered by that panel, or the panel at the main hearing, the panel of the immediately superior court shall render a ruling on the appeal. An appeal shall not stay the enforcement of the ruling.

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

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

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

Physical Examination and Other Procedures

Article 154

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

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

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

(4) If the suspect or accused person opposes actions referred to in paragraphs 1 and 2 of this Article, they may be undertaken only upon the order of the court having jurisdiction.
(5) Applying any medical intervention on the suspect, accused person or witness or giving them such medication that may influence their consciousness and will when giving their statement shall be permitted.

Expert Witness Audit of Business Books
Article 155

(1) When it is necessary to perform forensic examination on business books, the authority conducting the procedure shall indicate to the expert witnesses the direction and the scope of the expert audit as well as the facts and circumstances to be established.
(2) If an expert audit of the business books of an enterprise, other legal entity or an entrepreneur requires that they first put their book-keeping in order, than the expenses incurred in such operation shall be borne by the owner of the business books.
(3) The authority conducting the procedure shall render a ruling on putting the book-keeping in order on the ground of a substantiated written report from the expert witnesses appointed to give forensic examination on business books. The ruling shall also state the amount of money that the enterprise, other legal entity or the entrepreneur shall deposit to the court as an advance for the cost of putting its books in order. An appeal shall not be allowed against this ruling.
(4) After the book-keeping has been put in order, the authority conducting the criminal procedure shall render a ruling, based on the report of the expert witness, determining the amount of expenses for putting the book-keeping in order and ordering that this amount be borne by the enterprise, another legal entity or the entrepreneur whose book-keeping was put in order. An appeal may be filed against that ruling regarding the grounds for the decision on compensation of expenses and regarding the amount of the expenses. The first instance court panel referred to in Article 24, paragraph 7 of the present Code shall decide on the appeal.
(5) If the expenses and the fee were not paid in advance, they shall be paid to the authority that paid them in advance to the expert witnesses.
(6) Before forensic examination referred to in paragraph 1 of the present Article has been carried out, an inventory of the business books and other business documentation relating to the business

books shall be made in the presence of the State Prosecutor or an authorized police officer.

8. Inspection of Photographs, Listening to Audio Recordings and Inspection of Audiovisual Recordings

Article 156

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

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

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

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

- applied in public places: streets, squares, parking places, school yards and yards of institutions and other similar public places, or in public facilities and premises, public authority buildings, institutions, hospitals, schools, airports, bus and train stations, sports stadiums and halls and other similar premises and open spaces connected to them, as well as in shops, supermarkets, banks, business buildings and other similar facilities with regular security surveillance or
- undertaken by a person occupying dwellings or other premises or by another person acting in accordance with the order of the person who occupying dwellings or other premises, which also relates to yards and other similar open spaces.

(5) If photographs or audio, i.e. audiovisual recordings shows only certain objects or events or persons that are not suspects or accused, the photograph, or audio, i.e. audiovisual recording may be used as evidence in the criminal proceedings if they were not created by committing a criminal offence.
(6) When photographs or audio, i.e. audiovisual recordings have been taken in accordance with paragraphs 1 to 5 of the present Article, a part of such photograph or record extracted by special technical means, as well as a photograph made from a frame in a video recording may be used as evidence in criminal proceedings.
(7) When photographs or audio, i.e. audiovisual recordings have been taken in accordance with paragraphs 1 to 5 of the present Article, a drawing or draft made on the basis of the photograph or video recording may be used as evidence in criminal proceedings provided that they were made for the purpose of clarifying certain details of the photograph or recording and that the photograph, or the recording are a part of evidence.
(8) Audio recordings used as evidence in the criminal proceedings shall be transcribed and entered into the criminal case files.

9. MEASURES OF SECRET SURVEILLANCE

Types of Measures of Secret Surveillance and Conditions for Their Application
Article 157

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

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

2) secret photographing and video recording in private premises;

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

(2) If grounds for suspicion exist that a person has individually or in complicity with others committed, is committing or is preparing to commit criminal offences referred to in Article 158 of the present Code and circumstances of the case indicate that

evidence shall be collected with a minumum violation of the right to privacy, measures of secret surveillance may be ordered against those persons:

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

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

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

4) use of undercover investigators and collaborators.

(3) Measures referred to in paragraph 1, item 1 of this Article may be also ordered against persons for whom there are grounds for suspicion that they have been conveying to the perpetrator or from the perpetrator of criminal offences referred to in Article 158 of the present Code messages in connection to the criminal offence, or that the perpetrator has been using their telephone lines or other electronic communication devices.

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

Criminal Offences for Which Measures of Secret Surveillance May Be Ordered
Article 158

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

1) for which a prison sentence of ten years or a more severe penalty may be imposed;

2) having elements of organized crime;

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

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

5) against the security of computer data.

Competence for Ordering Measures of Secret Surveillance and Their Duration

Article 159

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

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

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

(4) By way of exception, if the written order can not be issued in time and risk of delay exists, application of measure referred to in Article 157 of the present Code may begin on basis of a verbal order of the investigative judge, i.e., State Prosecutor. In that case, a written order must be obtained within 12 hours following the issue of the verbal order**.**

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

repeated application of this measure. The application of measure shall be terminated as soon as reasons for its application cease.

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

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

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

(9) The State Prosecutor and the investigative judge shall, in an appropriate way (by coping records or official annotations without personal data, removal of an official annotation from the files and alike), prevent unauthorised persons, the suspects or their defence attorney to establish the identity of persons who have enforced the measures referred to in Article 157 of the present Code, as well as undercover agent and cooperative witness. If such persons are to be heard as witnesses, the court shall act in the manner prescribed in Articles 120-123 of the present Code.

Enforcement of Measures of Secret Surveillance

Article 160

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

(2) Undercover agent and collaborator may be an authorized police officer, employee in another public authority, authorized police officer of another state or, by way of exception, if the

measure can not be enforced in another manner, some other person.

(3) Undercover agents and cooperative witnesses can not be persons for whom reasonable suspicion exists that they were or that they currently are members of a criminal organization or group or persons who have been sentenced for criminal offences referred to in Article 22, item 8 of the present Code.

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

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

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

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

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

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

Legally Invalid Evidence
Article 161

(1) If the measures referred to in Article 157 of the present Code were undertaken in contravention to the provisions of the present Code or in contravention to the order of the investigative judge

or the State Prosecutor, the judgment may not be founded on the collected information.

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

Rendering Information to Persons Against Whom Measure of Secret Surveillance Was Enforced When a Criminal Procedure Is Not Initiated
Article 162

(1) Before the material obtained through the enforcement of measures of secret surveillance in cases referred to in Article 160, paragraphs 4 and 5 of the present Code is destroyed, the investigative judge shall inform the person against whom the measure was undertaken, and that person shall have the right to examine the collected material.

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

Chapter VIII
MEASURES FOR ENSURING THE PRESENCE OF THE ACCUSED PERSON AND FOR A PEACEFUL CONDUCTING OF THE CRIMINAL PROCEDURE

1. COMMON PROVISIONS

Types of Measures and General Rules of Their Enforcement
Article 163

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

(2) The competent court shall observe the conditions stipulated for enforcement of certain measures, taking into account not to

enforce a more severe measure if the same effect may be achieved by a less severe measure.
(3) The measures referred to in paragraph 1 of this Article shall be repealed *ex officio* after the reasons for their enforcement cease to exist, or under an appeal, i.e. they shall be replaced with a less severe measure when the conditions for it are created.
(4) Provisions of Articles 164 and 165 and Article 166, paragraph 2, item 6 of the present Code shall be applied to the suspect as well.

2. SUMMONS

Service, Contents and Delivery of Summons
Article 164

(1) The presence of the suspect in the criminal proceedings shall be ensured through the summons. The authority conducting the criminal proceedings shall have the summons served to the accused person.
(2) The accused person shall be summoned by means of serving a sealed written summons containing: the title and address of the summoning authority, the first name and surname of the accused person, the statutory title of the criminal offence s/he is charged with, the place, date and hour of appearance of the accused, note that the addressee is being summoned in the capacity of an accused person and a warning that in the case of his/her failure to appear s/he shall be brought in by force, the official seal and the first name and surname of the State Prosecutor or judge who is serving the summons.
(3) The summoning of accused persons may be done over the phone and other electronic communication devices, if they agree to obey such a summon.
(4) When summoned for the first time, accused persons shall be instructed in the summons of their right to retain a defense attorney and of the right to have the defense attorney present at their hearing.
(5) Witnesses shall notify the court immediately of changes of their address and on the intention to change residence. Accused person shall be instructed thereon at their first hearing or when the bill of indictment or a private action is served, and shall be warned of the consequences prescribed by this Code.
(6) If accused persons are unable to appear due to illness or other impediment that can not be removed, they shall be heard at the place they are or transportation shall be provided to the courthouse or any other place where the procedure is to be conducted.

3. APPREHENSION

Warrant for Apprehension
Article 165

(1) The court or State Prosecutor may order the accused person to be apprehended if the duly summoned accused person has failed to appear without justification, or if the summons could not have been orderly serviced and the circumstances obviously indicate that the accused person is evading the service of summons or if an ruling of detention has been issued.
(2) The police authorities shall execute a warrant for apprehension.
(3) A warrant for apprehension shall be issued in written form. A warrant should contain: name and surname of the accused that is to be apprehended, place and year of birth, statutory title of the criminal offence s/he is charged with, the provision of the Criminal Code prescribing that offence stated, grounds for ordering the apprehension, an official stamp and a signature of the judge or State Prosecutor ordering the apprehension.
(4) The person entrusted with the execution of the warrant shall serve the warrant to the accused person and shall ask the accused person to accompany him/her. If the accused persons refuse to comply they shall be apprehended by force.
(5) The warrant for apprehension issued against military personnel, members of the police authorities and penitentiary staff shall be executed by their headquarters or institution.

4. SURVEILLANCE MEASURES

Types of Measures
Article 166

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

1) prohibition to leave one's dwelling;
2) prohibition to leave place of residence;
3) prohibition to visit particular places or areas;
4) duty to occasionally report to a certain public authority;
5) prohibition of access to or meeting with certain persons;

6) provisional seizure of a travel document;

7) provisional seizure of a driving licence.

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

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

(5) Measures of supervision may not restrict the right of the accused persons to contact their defense attorney freely.

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

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

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

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

Ruling Ordering a Measure of Supervision
Article 167

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

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

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

(4) In the ruling imposing a measure of obligation to occasionally report to a certain public authority, the court shall designate a person in an official capacity to whom the accused person has to report, a term within which they have to report and the way records of the accused persons' reporting shall be kept.

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

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

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

Enforcement of Measures of Supervision
Article 168

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

(2) Measure of prohibition to leave one's dwelling, prohibition to leave the place of residence, prohibition of visiting a certain place or area, prohibition of access to or meeting a certain person, provisional seizure of a travel document, and provisional

seizure of a driving licence shall be enforced by the police authorities.
(3) The police authority or another public authority to which the accused person has to report shall attend to the enforcement of the measure of obligation to report periodically to a certain public authority.

Inspection of Measures of Supervision and Obligation to Report
Article 169

(1) The court may order the inspection to be carried out over measures of supervision at any time and request a report from the authority in charge of its enforcement, which is obliged to submit the report to the court without delay.
(2) If accused persons fail to fulfill the obligations ordered by the imposed measure, the authority enforcing the measure shall inform the court thereon, and the court may impose additional measure of supervision or order detention on that basis.

5. BAIL

Reasons for Ordering Bail
Article 170

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

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

Ordering Bail and Its Contents
Article 171

(1) Bail shall always be expressed as an amount of money that is set on the basis of the seriousness of the criminal offence, personal and family circumstances of the accused person, and the financial situation of the person posting bail.
(2) Bail shall consist of depositions of cash, securities, valuables or other movables of more considerable value that can be easily

cashed and kept, or of placing a mortgage for the amount of bail on real estate of the person posting bail.
(3) A person posting bail shall submit evidence on their financial position and ownership of the property posted as bail.
(4) If the accused flees, a ruling shall be issued ordering that the amount posted as bail be credited to a special budget allotment for the work of courts.

Vacating the Bail and Ordering Detention Instead
Article 172

(1) Notwithstanding the bail posted, detention shall be ordered if duly summoned accused persons fail to appear and fail to justify their absence, or if following a decision that they remain at liberty, some other legal ground for detention occurs against them.
(2) Accused persons for whom bail was posted on the grounds for detention referred to in Article 175, paragraph 1, item 5 of the present Code shall be detained if they fail to appear at the main hearing being duly summoned for the first time and do not justify their absence.
(3) In cases referred to in paras. 1 and 2 of this Article, bail shall be vacated. Deposited cash, valuables, securities or other movables shall be returned and the mortgage shall be removed. The same procedure shall be followed after the criminal procedure has been terminated by a final ruling discontinuing the procedure or by a final judgment.
(4) If judgment imposed a sentence of imprisonment, bail shall be vacated when the convicted persons begin to serve their sentence.

Competence for Ordering Bail
Article 173

(1) The investigative judge shall render the ruling establishing bail before and in the course of investigation. After the indictment has been brought the ruling establishing bail shall be rendered by the Chair of the Panel, and during the main hearing by the panel.
(2) If the procedure is conducted upon the indictment of the State Prosecutor, the ruling establishing bail and the ruling vacating bail shall be rendered after the opinion of the State Prosecutor has been obtained.

6. DETENTION

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

Article 174

(1) Detention may be ordered only under the conditions set forth in this Code and only if the same purpose cannot be achieved by another measure and it is necessary for a peaceful conduct of procedure.
(2) All authorities taking part in the criminal procedure and authorities providing them with legal assistance shall proceed with exceptional urgency if the accused person is in detention.
(3) Throughout the proceedings, detention shall be terminated as soon as the grounds for which it was ordered cease to exist.

Reasons for Ordering Detention

Article 175

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

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

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

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

4) in the case of the criminal offence punishable by imprisonment of ten years or a more severe punishment and especially grave due to the manner of commission and consequences and exceptional circumstances exist indicating that liberation would lead to a serious threat to the preservation of public order and peace;

5) duly summoned defendants obviously evade appearing at the main hearing.

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

ordered pursuant to paragraph 1, item 5 of this Article may last until the publication of the judgment.

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

Article 176

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

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

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

(4) Detainees and their defense attorneys may file an appeal against the ruling ordering detention to the panel referred to in Article 24, paragraph 7 of the present Code within a term of 24 hours from the moment of the delivery of the ruling. The appeal, the ruling on detention and other files shall be submitted to the panel immediately. An appeal shall not stay the enforcement of the the ruling.

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

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

Ordering Detention and Duration of Detention During Investigation

Article 177

(1) On basis of the ruling of the investigating judge, the accused person may be kept in detention at the longest one month from the day of deprivation of liberty. After this term has expired, the

accused person may be detained only on the basis of a ruling extending detention.
(2) Detention may be extended on basis of the ruling of the panel referred to in Article 24, paragraph 7 of the present Code for no longer than two months and at the motion of the State Prosecutor containing a statement of reasons. An appeal against the ruling of the Panel shall be allowed but it shall not stay the enforcement of the ruling.
(3) If the procedure is conducted for a criminal offence punishable by imprisonment for a term of more than five years, the panel of the Supreme Court may, upon a substantiated motion of the State Prosecutor, if important reasons exist, extend the detention for no longer than another three months.
(4) The accused person shall be released if the indictment has not been brought until the expiry of the terms referred to in paragraphs 2 and 3 of the present Code.

Termination of Detention

Article 178

(1) In the course of investigation, the investigating judge may terminate the detention at the motion of the State Prosecutor or of the accused persons, i.e. their defense attorney. An appeal to the ruling on the release from detention shall not stay the enforcement of the ruling.
(2) Before the adoption of the decision on the proposal of the accused person or defense attorney for the termination of detention, the investigative judge shall ask the opinion of the State Prosecutor.

Ordering and Supervising Detention after the Indictment Was Brought

Article 179

(1) After the indictment has been submitted to the court and up until the completion of the main hearing, detention may be ordered or terminated only by the ruling rendered by the panel, provided that the opinion of the State Prosecutor is obtained if the proceedings are conducted upon his/her charges. Detention may last at the longest for three years from the issuing of indictment until the rendering of a first instance decision.
(2) Upon a motion of the parties or by virtue of office, the panel shall review whether the grounds for detention still exist and it shall issue a ruling extending or terminating detention, upon expiration every 30 days before the indictment has become final, and every two months from the moment the indictment becomes final.

(3) An appeal on the ruling referred to in paragraphs 1 and 2 of this Article shall not stay the execution of the ruling and the court shall render a decision thereon within three days.
(4) An appeal shall not be allowed against the ruling of the panel referred to in paragraph 1 of this Article by which the motion to order or terminate detention is rejected.

Obligation to Inform on Deprivation of Liberty
Article 180

(1) Immediately after a person has been deprived of liberty and within a term of 24 hours at the latest, police authority, the State Prosecutor or the court shall inform the family of the detained persons or their extra-marital partner thereon, unless the detained persons expressly object thereto.
(2) A competent authority for social care shall be informed about the deprivation of liberty if necessary to take measures for the care of children and other family members to whom the person deprived of liberty is a guardian.

7. TREATMENT OF DETAINEES

Respect of Personality and Dignity of Detainees and Their Accommodation
Article 181

(1) Personality and dignity of the detainee shall not be offended in the course of detention.
(2) The only restrictions that may be imposed against detainees shall be only the ones needed to prevent their flight, instigation of third persons to destroy, conceal, alter and fabricate evidence or traces of a criminal offence or to prevent direct or indirect contacts of detainees for the purpose of influencing witnesses, accomplices and accessories by virtue of concealment.
(3) Persons of different sexes shall not be detained in the same room. As a rule, detainees against whom reasonable suspicion exists that they have participated in the same criminal offence shall not be accommodated in the same room, neither shall detainees be accommodated in the same room as persons who are serving a prison sentence. If possible, detainees against whom a reasonable suspicion exists that they are recidivist shall not be accommodated in the same room with other detainees on whom they might have an adverse influence.

Rights of Detainees
Article 182

(1) Detainees shall be entitled to at least eight hours of an uninterrupted night rest for every 24-hour period.
(2) At least two hours of movement in the open air within prison grounds daily shall be provided to detainees.
(3) Detainees shall be entitled to wear their own clothes, to use their own bedding or to obtain and use at their own expense food, books, professional periodicals, newspapers, stationary and drawing supplies and other things related to their daily needs, except those suitable for infliction of injures, impairment of health or preparation of flight.
(4) During the investigation, the investigating judge may, by virtue of office or upon the motion of the State Prosecutor issue a ruling temporarily suspending or limiting the detainee's right to procure and use newspapers if this could be detrimental to the conduct of proceedings. An appeal against the ruling of the investigative judge shall be allowed to the Panel referred to in Article 24, paragraph 7 of the present Code.
(5) Detainees may be obliged to maintain in clean condition the premises they are detained in. If required so by the detainees, the investigating judge or the Chair of the Panel with the consent of prison administration may allow the detainees to work within prison grounds in accordance with their mental and physical capacity, providing that this is not detrimental for the course of the procedure. For such a work the detainee is entitled to a fee ordered by the administrator of the prison.

Receiving Visits and Correspondence of Detainees
Article 183

(1) Upon the approval of the investigative judge and when necessary and under the judge's supervision or the supervision of a person designated by the judge, the detainees may, in accordance with the rules of conduct, be visited by their spouse or extramarital partner and their close relatives and upon their requests – by a physician and other persons. Some visits may be prohibited if they could detrimentally affect the conduct of the proceedings.
(2) If required so by the detainees and subject to the knowledge of the investigating judge, diplomatic and consular representatives of foreign states shall be entitled to visit and communicate unsupervised with detainees who are nationals of their state. The investigative judge shall inform the administrator of the detention facility in which the detainee in question is kept about the visit of the diplomatic or consular representative.

(3) Detainees may be visited by representatives of international anti-torture committees, International Committee of the Red Cross, as well as representatives of international organizations engaged in the protection of human rights when envisaged so by a ratified international agreement. Based on the approval of the Court President, a detainee may be visited by the representatives of domestic organizations engaged in the protection of human rights.
(4) Detainees may exchange letters with persons outside of prison, pursuant to knowledge and under supervision of the investigative judge. Investigative judges may prohibit sending and receiving of letters and other parcels that are detrimental to the conduct of proceedings. The prohibition shall not relate to the letters sent by the detainee to international courts and domestic legislative, judicial and executive authorities or received from them. The sending of a petition, complaint or appeal shall never be forbidden.
(5) After the indictment is brought and until the judgment becomes final, authorizations referred to in paragraphs 1, 2 and 4 of this Article shall be performed by the Chair of the Panel.

Disciplinary Offences and Disciplinary Sentences
Article 184

(1) In cases of disciplinary offences committed by the detainee, the prison administrator or the person authorized by him/her may impose against the detainee a disciplinary penalty consisting of restrictions of visits or solitary confinement of up to 15 days. Such restriction shall not refer to the communications between the detainees and their defense attorney.
(2) An appeal may be filed to the investigative judge against the ruling on the penalty referred to in paragraph 1 of this Article within 24 hours from the moment the ruling was received. The appeal shall not stay the enforcement of the the ruling. The investigative judge shall decide on the appeal within a term of three days from the day the appeal was received.

Supervision Over the Execution of Detention
Article 185

(1) The President of the Court authorized therefor shall carry out supervision over detainees.
(2) Court Presidents or judges designated by them shall visit the detainees at least twice a year, and if they find it necessary, even without the presence of keepers and guards, they will be informed about the manner in which the detainees are fed, about their fulfillment of other needs and the manner in which they are

treated. The President or the judge designated by the President shall undertake measures necessary for the removal of flaws noticed during the prison visit and draw up a report on his/her visit to be submitted to the President of the Supreme Court and delivered to the ministry competent for the affairs of the judiciary.
(3) The President of the Court and the investigative judge may visit detainees at any time, talk to them and hear their complaints.

Regulations on Rules of Conduct During the Execution of Detention
Article 186

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

Chapter IX
RENDERING AND PRONOUNCING DECISIONS

Types of Decisions and Decision-making Authorities
Article 187

(1) Decisions in the criminal proceedings shall be rendered in the form of a judgment, ruling and order.
(2) Only the court shall render a judgment, while rulings and orders may be rendered also by other authorities taking part in the criminal proceedings.

Rendering Decisions in Session on Deliberations and Voting
Article 188

(1) The panel shall render a decision after oral deliberations and voting. A decision shall be deemed rendered when made by the majority vote.
(2) The Chair of the Panel shall chair the deliberations and voting, and shall make sure that all the issues are thoroughly and fully considered, and shall cast his vote last.
(3) If the votes on specific issues are divided into more different opinions so that none of them reaches the necessary majority, the issues shall be separated and the voting repeated until a majority is reached. If in such a manner a majority is not reached, the decision shall be rendered by adding the votes most unfavorable to the defendant to the votes less unfavorable to him/her, until a required majority is reached.
(4) The members of the panel may not abstain from voting on issues presented by the Chair of the Panel but the member of the Panel who voted for the acquittal of the defendant or for the annulment of the judgment and was outvoted shall not be obliged to

vote on the sanction. If s/he fails to vote, s/he shall be deemed as having assented to the vote most favorable to the defendant.

Sequence of Matters Subject to Vote
Article 189

(1) When debating, the court shall first vote on whether the court has jurisdiction over the matter, on whether the procedure should be supplemented, and on other preliminary issues. Having decided on the preliminary issues, the court shall proceed with deciding on the merits of the case.
(2) When deciding on the merits of the case, the court shall first vote to determine whether the defendant committed the criminal offence and whether s/he is guilty as charged, and subsequently it shall vote on the punishment, other criminal sanctions, the costs of the criminal proceedings, claims under the property law, and other matters subject to rendering a decision.
(3) Where the same person has been charged with committing more than one criminal offence, the court shall vote on the guilt and punishment for each offence and thereafter on a cumulative punishment for all the offences.

Closed Session
Article 190

(1) Deliberations and voting shall take place in camera.
(2) Only the members of the panel and the court reporter may be present in the room where the deliberations and voting take place.

Pronouncement of Decisions
Article 191

(1) Unless otherwise provided by this Code, decisions shall be conveyed to persons having a legal interest by oral pronouncement where they are present, and by the service of a certified copy where they are absent.
(2) Where a decision is pronounced orally, this shall be entered into the records or the file, and shall be certified by the signature of a person entitled to filing an appeal. If the person makes a statement of waiving the appeal, a certified copy of the orally pronounced decision shall not be served on him, unless otherwise provided by this Code.
(3) Copies of decisions subject to an appellate review shall be served along with an instruction on the right to appeal. The appeal filed to the benefit of the accused person shall be deemed timely if it is filed within the time limit specified in the instruction on the right to appeal, provided that the deadline specified in the instruction exceeds the statutory deadline.

Chapter X
SERVICE OF DOCUMENTS AND EXAMINATION OF FILES

Manner of Service
Article 192

(1) Serving of documents shall, as a rule, be effected by a person acting in an official capacity on behalf of the authority which has rendered the decision, or directly with such authority, and may be served by mail or an authorized legal person registered for the performance of delivery affairs, by local governance authority, or through other authorities by means of letter rogatory.
(2) The court may also orally serve a summons for main hearing or other summonses to the person present before the court, along with the instructions on the consequences of any failure to appear. The summons served in such a manner shall be entered into the records and signed by the summoned person, unless the summons is entered into the records of the main hearing. The service shall thereby be considered valid.

Service in Person
Article 193

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

Indirect Service
Article 194

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

charge of mail receipt who shall receive the document, or to another employee thereof, if s/he consents to accept it.
(2) Should it be established that the addressee to the document is absent and the persons from paragraph 1 of this Article unable to hand over the document in due time, the document shall be returned with an indication as to the whereabouts of the absent addressee.

Summoning and Summons Service on the Accused Person
Article 195

(1) The summons for the first hearing in a pre-main hearing proceedings and the summons for the main hearing shall be served on the accused person personally.
(2) An indictment, bill of indictment or private charge, a judgment and other decisions for which the time limit for an appeal starts running on the date of service, as well as an appeal by the adverse party that is served for reply, shall be served in person to the accused person who does not have a defense attorney. Should the accused person request that the summons from paragraph 1 and the documents from the same paragraph be served on a person s/he designates, they shall be served on the person designated, and thereby deemed served on the accused person .
(3) Should the accused person who does not have a defense attorney be served a judgment imposing a sentence of non-suspended imprisonment and the service is impossible at his/her known address, the court shall by virtue of office assign a defense attorney to the accused person who shall perform this duty until the new address of the accused person is learnt. The appointed defense attorney shall be given the necessary time limit to acquaint himself with the case file, whereupon the judgment shall be served on the appointed defense attorney, and procedure shall resume. Where there is another decision with a time limit for filing an appeal starting running from the moment of the service, or an appeal of the adverse party that is being submitted for reply, the decision or appeal shall be posted on the bulletin board of the court, and it shall be deemed validly served upon the expiry of eight days from the date of its posting.
(4) If the accused person has a defense attorney, the indictment, bill of indictment, private charge, judgement and all decisions the service of which launches the time limit for filing an appeal or objection, and also the appeal of the adverse party submitted for response, shall be delivered to the defense attorney and the accused person in accordance with Article 194 of the present Code. In such a case, the time limit period shall commence on the date when the document is served to the accused person or defense attorney. If the decision or a notice of appeal cannot be served on the accused person due to his/her failure to report a change of address, the

document thereabove shall be posted on the bulletin board of the court, and may be published on the web site of the court, and upon the expiry of eight days from the date of its posting the document shall be deemed validly served.
(5) If a document has is to be served to the defense attorney of the accused person, and he has more than one defense attorney, it shall be sufficient to serve the document to one of them.

Service of Documents on Private Prosecutor and Subsidiary Prosecutor
Article 196

(1) The notice to file private charge or indictment as well as a summons for main hearing shall be served personally on a private prosecutor and subsidiary prosecutor, or their legal representative as compliant to Article 193 of the present Code, and to their proxies as compliant to Article 194 of the present Code. The same service procedure shall be followed for the decisions where the time limit for appeal runs from the date of their service, and for an appeal by the adverse party which is served for response.
(2) If the service cannot be carried out on the persons from paragraph 1 of this Article or on the injured party at their last known address, the court shall post a notice, decision or appeal on the bulletin board and after the expiry of eight days from the date of its posting it shall be deemed validly served.
(3) If the injured party, subsidiary prosecutor or private prosecutor is represented by a legal representative or proxy, the service shall be made on them, and where there are several, only one of them shall be served on.

Certificate of Service
Article 197

(1) Documents shall be served in sealed covers.
(2) Proof of service (a certificate of service or return receipt) shall be signed by both the recipient and server. The recipient shall himself make a certificate of service note of the date and hour of the service.
(3) Should a recipient be illiterate or otherwise unable to sign the certificate of service, a server shall sign the recipient’s name, note the date and hour of the receipt, and make a note specifying the reasons why the signature was put by the server instead of the recipient.
(4) Should a recipient refuse to sign a certificate of service or return receipt, the server shall make a note thereof on the certificate of service specifying the date and hour of the service, thus making the service deemed provided.

Refusal of Documents
Article 198

When the addressee or an adult household member refuses to accept a document, the server shall note on the certificate of service of the day, hour and reason for such refusal and shall leave the document in the dwelling of the addressee or at his/her workplace, and thereby the document shall be deemed duly served.

Special Cases of Service
Article 199

(1) Services of summons on military personnel, guards in the administrative authority competent for the enforcement of criminal sanctions and institutions accommodating persons deprived of liberty, and on employees of road, river, overseas, and air transportation shall be effected through their command or the immediate superior officer, the same procedure being applicable thereto in the service of other official documents as needed.
(2) Writs shall be served on persons deprived of liberty in the court or through the administrative authority competent for the enforcement of criminal sanctions or institution they were accommodated in.
(3) Service on persons enjoying immunity in Montenegro shall be made through the Ministry of Foreign Affairs of Montenegro, unless otherwise provided for by international treaties.
(4) Save letters rogatory of domestic courts for international legal assistance in criminal matters, documents shall be served on the nationals of Montenegro abroad through a diplomatic or consular mission of Montenegro, provided that the foreign state in question does not object to such a manner of service and that the addressee voluntarily consents to be served the document. Where the document is served in a diplomatic or consular mission, the authorized person thereof shall sign the certificate of service in the capacity of the server, and where the service is made by mail s/he shall confirm this on the certificate of service.

Service on the State Prosecutor
Article 200

(1) Service of decisions and other documents on the State Prosecutor is effected by their submission to the Registry of the State Prosecutor's Office.
(2) Should the time limit of a decision run from the date of its service, the date of service shall be the date of the document's submission to the Registry of the State Prosecutor's Office.
(3) The court shall provide a criminal file to the State Prosecutor for examination upon the State Prosecutor's request. Where the time limit for filing a petition of appeal is running or where thus

conditioned by other interests of the proceedings, the court may order a time limit for the return of the file by the State Prosecutor.

Application of Other Laws' Provisions
Article 201

Where not set forth by this Code, service shall be made in compliance with the provisions of the Civil Procedure Code.

Notification by Telephone and Telegram
Article 202

(1) Summonses and decisions issued up to the completion of the main hearing for persons involved in the proceedings, save the defendant, may be handed over to a participant to the proceedings who accepts to service them on the addressees, if the authority conducting the proceedings holds that their service is therewith secured.
(2) The persons referred to in paragraph 1 of this Article may be informed about the summons for main hearing or another summons as well as on the decision on the postponement of main hearing or other scheduled actions by telegram or telephone or other means of electronic communication if under the circumstances it can be assumed that the person to whom the information is sent will thus receive it.
(3) An official annotation shall be made in the file about the summons and service of a decision effected in the manner prescribed in paragraphs 1 and 2 of this Article.
(4) Detrimental consequences provided for by this Code may not take effect against a person who was notified pursuant to paragraphs 1 or 2 of this Article, or to whom a decision was sent.

Examining, Transcribing/Copying or Recording of Individual files
Article 203

(1) Unless otherwise provided for by this Code, after the indictment has been confirmed, anyone having a justified interest may be allowed to examine, transcribe, copy or record particular criminal files.
(2) Actions referred to in paragraph 1 of this Article shall be authorized by the authority before which the proceedings have been conducted where the proceedings are underway, and by the President of the court or thereby designated person acting in an official capacity upon the completion of the proceedings.
(3) Where the public is excluded from a main hearing or the right to privacy would be severely violated by the actions from paragraph 1 of this Article, the actions therein may be denied or conditioned by a prohibition of making public the names of parties to the case. Such

ruling on denial of the actions shall be subject to appeal, which shall not withhold the execution of the ruling.
(4) The actions from paragraph 1 of this Article taken by a private prosecutor, subsidiary prosecutor, the defendant, and defense attorney shall be subject to the provisions of Article 58 paragraph 3 or Article 72 of the present Code.
(5) An accused person or suspect, where examined according to the provisions on interrogation of an accused person, or after a direct indictment from Article 288 of the present Code has been brought, shall be entitled to examine the files and observe the objects that will serve as evidence.

Chapter XI
SUBMISSIONS AND RECORDS

Submission of and Correction to Applications
Article 204

(1) Private charges, indictments, and bills of indictment of the subsidiary prosecutor, motions, legal remedies and other declarations and releases shall be submitted in writing, or given orally and entered into records.
(2) The application referred to in paragraph 1 of this Article shall be comprehensible and contain all that is necessary to act upon them.
(3) If the application is not comprehensible or does not contain all that is necessary to act upon it, the court shall, unless otherwise provided for by this Code, invite the person who submitted the application to correct or amend it; should s/he fail in doing so within an anticipated time limit, the court shall dismiss the application.
(4) In the summons to correct or amend an application, the person filing the application shall be cautioned about the consequences of an omission to comply thereto.

Serving Charges on the Adverse Party
Article 205

Applications that pursuant to this Code are to be served on the adverse party shall be filed to the court in a number of copies sufficient for both the court and the adverse party. Where such applications are not submitted to the court in sufficient number of copies, the court shall make the necessary copies at the expense of the person who submitted the application.

Protection of Reputation of Court, Parties and Other Participants in Proceedings
Article 206

(1) A court shall protect its reputation, the reputation of the parties to a case, and other participants in proceedings from any assault, threat, or attack.
(2) The duty from paragraph 1 of this Article shall be vested in the State Prosecutor in a preliminary investigation and investigation.
(3) The courts shall punish by a fine not exceeding € 1,000 any defense attorney, proxy, legal representative, injured party, private prosecutor or subsidiary prosecutor who offends the court or a participant in the proceedings, be it in an application or verbally. An investigative judge or panel before which a deposition has been given shall render a ruling on the punishment and, if the offence has been given within an application, the ruling shall be rendered by the court competent in deciding on the application. Should the State Prosecutor or the State Prosecutor's representative offend another person, this shall be subject to notification to a competent State Prosecutor. The Bar Chamber shall be notified on any punishment against an attorney.
(4) Should a State Prosecutor assess during an preliminary investigation or investigation that the defense attorney, proxy, or legal representative of an injured party has offended the court, the State Prosecutor, or another participant in criminal proceedings, be it within an application or verbally, the State Prosecutor shall provide a copy of the application or a written record of the verbal remarks to an investigative judge, who may render the ruling on punishment from paragraph 3 of this Article.
(5) The ruling from paragraphs 3 and 4 of this Article may be subject to appeal.
(6) The act of punishment from paragraphs 3 and 4 of this Article shall not affect the prosecution and sentencing for a criminal offence committed by giving an offence.

Obligation of Keeping Records
Article 207

(1) Any action taken in the course of a criminal proceedings shall be entered into a record at the very time of the action or, where impossible, immediately afterwards.
(2) A records shall be made by a court reporter.
(3) Should a search of a home or person be carried out, or an action taken outside the official premises of an authority and it is impossible to provide a court reporter on the spot, the record may be kept by the person who takes the action.

(4) Where a record is kept by a court reporter, this shall be done as follows: the person who takes the action shall dictate to the court reporter what to enter in the record.
(5) A person being examined may be permitted to directly dictate answers for the record. Where abused, this right may be denied.

Record Content
Article 208

(1) A record shall contain the name of the state authority before which the action is taken, the name and surname of the person who takes the action acting in an official capacity, the location of the action performance, the date and hour of the commencement and end of the action, the names and surnames of present persons and the capacity in which they are present, and the reference to the criminal case in which the action is taken.
(2) A record shall include the essential data on the course and the contents of the action performed. Only the essentials of given statements and depositions shall be entered in the record in the narrative form. Questions shall be entered into the record only where they are essential to understanding the answer. Where court deems needed, or on the request by the parties to a case or a defense attorney, the question and the answer thereto shall be entered in the record verbatim. Should such right be abused, it may be denied. Where items or documents are seized while performing an action, this shall be entered in the record, the seized items being attached to the record or the location of their safeguarding indicated.
(3) The course of the main hearing may also be recorded stenographically. Stenographic notes shall be translated, examined, signed by the stenographer, and attached to the files within 48 hours.
(4) When taking actions such as a crime scene examination, search of homes or persons, or the identification of persons or items from Article 115 of the present Code, a record shall include the data important from the point of view of the nature of such action, or for the determination of the identicalness of certain items (description, measurements and size of items or traces, labeling of items, etc); where there are sketches, drawings, blueprints, photographs, video footages, etc. - these shall also be indicated and enclosed in the record.

Orderly Record-keeping, Alterations, Corrections and Amendments to Records
Article 209

(1) The records shall be kept orderly. No content shall be erased, amended, or altered. Parts that are crossed out shall remain legible.
(2) All alterations, corrections, and amendments shall be entered at the end of records and certified by the signatories to the records.

Reading of i.e. Insight into Records and Signing of Records
Article 210

(1) The examined person, persons who mandatorily attend procedural actions, and parties to a case, a defense attorney, and an injured party, if present, shall be entitled to read the record, or to request to have it read. They shall be admonished thereon by the performer of the action; whether they have been notified thereof and the record read shall be indicated in the record. A record shall always be read, even in the absence of the court reporter, which shall be notified in the record.

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

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

(4) In lieu of personal signature, an illiterate person shall put the fingerprint of the index finger of the right-hand, and a court reporter shall enter the name and surname of the person below his/her fingerprint. Where impossible to make the fingerprint of the right hand index finger, the print of some other finger or the print of left hand finger shall be put instead and the record shall include a note on which finger and hand the fingerprint has been taken from.

(5) If the examined person has neither arm, s/he shall read the record, or, if illiterate, the person shall have the record read, which shall be entered in the record.

(6) Where an action could not be performed without any interruption, the record shall include a note on the date and hour of the interruption as well as the date and hour of the resumption of the action.

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

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

Exclusion of Records
Article 211

(1) Where this Code envisages that a judgment cannot be based on the statement of a defendant, witness or expert witness, or on the record of the search of one's dwelling, or the information from Article 161 of the present Code, the investigative judge shall, by virtue of office or upon the motion of the parties, render a ruling on their exclusion from the file immediately or the latest until the completion of the investigation, or bringing the direct indictment from Article 288 of the present Code. This ruling may be subject to a special appeal.

(2) Once a ruling is final, the excluded records shall be sealed in a separate cover and kept with the investigating judge separately from other files; they may not be examined or used in the proceedings.

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

Audio and Audiovisual Recording
Article 212

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

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

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

(4) Upon the request of the examined person, the recording shall be copied immediately, and corrections or explanations offered by the abovementioned person shall be recorded.

(5) A record about the evidence gathering action shall include an entry on the recording, the identity of the person who has recorded it, a previous notification to the examined person of the act of

recording, the note that the recording has been copied and where it is kept if not enclosed in the case files.
(6) The State Prosecutor**,** investigative judge, or the Chair of the Panel may order the recording to be fully or partially copied. In such case, the above person shall examine the copy, certify it, and enclose it to the record on the evidence gathering action.
(7) A recording shall be kept with court as long as the respective criminal file is kept.
(8) The State Prosecutor, investigative judge, or Chair of the Panel may allow participants in proceedings who have a reasonable interest to record the course of the evidentiary action by an audio recording device.
(9) The recordings referred to in paragraphs 1 through 8 of this Article may not be publicly presented without a prior written consent of the parties to and participants in the proceedings.

Other Provisions of the Code Applicable to Main Hearing Records
Article 213

A main hearing record shall also be subject to provisions from Articles 331 through 334 of the present Code.

Records on Deliberation and Voting
Article 214

(1) A separate record on deliberation and voting shall be made.
(2) The record on deliberation and voting shall contain the course of the voting and the decision made.
(3) The record shall be signed by all members of the Panel and the court reporter. Separate opinions shall be enclosed in the record on deliberation and voting if not entered in the record.
(4) The record on deliberation and voting shall be sealed in a separate cover. The record may be examined only by the Higher Court when deciding on legal remedy. In that case, the court shall reseal the record in a separate cover and make a note thereon about the record's examination.

Chapter XII
TIME LIMITS

Time Limits for Filing Submissions
Article 215

(1) Time limits set forth by this Code may not be extended, unless this is explicitly allowed by this Code. Should a time limit be set by this Code for the protection of the right to defense and other procedural rights of an accused person, this time limit may be

shortened upon a written or oral request by the accused for the record before the court.
(2) Where a deposition is bound to a time limit, it shall be deemed timely if submitted to an authorized receiver thereof before the time limit expiry.
(3) Where a deposition is sent by registered mail, the date of its mailing shall be deemed the date of service on the addressee. Where a regular post office is inexistent, a delivery made to a military post office shall be deemed a delivery to the post by registered mail.
(4) An accused person who is in detention may make a deposition bound by a time limit also for the record before the court conducting the procedure or hand it to the prison administration; whereas the person serving the sentence or staying in an institution as subject to security or corrective measure may deliver such a deposition to the administrative authority competent for the enforcement of criminal sanctions or the institution where s/he is placed. The date of drafting such a record or submitting of such a deposition to the administrative authority competent for the enforcement of criminal sanctions or the institution shall be deemed the date of the submission to the authorized addressee authority. The administrative authority competent for the enforcement of criminal sanctions or the institution shall issue the detainee a certificate of delivery of the deposition.
(5) Should a time-limit-bound submission be submitted or addressed to an incompetent court, due to ignorance or an obvious mistake on the part of the submitter, it being done before the time limit's expiry, and the competent court receives it after the time limit's expiry, the submission shall be deemed timely.

Time Limit Calculation
Article 216

(1) Time limits shall be calculated in hours, days, months and years.
(2) The hour or day of the submission, or act of deposition, or the event from which a time limit starts running shall not be calculated into the time limit but it shall start running from the very following hour or day. One day shall be calculated as 24 hours while a month shall be calculated by calendar.
(3) The time limits expressed in terms of months or years shall expire with the lapse of the day of the term's last month or year which by date corresponds to the date when the time limit has started running. Where such a date is inexistent in the term's last month, the time limit shall expire with the lapse of the last day of the month in question.
(4) Where the last day of the time limit happens to fall on a public holiday or on Saturday or Sunday, or on some other non-working

day of the competent state authority, the time limit shall expire with the lapse of the first following working day.

Return to the S*tatus quo ante*
Article 217

(1) The accused person who fails to meet the deadline for filing an appeal against a judgment, or ruling on effecting a security or corrective measure or the seizure, freezing and confiscation of proceeds of crime, or for lodging an objection to the ruling on punishment, the court shall allow the return to the *status quo ante* aimed at filing the appeal or lodging the objection if the accused person submits the application for return to the *status quo ante,* together with filing the appeal or lodging the objection, within eight days from the cease of reasons for failing to meet the deadline.
(2) Return to the *status quo ante* may not be subject to an application after three months from the date of failure to meet the time limit.

Deciding on Return to *Status quo ante*
Article 218

(1) The return to the *status quo ante* shall be decided on by the Chair of the Panel who has rendered the judgment or ruling challenged by an appeal or objection.
(2) A ruling granting the return to the *status quo ante* may not be subject to appeal.
(3) Where the defendant has filed an appeal against the ruling which rejects the return to the *status quo ante*, the court shall forward this appeal, together with the appeal against the judgment or ruling on security or corrective measure or on the seizure, freezing and confiscation of proceeds of crime as well as the response to the appeal and the entire file to the Higher Court for ruling.

Effect of Filing an Application for Return to *Status quo ante*
Article 219

As a rule, an application for return to the *status quo ante* shall not withhold the execution of a judgment or ruling on instituting a security or corrective measure or on the seizure, freezing and confiscation of proceeds of crime, and the execution of ruling on punishment, but the court competent in ruling on the application may decide to delay the execution until a decision on the application is made.

Chapter XIII
ENFORCEMENT OF DECISIONS

Finality and Enforceability of Judgment
Article 220

(1) The judgment shall become final when it can no longer be contested by an appeal or when an appeal is not allowed.
(2) The final judgment shall become enforceable from the date of its service provided that there are no legal obstacles to its execution. If an appeal has not been filed or the parties have waived their right to appeal or have withdrawn the appeal, the judgment shall become enforceable upon the expiry of the time limit for the appeal or from the date of waiver of the right to appeal or withdrawal of the filed appeal by the parties.
(3) If the court which rendered the judgment in the first instance is not competent in its enforcement, it shall serve a certified copy of the judgment with a certificate of its enforceability to the court which is competent therein.
(4) If a punishment is imposed on a person serving in the Army of Montenegro, the court shall serve a certified copy of a final judgment to the state administration authority competent in the affairs of defense.

Enforcement of Decisions with Respect to the Costs of Criminal Proceedings, Claims under Property Law, and Seizure of Items and Proceeds of Crime
Article 221

(1) The execution of judgments with respect to the costs of criminal proceedings, seizure of proceeds of crime, and claims under the property law shall be vested in the competent court in compliance with the provisions of the law on the enforcement procedure.
(2) The costs of criminal proceedings shall be compulsory charged by virtue of office and shall be credited to a separate budget allotment for the work of courts. The costs of compulsory charge shall previously be paid from the separate budget allotment for the work of courts.
(3) If the security measure of seizure of an item has been pronounced by a judgment, the court which has rendered the judgment in the first instance shall decide whether such items will be sold pursuant to the provisions of law on the enforcement procedure, or given to a museum of criminology or other institution, or destroyed. The proceeds obtained from such a sale shall be credited to the separate budget allotment for the work of courts.
(4) The provision of paragraph 3 of this Article shall be applied accordingly also where there is a decision made on seizure of an object pursuant to Article 477 of the present Code.

(5) In addition to a repeating of criminal proceedings or a request for the protection of legality, a final judgment on seizure of items may be amended in civil proceedings if a dispute arises regarding the ownership of the items seized.

Finality and Enforceability of Other Decisions

Article 222

(1) Unless otherwise provided for by this Code, rulings shall be executed after they become final. Writs and orders shall be executed immediately unless otherwise instructed by the issuing authority.
(2) A ruling shall be deemed final when it may not be contested by an appeal or when an appeal is not allowed.
(3) Rulings and writs shall be executed by the issuing authorities unless defined otherwise. If court decides in the form of a ruling on the costs of criminal proceedings, such costs shall be collected according to the provisions from Article 221 paragraphs 1 and 2 of the present Code.

Doubts about Permissibility of Execution or Doubts about Other Matters in Final Judgments

Article 223

(1) If doubts arise about the permissibility of the judgment's execution or about the calculation of punishments, or if a final judgment fails to decide on a credit for pre-main hearing custody or a previously served sentence, or the calculation has not been done correctly, the Chair of the Panel of the court which judged in the first instance shall decide on these issues by a separate ruling. An appeal shall withhold the execution of the ruling unless otherwise instructed by the court.
(2) If doubts arise about the interpretation of a judgment, the Chair of the Panel that rendered the final decision shall rule thereabout.
(3) Where enforcement is not allowed due to the statute of limitations, the President of the court competent in carrying out the enforcement shall decide thereon. The President of the higher court shall decide on the appeal against the ruling of the President of the court.

Issuing a Certificate of Enforceability of Decision to the Injured Party

Article 224

After a decision on a claim under property law becomes final, the injured party may request the court that rendered the decision in the first instance to issue him/her a certified copy of the decision with a notification that the decision is enforceable.

Criminal Records
Article 225

(1) Criminal records on persons convicted of criminal offences committed in the territory of Montenegro and of criminal offenders convicted by foreign courts shall be kept by the Ministry in charge of judicial affairs.
(2) The manner of criminal records keeping shall be prescribed by the Government.

Chapter XIV
COSTS OF CRIMINAL PROCEEDINGS

Types of costs
Article 226

(1) Costs of criminal proceedings are expenses incurred for the criminal proceedings, from its institution to its completion, and the costs of the evidence gathering process preceding an investigation.
(2) Costs of criminal proceedings shall include the following:

1) costs of witnesses, expert witnesses, interpreters and specialists, and the costs of a crime scene investigation, reconstruction, exhumation, and costs of stenograph and typewriting and technical recording, and copies of records;

2) transport costs of the defendant;

3) expenses incurred when bringing a suspect, defendant, witness, and expert witness;

4) travel expenses of persons acting in an official capacity;

5) costs of medical treatment of a defendant while in detention as well as the costs of childbirth, except for the expenses which are charged from the health insurance funds;

6) costs of technical examination of a vehicle, blood analysis, DNA analysis, urine analysis, or other medical analysis, as well as the costs of the transportation of a corpse to the place of autopsy,

7) fees and necessary expenses of a defense attorney, necessary expenses of a private prosecutor and subsidiary prosecutor and their legal representatives, as well as fees and necessary expenses of their proxies;

8) necessary expenses of the injured party and the legal representative thereof, as well as fees and necessary expenses of his/her proxy;

9) an approximate sum for the expenses not included in the previous items.

(3) An approximate sum shall be determined according to the duration and complexity of the proceedings and the financial situation of the person required to pay the sum.
(4) The costs referred to in paragraph 2, items 1 through 6 of this Article, as well as necessary expenses of the appointed defense

attorney and appointed proxy of the subsidiary prosecutor from Article 64 paragraph 3, Article 69 paragraph 6 and Article 70 of the present Code, in the proceedings for criminal offences which are prosecuted by virtue of office shall be paid from the funds of the authority conducting the criminal proceedings upon submitting a request for reimbursement of costs. These costs shall be later paid by the persons required to compensate them pursuant to the provisions of the present Code. The authority conducting the criminal proceedings shall enter all the costs paid in advance in a list which shall be enclosed in the file.

(5) Where no criminal proceedings are eventually instituted, the costs arising from the evidentiary actions shall be borne by the authority under the order of which such actions were performed.

(6) The costs of translation/interpretation, incurred pursuant to the provisions of the present Code referring to the right of the parties to a case, witnesses and other participants in the proceedings to use their mother tongue, shall not be charged from the persons who, according to the provisions of the present Code, are due to compensate the costs of the criminal proceedings.

Decision on Costs
Article 227

(1) The judgment and the ruling by which criminal proceedings are discontinued or the indictment is dismissed, shall contain a decision on the person to bear the costs of proceedings and to which amount.

(2) If the data on the amount of costs is lacking, the State Prosecutor or Chair of the Panel shall issue a separate ruling on the amount of those costs when such data are obtained. The data on the amount of costs that are lacking and a request for their compensation may be submitted not later than 15 days from the day of receipt of the final judgment or ruling referred to in paragraph 1 of this Article.

(3) When a decision on the costs of the criminal proceedings referred to in paragraph 2 of this Article is made in a separate ruling, the Panel from Article 24 paragraph 7 of the present Code shall decide on the appeal against such ruling.

(4) When criminal proceedings are not initiated or it is discontinued in the investigation phase, the issue of expenses shall be resolved by a State Prosecutor. If the State Prosecutor does not accept the request for the remuneration of expenses or does not render a decision thereon within two months as of the day the request was submitted, the suspect, the accused person and the defense attorney may request the investigative judge to decide on the expenses.

Hidden Costs
Article 228

(1) The defendant, injured party, subsidiary prosecutor, private prosecutor, defense attorney, legal representative, proxy, witness, expert witness, interpreter, and specialist from Article 282 paragraph 8 of the present Code, regardless of the outcome of the criminal proceedings, shall bear expenses for bringing them before the court, postponing the evidence gathering process' action or main hearing , and other costs of the proceedings incurred by their own fault, as well as a proportional amount of the approximate sum.
(2) A separate ruling shall be issued on the costs referred to in paragraph 1 of this Article, unless the issue of the costs borne by a private prosecutor and defendant is to be resolved within the decision on the merits of the case.
(3) The Panel from Article 24 paragraph 7 of the present Code shall decide on an appeal against the separate ruling referred to in paragraph 2 of this Article.

Costs of the Proceedings When a Defendant is Found Guilty
Article 229

(1) When court finds a defendant guilty, it shall pronounce in the judgment that the defendant shall cover the costs of the criminal proceedings which have been paid in advance from the funds referred to in Article 226 paragraph 4 of the present Code, as well as the costs of a private prosecutor, subsidiary prosecutor and their legal representatives, and fees and necessary expenses of their proxies.
(2) A person charged with several criminal offences shall not be sentenced to bear the costs with respect to the offences for which he was acquitted if such costs may be separated from the overall costs.
(3) In a judgment finding several defendants guilty, the court shall determine a proportion of the costs to be borne by each defendant, and, if this is not possible, the court shall order that all the defendants be jointly liable for the costs. The payment of the approximate sum shall be determined separately for each defendant.
(4) In a decision on costs, court may acquit the defendant from bearing the overall or partial costs of the criminal proceedings referred to in Article 226 paragraph 2 items 1 through 6 and item 9 of the present Code where the payment of these costs could destitute the defendant or his/her dependant. If such circumstances become evident after the decision on costs has been rendered, the Chair of the Panel may, in a separate ruling, release the defendant of the duty to reimburse the costs of the criminal proceedings.

Costs of the Proceedings in Discontinuation of Proceedings, Judgment of Acquittal or of Rejecting the Charges
Article 230

(1) When criminal proceedings are discontinued or a judgment of acquittal or rejecting the charges is rendered, the court shall pronounce in its decision on the discontinuation of proceedings or in the judgment that the costs of criminal proceedings referred to in Article 226 paragraph 2, items 1 through 6 of the present Code, as well as the necessary expenses of the defendant and the necessary expenses of the accused party and the necessary expenses and fee of the defense attorney, shall be paid from a separate budget allotment for the work of courts, save in the cases referred to in paras. 2 and 3 of this Article.

(2) A person found guilty of false reporting offence shall reimburse the costs of the criminal proceedings that s/he prompted by the false reporting.

(3) A private prosecutor shall reimburse the costs of the criminal proceedings referred to in Article 226 paragraph 2 items 1 through 6 and item 8 of the present Code, the necessary expenses of the defendant and the necessary expenses and fees of his defense attorney if the proceedings are terminated by a judgment of acquittal or a judgment of rejecting the charges or a ruling discontinuing the proceedings, unless the proceedings are discontinued or if the judgment rejecting the charges is rendered because of the death of the defendant or statutory limitations in place due to prolongation of the case that may not be attributed to the private prosecutor. If the proceedings are discontinued because the Prosecutor withdraws the charges, the defendant and private prosecutor may settle their mutual claims. If there is more than one private prosecutor, all of them shall be jointly liable for costs.

(4) When a court rejects charges on the grounds that the court is not competent in a case, the decision on costs shall be made by the competent court.

(5) The amount of necessary expenses of the accused person and necessary expenses and fee of the defense attorney shall be decided by the President of the Panel by way of a special ruling. An appeal against that ruling shall be decided by the Panel referred to in Article 24, paragraph 7 of the present Code.

(6) The request for reimbursement of expenses referred to in paragraph 5 of this Article shall be submitted within fifteen days as of the day of receipt of a final decision referred to in paragraph 1 of this Article.

Fees and Necessary Expenses of Defense Attorney
Article 231

(1) Fees and necessary expenses of a defense attorney and proxy to a private prosecutor or injured party shall be borne by the person whom they have represented regardless of who, according to the court decision, shall bear the costs of the criminal proceedings unless, pursuant to the provisions of the present Code, the fees and necessary expenses of the defense attorney shall be paid from the separate budget allotment for the work of courts. If court has appointed a defense attorney to the accused person, and the payment of fees and necessary expenses would impose a risk for the sustenance of the accused person or the sustenance of persons s/he is obliged to support, the fees and necessary expenses of the defense attorney shall be paid from the separate budget allotment for the work of courts. This shall also apply when a proxy to the subsidiary prosecutor has been appointed by court.

(2) A proxy who is not a member of the Bar or attorney in training shall not be entitled to a fee but only to the reimbursement of necessary expenses.

Costs Incurred with Higher Court
Article 232

A higher court shall decide on the bearer of costs incurred with the higher court pursuant to the provisions from Articles 226 through 231 of the present Code.

Special Regulations on Payment of Costs
Article 233

The amount of a payment of costs of criminal proceedings and the lump sum amount, as well as the payment method shall be regulated by the Government.

Chapter XV
CLAIMS UNDER PROPERTY LAW

Subject Matter of Claim under Property Law
Article 234

(1) A claim under property law arising from the commission of an offence shall be considered upon a motion by persons from Article 235 of the present Code, provided that this would not considerably delay the proceedings.

(2) The claim under property law may refer to a compensation of damages, restitution of items or annulment of certain legal matter.

Persons Entitled to File Petitions for Asserting Claims under Property Law
Article 235

(1) A motion to assert a claim under property law in the criminal proceedings may be filed by a person entitled to exercise such claim in litigation.
(2) Should state property be damaged due to a criminal offence, the authority entitled by law to protect such property may take part in the criminal proceedings in line with the competences vested in the abovementioned authority based on that law.

Proceedings for Asserting Claim under Property Law
Article 236

(1) A motion to assert the claim under property law in the criminal proceedings shall be submitted to the State Prosecutor**,** or the court conducting the proceedings.
(2) The motion may be filed prior to the conclusion of the main hearing before the court of the first instance, at the latest.
(3) A person entitled of filing motions shall specify his/her claim and present evidence.
(4) If the authorized person fails to file a motion under the property law in criminal proceedings before the charge has been brought, s/he shall be notified of the right to file the motion before the conclusion of the main hearing. If state property has been damaged due to a criminal offence and no motion is filed, the court shall thereabout notify the authority referred to in Article 208 paragraph 2 of the present Code.

Withdrawal of Petition
Article 237

(1) The authorized persons from Article 235 of the present Code may withdraw their petition for winning claims under the property law in criminal proceedings and may try to win them in litigation. The motion withdrawn, it may not be filed again.
(2) If after filing a petition but prior to the conclusion of the main hearing a right contained in the claim under property law is transferred to another person in line with the rules of property law, the person in question shall be invited to declare whether or not he abides by the petition. If the person does not appear when duly summoned, s/he shall be deemed to have withdrawn the filed petition.

Inquiry into the Claim under Property Law and Gathering of Evidence

Article 238

(1) The court conducting the proceedings shall hear the defendant with respect to the facts presented in the petition and examine the circumstances which are of relevance for the decision on the claim under property law. Even before such a petition has been filed, the court shall gather evidence and determine what is necessary for rendering a decision on the petition.

(2) If an inquiry into a claim under property law would considerably protract the criminal proceedings, the court shall restrict itself to gathering only the information which at a later stage would be impossible or considerably more difficult to determine.

Decisions on Claims under Property Law

Article 239

(1) The court shall decide on claims under property law.

(2) In a judgment finding the defendant guilty, the court may pronounce judgment on the claim under the property law in its entirety or partially, and instruct the defendant to transfer the pending remainder of the case to litigation. If the facts established in the criminal proceedings furnish no solid grounds for either full or partial judgment, while their establishing would lead to a considerable protraction of the proceedings, the court shall advise the authorized person that s/he may pursue the entire claim under property law in litigation.

(3) Where having rendered a judgment of acquittal, a judgment of rejecting the charges, or a ruling discontinuing the criminal proceedings, the court shall advise the authorized person that s/he may pursue his/her claim under property law in litigation.

(4) When a court declares itself incompetent in the criminal proceedings, it shall instruct the authorized person that s/he may file the petition on claims under property law in the criminal proceedings which shall be instituted or continued by a competent court.

(5) In the course of criminal proceedings or after the completion thereof, the court may, regardless of the type of the decision rendered, instruct the injured party, i.e. the petitioner of a claim under property law, and defendant to try to settle the dispute through mediation process in accordance with the law regulating the rules of the mediation process.

Decision on Delivering Items to Injured Parties

Article 240

Where the petition of a claim under property law pertains to the recovery of items, the court shall order by a judgment that the item

be delivered to the injured party if the court establishes that the item belongs to the injured party, while kept by the defendant or an accomplice in a criminal offence or a person given the item for safekeeping.

Annulment of a Legal Transaction
Article 241

When a claim under property law pertains to annulment of a specific legal transaction and the court finds it grounded, it shall adjudicate the full or partial annulment of that legal transaction, with all the consequences deriving therefrom, without affecting the rights of third parties.

Alteration to Decision on Claim under Property Law
Article 242

(1) In the criminal proceedings a court may alter a final judgment which decides on a petition on a claim under the property law only on the occasion of repeating the criminal proceedings or the motion of the protection of legality.
(2) Except in the case referred to in paragraph 1 of this Article, a convict or his/her heirs may request the alterations to the final judgment which decides on a claim under property law only in litigation, as long as grounds exist for repeating the proceedings under the provisions of the Civil Procedure.

Imposing Temporary Measures
Article 243

(1) Temporary measures securing a claim under property law arising out of the perpetration of a criminal offence may be ordered upon the motion of authorized persons (Article 235) and in conformity with the rules of the enforcement proceedings.
(2) In the course of the investigation, the ruling referred to in paragraph 1 of this Article shall be rendered by the investigative judge. After the indictment has been brought, the ruling shall be rendered by the Chair of the Panel outside the main hearing and by the Panel during the main hearing.
(3) A ruling rendered by the Panel on temporary measures of security may not be subject to appeal. In other cases, the Panel referred to in Article 24, paragraph 7 of the present Code shall rule on the appeal. An appeal shall not withhold the execution of the ruling.

Return of Items in the Course of Proceedings
Article 244

(1) If the items undoubtedly belong to the injured party and they do not serve as the evidence in the criminal proceedings, these items

shall be handed over to the injured party even prior to the completion of the proceedings.
(2) If several injured parties claim ownership over an item, they shall be instructed to institute a litigation proceedings and the court in the criminal proceedings shall order the safeguarding of items only as a temporary security measure.
(3) Items serving as evidence shall be provisionally seized from the owner and returned to him/her after the completion of the proceedings. If such an object is indispensable to the owner it may be returned to him/her even before the completion of the proceedings but s/he shall be liable to obligation to bring it in upon request.

Measures Securing the Claim against a Third Party
Article 245

(1) If the injured party has a claim against a third party for keeping items gained by the commission of a criminal offence, or for proceeds of crime, the court, in the criminal proceedings, upon the motion of the authorized persons from Article 235, may order a temporary measure securing the claim against that third party as well, in conformity with the provisions of the enforcement procedure law. The provisions of Article 243 paragraphs 2 and 3 of the present Code shall also apply to the abovementioned case.
(2) In a judgment finding a defendant guilty, the court shall either annul the measures referred to in paragraph 1 of this Article if these have not already been annulled, or instruct the injured party to institute the civil proceedings, and shall annul the measures if the civil proceedings is not instituted within a time limit set by the court.

Chapter XVI
PREJUDICIAL ISSUES AND OTHER PROVISIONS

Resolution of Prejudicial Matters
Article 246

(1) If the application of the Criminal Code depends on a prior decision on a judicial matter that falls within the jurisdiction of a court in some other proceedings or within the competences of another state authority, the court adjudicating on the criminal case may also decide on this issue, pursuant to the rules of evidence in the criminal proceedings. The resolution of this judicial matter by a Criminal Court shall affect only the criminal case that is being tried before this court.
(2) If such a prejudicial issue has already been decided by a court in some other proceedings or by another state authority, such a

decision shall not be binding on the Criminal Court in deciding on whether a particular criminal offence has been committed.

Approval to Institute Criminal Proceedings
Article 247

(1) Where law provides that prosecution of certain persons and criminal offences requires previous approval of the competent state authority, the State Prosecutor may not order the conduct of an investigation or bring a direct indictment i.e. bill of without presenting evidence that such approval has been granted, unless otherwise prescribed by ratified international treaties.
(2) When prosecution is based upon a private charge or upon a petition by a subsidiary prosecutor, the approval shall be obtained by the court.
(3) A person enjoying the right to immunity may invoke this right before the main hearing starts. If the defendant is granted immunity after the start of the main hearing, s/he may invoke immunity immediately, but not later than the end of the main hearing.
(4) Authorities referred to in paragraphs 1 and 2 of this Article may request a permission to institute criminal proceedings even before the person enjoying immunity invokes such a right.

Notification on Detention, on Entering of Indictment into Effect and on Judgment of Conviction
Article 248

Within three-day time limit, the court shall notify the authority or employer which employs a defendant about his/her detention, entering of an indictment into effect, or a judgment of conviction for a criminal offence subject to prosecution upon a bill of indictment.

Discontinuation of Criminal Proceedings due to Defendant's Death
Article 249

Where in the course of criminal proceedings it has been established that the defendant has died, the investigative judge or the Chair of the Panel shall issue a ruling to discontinue the criminal proceedings.

Acting in Case of Establishing the Mental Incapacity of Defendant
Article 250

Should a court, in the course of criminal proceedings, establish that the defendant has committed a criminal offence but was mentally incapacitated at the time of the commission, the court shall render a decision in accordance with Article 470 of the present Code.

Sanctioning the Protraction of the Proceedings
Article 251

(1) In the course of proceedings, a court may impose a fine amounting to € 1.000 upon a defense attorney, proxy or legal representative, injured party, subsidiary prosecutor or private prosecutor if their actions are clearly aimed at protraction of the criminal proceedings.
(2) The Bar Chamber shall be notified of the punishment imposed on an attorney.
(3) If the State Prosecutor fails to timely file petitions to court or undertakes other actions in the course of proceedings with considerable delay, causing therewith a protraction of the proceedings, the court shall notify the higher State Prosecutor thereof.

Application of the Regulations of International Law
Article 252

(1) The rules of international law shall apply with respect to exemption from criminal prosecution of aliens who enjoy the right to immunity in Montenegro.
(2) Should there be any doubt as to the status of persons referred to in paragraph 1 of this Article the court shall seek clarification from the administration authority competent in foreign affairs.

Obligation of State Authorities, Courts of Law and Other Authorities in Detecting Criminal Offences and Perpetrators
Article 253

All state authorities shall render necessary assistance to courts and other state authorities taking part in criminal proceedings, especially in the matters of detecting criminal offences and finding their perpetrators.

Part Two

COURSE OF THE PROCEEDINGS

A. PRELIMINARY INVESTIGATION

Chapter XVII
CRIMINAL CHARGE

Obligation to File Charge for Criminal Offence
Article 254

(1) Persons acting in an official capacity and responsible persons in state authorities, local governance authorities, public companies and institutions shall file charge for criminal offences, subject to

prosecution by virtue of office, of which they have been informed or which they have learned while performing their office.
(2) The duty from paragraph 1 of this Article shall also be incumbent upon all natural and legal persons who are granted certain public powers pursuant to law, or are professionally involved in the protection and security provision to persons and property or in the health care of persons, as well as in jobs of minors care and education, if they learn about a criminal offence while performing or in connection with their profession.
(3) Persons filing a criminal charge from paragraph 1 of this Article shall indicate evidence to the best of their knowledge and take measures to preserve traces of the criminal offence, the items upon which or by means of which the criminal offence has been committed, items resulting from the commission of criminal offence as well as other evidence.

Reporting Criminal Offences by Citizens
Article 255

(1) Everyone shall report a criminal offence which is prosecuted by virtue of office and is obliged to report a criminal offence the commission of which has caused detriment to a minor.
(2) When the court establishes in the course of criminal proceedings that reasonable suspicion exists that a person has failed to perform the duty referred to in paragraph 1 of this Article and that such omission results in a reasonable suspicion as to the commission of the criminal offence of neglecting and abuse of a minor, the court shall notify the competent State Prosecutor thereof.

Filing Criminal Charge
Article 256

(1) Criminal charge shall be filed with the competent State Prosecutor whether in writing or orally.
(2) If the charge is filed orally, the informant shall be cautioned as to the consequences of false information. Oral charge shall be entered in a record, and where the information is filed over the phone or other means of electronic communication, an official annotation shall be made thereabout.
(3) The charge filed with a court, the police authority or a State Prosecutor lacking jurisdiction, they shall receive the information and immediately forward it to the State Prosecutor having the jurisdiction.

Competences and Actions of Police in Preliminary Investigation
Article 257

(1) Where there are grounds for suspicion that a criminal offence which is subject to prosecution by virtue of office has been

committed, the police shall inform the competent State Prosecutor and take necessary measures as a self-initiative or upon a petition by a State Prosecutor, with a view to discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or hiding, discovering and securing traces of the criminal offence and items which may serve as evidence, and to gathering all information which could be useful for conducting the criminal proceedings successfully.

(2) In order to fulfill the duties referred to in paragraph 1 of this Article, the police authorities may seek information from citizens, apply polygraph testing, conduct voice analysis, perform anti-terrorist raid, restrict movement to certain persons in a certain area for a relevant period, publicly offer a reward with the view of collecting information, request from the entity delivering telecommunication services to establish identity of telecommunication addresses that have been connected at a certain moment, carry out a necessary inspection of the means of transportation, passengers and luggage; undertake necessary measures related to the establishment of the identity of persons and the sameness of items, take a DNA sample for analysis, issue a wanted notice for a person or warrant for seizure of items which are subject to a search, inspect, in the presence of the authorized person, facilities and premises of state authorities, companies, other legal persons and entrepreneurs, have insight in their documentation and seize it where needed, and take other necessary measures and actions in compliance with this Code. Records or an official annotation shall be made on the facts and circumstances established in the course of individual actions, which may be of importance for the criminal proceedings, as well as on discovered or seized items. The police may also make audio or audiovisual recordings of the execution of certain actions from this paragraph, in which case such recordings shall be enclosed with the record or the official annotation thereon.

(3) When conducting a crime scene investigation for the criminal offence against traffic safety for which there are grounds for suspicion that it has caused severe consequences or has been committed with the intent, the police authorities may temporarily, and for to the time not exceeding three days, provisionally seize the driving license of the suspect.

(4) A person against whom some of the actions or measures referred to in paragraphs 2 and 3 of this Article have been undertaken shall be entitled to file a complaint with the competent State Prosecutor.

Holding at the Crime Scene and Other Actions
Article 258

(1) An authorized police official shall have the right to send persons found at the crime scene to the State Prosecutor or to hold them at the crime scene until the State Prosecutor's arrival if these persons may provide facts important for the criminal proceedings and if it is likely that their interrogation at a later stage might be impossible or might entail considerable delays or other difficulties. Such persons shall not be held at the crime scene for more than six hours.
(2) Where necessary for establishing identity or in other cases of interest for successful conduct of the proceedings, the police may take photos of the suspect and his/her fingerprints, and take other actions necessary to establish the identity of the suspect, the abovementioned being subject to a prior approval of the State Prosecutor.
(3) If necessary to establish the identity of the person whose fingerprints have been left on certain items, the police may take the fingerprints of persons likely to have touched those items.
(4) Any person against whom some of the actions referred to in this Article have been taken shall have the right to file a complaint with the competent State Prosecutor or an immediately superior police authority.

Gathering Information from Citizens
Article 259

(1) In order to gather information about a criminal offence or a perpetrator, the police may summon citizens. The reason for the summoning must be specified in the summons. A person who fails to appear as summoned may be brought in by force only where cautioned thereof in the summons.
(2) Gathering information from the person may last as long as necessary to get the information needed, but not more than six hours.
(3) Information may not be gathered from citizens by using force, or by means of deception or exhaustion, and the police must respect the personality and dignity of each citizen. If a citizen declines to give information he may not be prevented from leaving in which case the six hour rule referred to in paragraph 2 of this Article shall not be applicable.
(4) If a summoned citizen is accompanied to the police premises by an attorney, the police shall allow the presence of the attorney while gathering information from the citizen.
(5) An official annotation or record of the information provided to the police shall be read to the informant thereof. This person may raise objections which shall be entered in the official annotation or

record by the police. A copy of the official annotation or record on the information provided shall be issued to the citizen upon request.
(6) A citizen may be resummoned as to gathering information on the circumstances of another criminal offence or perpetrator, whereas for the purpose of gathering information related to the same criminal offence may be brought in again only with permission of the State Prosecutor.
(7) While acting in accordance with paragraphs 1 to 6 of this Article, the police may not interrogate citizens in the capacity of the accused, witness or expert.

Gathering Information from Detainees
Article 260

(1) Upon an approval by the investigative judge or the Chair of the Panel, the State Prosecutor, and, in exceptional cases, the police, when so authorized by the State Prosecutor, may gather information from persons held in detention, if that is required for the discovery or clarification of other criminal offences and perpetrators.
(2) The gathering of information specified in paragraph 1 of this Article shall take place in the prison where the defendant is detained, at the time ordered by the investigative judge or the Chair of the Panel and in his/her presence or in the presence of a judge designated by him/her. If so requested by the detainee, the defense attorney may be present in the course of gathering the information.
(3) Gathering of information shall be postponed until the arrival of the defense attorney, but not longer than four hours, and if the defense attorney does not appear in that time the information may be gathered in his/her absence.

Examination of Suspect in Preliminary Investigation
Article 261

(1) If in the course of gathering information the police assesses that a summoned citizen may be deemed a suspect, they are bound to immediately notify thereon the State Prosecutor who shall request the police to bring the suspect before him/her if s/he finds necessary to examine him/her prior to issuing an order of investigation.
(2) The suspect shall be notified on the criminal offence he is charged with and the grounds for suspicion, that s/he is not obliged to make statements or answer any questions, that everything s/he says can be used as evidence against him in criminal proceedings, and on his/her right to retain a defense attorney who shall be present in the course of his/her interrogation.
(3) The suspect shall be allowed to make contact with his/her defense attorney by phone or other means of electronic communication either directly or through his/her family members or

a third person whose identity must be revealed, and the State Prosecutor may assist the suspect to find a defense attorney.
(4) If in the case of mandatory defense from Article 69 paragraph 1 of the present Code the suspect fails to retain a defense attorney by himself/herself or the defense attorney fails to appear within four hours from being contacted by the suspect in the sense of paragraph 3 of this Article, the State Prosecutor shall, by virtue of office, appoint a legal aid defense attorney from the Bar Chamber's list of defense attorneys at his/her own discretion, and shall examine the suspect without any delay.
(5) Exceptionally, upon the approval by the State Prosecutor, and with consent of the suspect and in the presence of the defense attorney, the police may examine a suspect. If the suspect fails to retain a defense attorney, the State Prosecutor shall, by virtue of office, appoint the defense attorney from the Bar Chamber's list, and the police shall examine him/her without any delay.
(6) A defense attorney appointed by virtue of office within the meaning of paragraphs 4 and 5 of this Article shall remain in the proceedings as long as there are conditions for mandatory defense, or until the defendant selects a defense attorney by himself/herself.
(7) The interrogation of a suspect by the State Prosecutor or police shall be subject to the provisions of the present Code which govern the interrogation of the defendant.
(8) A record shall be kept on the interrogation of a suspect. The record shall be read to the suspect and signed by the suspect, and any objections by the suspect shall be entered therein. The record of the interrogation of the suspect shall not be separated from the file and may be used as evidence in the criminal proceedings.
(9) Should the State Prosecutor assess, after the interrogation of the suspect, that there is a reasonable suspicion that the suspect had committed the criminal offence from the charges, the State Prosecutor shall issue an order of investigation.
(10) Upon issuing the order from paragraph 9 of this Article, the State Prosecutor may, if having assessed the conditions referred to in Article 267 paragraph 4 of the present Code to be met, issue a ruling on holding the suspect in custody, in which case the State Prosecutor shall propose to the investigative judge to order detention. The investigative judge shall act in compliance with Article 268 of the present Code.

Examination of Witnesses in Preliminary Investigation
Article 262

(1) Should, in the course of preliminary investigation, the State Prosecutor find needed that a summoned citizen be heard in the capacity of a witness, the interrogation shall be performed by the

State Prosecutor in compliance with Article 113 of the present Code and prior to issuing an order of investigation.
(2) While the action from paragraph 1 of this Article being taken, the suspect and the defense attorney shall be allowed to attend the interrogation, unless there is a risk of delay or this is impossible for other important reasons, where they may put questions to the witness and make objections.
(3) The interrogation of a citizen in the capacity of a witness shall begin before the expiry of the time limit referred to in Article 259 paragraph 2 of the present Code, but such time limit may be extended with the citizen's consent thereto.
(4) A record shall be kept of the interrogation of a witness which shall be signed by the witness. The course of the interrogation may be recorded by an audio or audiovisual recording device. The record on the interrogation of witness shall not be separated from the file and may be used as evidence in the criminal proceedings.

Provisional Seizure of Items, Crime Scene Investigation and Expert Witness Evaluation
Article 263

(1) If there is a risk of delay, the police may provisionally seize items pursuant to Article 85 paragraph 9 of the present Code and carry out a search of dwelling and persons under conditions from Article 84 of the present Code even before the investigation has been launched.
(2) The police shall immediately return the provisionally seized items to the owner or holder if none criminal proceedings are instituted or if they fail to file a criminal charge with the State Prosecutor within three months.
(3) If the State Prosecutor is unable to come immediately to the scene, the police may carry out a crime scene investigation by themselves and order necessary expert witness evaluations which allow no delay, except for autopsy and exhumation. If the State Prosecutor arrives to the crime scene while crime scene investigation is underway, s/he may take over the execution of those actions.
(4) The police or the investigative judge shall notify the State Prosecutor on the actions referred to in paragraphs 1 to 3 of this Article without any delay.

Deprivation of Liberty and Holding by the Police
Article 264

(1) Authorized police officers may deprive a person of liberty if any of the grounds for detention from Article 175 of the present Code exists, but they shall inform the State Prosecutor thereon without delay, draw up an official annotation that has to contain the time and

the place of the deprivation of liberty and to bring that person before the State Prosecutor without delay. On the occasion of the liberty-deprived person's appearance before the State Prosecutor, an authorized police officer shall submit the official annotation to the State Prosecutor and the State Prosecutor shall also enter in the record the deposition of the liberty-deprived person as to the time and place of his/her deprivation of liberty.
(2) The person deprived of liberty shall be advised on the rights referred to in Article 5 of the present Code.
(3) If a person deprived of liberty is not escorted before the State Prosecutor within 12 hours from the deprivation of liberty, the police shall release the person.
(4) A person deprived of liberty in compliance with paragraph 1 of this Article may not be deprived of liberty again for the same criminal offence.

Deprivation of Liberty of a Person Caught in the Act of Committing Criminal Offence
Article 265

Anyone may deprive of liberty a person caught in the act of committing a criminal offence which is prosecuted by virtue of office. The person deprived of liberty shall immediately be brought to the State Prosecutor or police, and if this is not possible, one of the abovementioned authorities shall immediately be informed thereon. The police shall proceed pursuant to Article 264 of the present Code.

Proceeding by the State Prosecutor upon Bringing a Person Deprived of Liberty
Article 266

(1) The State Prosecutor shall immediately advise a person deprived of liberty on his/her right to retain a defense attorney, and enable him/her to inform a defense attorney on his/her deprivation of liberty by phone or other means of electronic communication, either directly or through his/her family members or a third party whose identity must be relieved to the State Prosecutor, and shall where necessary assist him/her in retaining a defense attorney.
(2) If the person referred to in paragraph 1 of this Article fails to ensure the presence of a defense attorney within 12 hours from the moment this was made available to him/her within the meaning of paragraph 1 of this Article, or if s/he declares waiver of the right to defense attorney, the State Prosecutor shall examine him/her with no delay, and not later within the next 12 hours.
(3) If in a case of mandatory defense from Article 69 paragraph 1 of the present Code the person from paragraph 1 of this Article fails to retain a defense attorney within 12 hours from the moment he/she

was advised on that right, or declares the waiver of retaining a defense attorney, s/he shall be appointed a defense attorney by virtue of office and shall be examined without any delay.
(4) The State Prosecutor shall release the person from paragraph 1 of this Article immediately after the interrogation unless the State Prosecutor assesses there are reasons for the person's detention.

Holding by the State Prosecutor
Article 267

(1) Exceptionally, the suspect deprived of liberty may be held by the State Prosecutor, not longer than 48 hours from the moment of his/her deprivation of liberty, if the State Prosecutor finds that there is any of the reasons from Article 175 paragraph 1 of the present Code.
(2) A person held and his/her defense attorney shall be issued and served a decision on holding immediately or within two hours the latest. The decision shall specify the offence which the suspect has been charged of, the grounds of suspicion, the reason of holding, date and hour of the suspect's deprivation of liberty, and the moment from which the holding starts running.
(3) The decision on holding may be subject to appeal by the suspect and defense attorney, the appeal being immediately submitted to an investigative judge together with the case file. The investigative judge shall decide on the appeal within four hours from the appeal's receipt. The appeal shall not withhold the execution of the decision.
(4) A suspect shall have a defense attorney as soon as the decision on holding is issued, in which case, accordingly, the provisions of Article 261 of the present Code shall be applicable.

Ordering Detention in Preliminary Investigation
Article 268

(1) Where the State Prosecutor issues a decision on holding a suspect, and finds that there are still reasons for ordering detention, the State Prosecutor shall file a motion to the investigative judge for detention of the suspect.
(2) The motion referred to in paragraph 1 of this Article shall be delivered to the investigative judge before the expiration of the holding time limit. Within that time limit the person held must be brought before the investigative judge.
(3) The investigative judge shall, in the presence of the State Prosecutor, interrogate the person referred to in paragraph 1 of this Article regarding all the circumstances of significance for the rendering of the decision ordering detention. After interrogation, without delay and at the latest within 24 hours as of the moment that person was brought before him/her, the investigative judge shall order detention or reject the motion ordering detention.

(4) The person referred to in paragraph 1 of this Article shall have the right to have his/her defense attorney present during his/her interrogation by the judge. As regards the exercise of this right, provisions of Article 266, paras. 2 and 3 of the present Code shall be applied.
(5) If the State Prosecutor did not bring and deliver to the court the order on conducting investigation in the course of holding a suspect, and does not perform this within 48 hours as of the moment of ordering detention, the investigative judge shall release the detainee.
(6) Where a liberty-deprived person is brought to the State Prosecutor, that person, his/her defense attorney, family member, or partner in a customary marriage may request that the State Prosecutor allow a medical examination of the detainee. The decision on appointing a medical doctor who will perform the medical checks and the record on the detainee's hearing shall be enclosed in criminal case file by the State Prosecutor.

Ensuring Evidence by Court
Article 269

(1) If there is a risk that a person will not be available to court during the main hearing due to an older age, illness or other important reasons the State Prosecutor shall file a motion to the investigative judge to hear such person as witness in compliance with Article 114 of the present Code.
(2) If the investigative judge rejects the motion from paragraph 1 of this Article the Panel referred to in Article 24 paragraph 7 of the present Code shall render a decision on the matter.

Filing of Criminal Charge by Police
Article 270

(1) On the basis of information gathered, the police shall draft a criminal charge and file it with the State Prosecutor, shall notify the State Prosecutor on the measures taken in the preliminary investigation and specify evidence learned of in the course of gathering of information. The items, sketches, photographs, audio and visual recordings, reports obtained, documents on the measures and actions taken, records, official annotations, depositions, and other materials which may be useful for a successful conduct of criminal proceedings shall be attached to the criminal charge.
(2) Should the police learn of new facts, evidence or traces of a criminal offence after having filed a criminal charge, the police shall gather necessary information and to deliver a report thereon to the State Prosecutor as an amendment to the criminal charge.

Dismissals of and Amendments to Criminal Charges
Article 271

(1) The State Prosecutor shall, by a reasoned decision, dismiss a criminal charge if it arises from the charge that the act in question does not constitute a criminal offence or a criminal offence prosecuted by virtue of office**,** if the statutory limitation has come to effect, or if the offence is subject to amnesty or pardon, or if there are other circumstances disqualifying the prosecution.
(2) Within eight days, the State Prosecutor shall deliver the act on the dismissal of a criminal charge to the informant, as well as to the injured party, compliant to Article 59 of the present Code.
(3) If, based on the contents of the criminal charge, the State Prosecutor is unable to establish whether the allegations in the charge are probable, or if the facts from the charge are insufficient to issue either an order of investigation or decision on the dismissal of charge, and particularly if the offender is unknown, the State Prosecutor shall, either personally or through other authorities, gather necessary information. For that purpose the State Prosecutor may summon the informant, the person subject to criminal charge, and other persons whom s/he assesses able to provide information relevant to deciding on the charge. If the State Prosecutor is unable to do it by himself/herself, s/he shall request the police authorities to obtain necessary information and take other measures in order to discover the criminal offence and its perpetrator, in compliance with Articles 257, 258 and 259 of the present Code.
(4) Aimed at clarification of specific issues subject to an expert opinion, arising on the occasion of deciding on a criminal charge, the State Prosecutor may ask for relevant explanations from professionals in the field.
(5) The State Prosecutor may at any time require information from the police regarding the measures taken. The police shall respond to the State Prosecutor without any delay.
(6) If, even after the undertaking of the actions from paragraphs 3, 4 and 5 of this Article, there are some of the circumstances from paragraph 1 of this Article or if there is no reasonable suspicion that a suspect has committed a criminal offence which is prosecuted by virtue of office, the State Prosecutor shall dismiss the charge.
(7) When gathering or giving information, the State Prosecutor and other state authorities, companies and other legal persons shall act with due caution, ensuring that no harm be inflicted on the honor and reputation of the person who is subject to the information.

Laying off Criminal Prosecution
Article 272

(1) The State Prosecutor may decide to postpone criminal prosecution for criminal offences punishable by a fine or

imprisonment for a term up to five years, when s/he establishes that it is not functional to conduct criminal proceedings having in mind the nature of a criminal offence and the circumstances of its commission, the offender's past and personal attributes, if the suspect accepts to fulfill one or several of the following obligations:

1) to eliminate a detrimental consequence or to compensate the damage caused by the criminal offence,

2) to fulfill obligations as to the payables for material support or other liabilities determined by a final judgment;

3) to pay a certain amount of money for the benefit of a humanitarian organization, fund or public institution;

4) to carry out some community service or humanitarian work,

(2) The suspect shall fulfill the accepted obligation within six months the latest.

(3) The obligations referred to in paragraph 1 of this Article shall be imposed upon the suspect by a decision of the State Prosecutor. The decision shall be served on the suspect, injured party, if any, or the beneficiary humanitarian organization or public institution.

(4) Before issuing the decision referred to in paragraph 3 of this Article, the State Prosecutor may, assisted by specially trained persons – mediators, carry out the procedure of mediation between the injured party and the suspect, the process being subject to the provisions of the law regulating the rules of mediation procedure for the obligations referred to in paragraph 1 items 1 and 2 of this Article, or obtain the consent of the injured party for the measures referred to in paragraph 1 items 3 and 4 of this Article.

(5) A more detailed manner of fulfilling obligations referred to in paragraph 1, items 1 to 4 of this Article, the contents of the decision referred to in paragraph 3 of this Article as well as a more detailed manner of implementing actions in the application of provisions of this Article shall be prescribed by the ministry competent for the affairs of the judiciary.

(6) If the suspect executes the obligation referred to in paragraph 1 of this Article, within the time limit referred to in paragraph 2 of this Article, the State Prosecutor shall dismiss the criminal charges. In this case, the provisions of Article 59 of the present Code shall not be applicable, of which the State Prosecutor shall advise the injured party before obtaining the consent referred to in paragraph 4 of this Article.

Dismissal of Criminal Charge for Fairness
Article 273

In the cases of criminal offences punishable by a fine or prison sentence of up to 3 years, the State Prosecutor may dismiss a criminal charge if the suspect, expressing his/her true regret, has prevented a damage from occurring or has already compensated for

the entire damage, and the State Prosecutor has established that imposing a criminal sanction would not be in line with fairness. In such case, the provisions of Article 59 of the present Code shall not be applicable.

B. PRE-MAIN HEARING PROCEEDINGS

Chapter XVIII
INVESTIGATION

Purpose of Investigation
Article 274

(1) An investigation shall be conducted based on an order of investigation and against a specific person when there is a reasonable suspicion that the person has committed a criminal offence.
(2) In the course of an investigation, such evidence and information shall be gathered as are necessary for the State Prosecutor in rendering a decision as to whether to bring an indictment or discontinue the investigation, and evidence for which there is a risk they may not be available for repetition at the main hearing or whose presentation may involve some difficulties, as well as other evidence which may be of use for the proceedings and which presentation is functional considering the circumstances of a case.

Order of Investigation
Article 275

(1) A State Prosecutor shall order the launch of an investigation where s/he finds that the allegations in a criminal charge and its enclosures indicate reasonable grounds to believe that a suspect has committed the criminal offence charged with.
(2) Before issuing the order referred to in paragraph 1 of this Article, the State Prosecutor shall examine the suspect unless the suspect has already been examined in the preliminary investigation in accordance with Article 261 of the present Code or if there is a risk of postponement. If special circumstances so require or if repeated interrogation of the suspect is required in order to gather evidence for the defense, the State Prosecutor may again examine the suspect already examined in the preliminary investigation, prior to ordering an investigation.
(3) The order of investigation shall contain: the personal data of the suspect, a description of the offence which result in its legal attributes, the statutory title of the criminal offence, and evidence as grounds for the reasonable suspicion.
(4) In the order of investigation, the State Prosecutor may suggest to the judge to impose on the defendant one or several measures

referred to in Article 166 paragraph 2 of the present Code or to order detention of the defendant who is held or deprived of liberty.
(5) Order on the conduct of investigation shall be delivered to the accused person and his/her defense counsel.

Competence in Conducting Investigation
Article 276

(1) The State Prosecutor shall conduct the investigation.
(2) If so requested by the parties, certain actions of the evidence gathering process in the investigation may, under the rules of the present Code, be undertaken by an investigative judge, provided that special circumstances obviously indicate that it will not be possible to repeat such actions at the main hearing or that the presentation of evidence at the main hearing would be impossible or significantly more difficult.
(3) If the investigative judge does not concur with the request referred to in paragraph 2 of this Article, the decision thereon shall be made by the Panel referred to in Article 24 paragraph 6, within 24 hours.
(4) An investigation may be conducted by one State Prosecutor's Office for the territory of several Prosecutor's Offices (the investigative center), in compliance with law.

Entrusting Performance of Actions in Evidence Gathering Process
Article 277

(1) The State Prosecutor may entrust performance of certain actions in the evidence gathering process to the State Prosecutor with territorial jurisdiction as to the performance of such actions, or to a single prosecutor vested with competences in conducting investigations for the territory of several prosecutors.
(2) Upon request or approval of the State Prosecutor the police shall take photographs of the defendant, take his fingerprints or saliva sample for DNA analysis if needed for the purposes of criminal proceedings.
(3) The State Prosecutor entrusted with the performance of certain evidence gathering actions shall, where needed, carry out other evidence gathering actions connected to or arising from those entrusted with the State Prosecutor.
(4) If the State Prosecutor entrusted with performance of certain evidence gathering actions is not competent in performing thereof, s/he shall forward the case to the competent State Prosecutor and notify thereabout the State Prosecutor who entrusted him with the case.

Actions of Evidence Gathering Process Exclusively Ordered by Investigative Judge
Article 278

(1) The order for a search of dwelling, other premises and persons, as well as the order for provisional seizure of objects shall be issued by the investigative judge upon a motion of the State Prosecutor.
(2) At the request of the State Prosecutor the investigative judge shall issue an order for a corpse exhumation.
(3) If the investigative judge does not approve the motion referred to in paragraph 1 of this Article or the request referred to in paragraph 2 of this Article, the decision thereon shall be made by the Panel referred to in Article 24 paragraph 7 of the present Code within 24 hours.

Ordering Detention in Investigation
Article 279

(1) Upon filing a motion for detention of a defendant pursuant to Article 275 paragraph 4 of the present Code, after being satisfied that other measures referred to in Article 163 paragraph 1 of the present Code cannot ensure the presence of the defendant or create conditions for an unimpeded conduct of the criminal proceedings, the State Prosecutor shall issue a decision on a temporary holding of the defendant in accordance with Article 267 of the present Code if the State Prosecutor has not ordered the holding of the suspect prior to issuing an order of launching investigation.
(2) Within the duration of holding, the investigative judge shall examine the accused person and decide whether to impose detention or dismissal the motion for having the defendant detained.
(3) In the case referred to in paragraph 2 of this Article, if the investigative judge fails to issue a ruling ordering detention before the expiry of the holding time limit, the accused person shall be released without delay.

Scope of Investigation
Article 280

(1) An investigation shall only be conducted with respect to the criminal offence and against the accused person who is subject to the order on launching the investigation.
(2) If in the course of the investigation it becomes evident that it should be expanded to another criminal offence or another person**,** the State Prosecutor shall issue an order to that effect, subject to the provisions from Article 275 of the present Code.

Motions for Evidence Gathering Actions Filed by the Accused Person, Defense Attorney, Injured Party, and Proxy of the Party Injured in Investigation
Article 281

(1) In the course of an investigation, the accused person, defense attorney, injured party, and proxy of the injured party may file motions to the State Prosecutor for certain actions to be taken.
(2) The accused person, defense attorney, injured party, and proxy of the injured party may file motions referred to in paragraph 1 of this Article also to the State Prosecutor entrusted with the performance of certain evidence gathering actions. If the State Prosecutor disagrees with the motion, s/he shall notify the person who has filed the motion thereon, and this person may repeat filing the motion with the State Prosecutor referred to in paragraph 1 of this Article.

Openness of Investigation
Article 282

(1) An injured party, proxy of the injured party and defense attorney may attend the interrogation of the accused person.
(2) The injured party, proxy of the injured party, accused person and defense attorney may attend the crime scene investigation, reconstruction and hearing of an expert witness.
(3) The injured party, proxy of the injured party and defense attorney may be present at the search of dwelling.
(4) The accused person, defense attorney, injured party, and proxy of the injured party may be present at witness hearings.
(5) The State Prosecutor shall notify in a convenient manner the defense attorney, the injured party, proxy of the injured party, and the accused person of the time and place of taking evidence gathering actions they are entitled to attend, unless there is a risk of delay. If the accused person retains a defense attorney, the State Prosecutor shall, as a rule, notify only the defense attorney. If the accused person is in detention and the evidence-related action is to be performed outside the court seat, the State Prosecutor shall decide whether the presence of the accused person is needed.
(6) The evidence gathering action may be carried out even in the absence of a duly notified person who fails to appear.
(7) Persons attending the evidence gathering actions may suggest that the State Prosecutor poses certain questions to the accused person, witness or expert witness for the purpose of clarification, and, upon the permission of the State Prosecutor, may pose questions personally. These persons are entitled to request that their objections as to carrying out certain actions be entered in the records and may propose that certain evidence be examined.

(8) In order to clarify certain technical or other expert issues which arise in relation to the evidence gathered or at the interrogation of the accused person or in the course of undertaking other evidence-related actions, the State Prosecutor may require that an expert in the relevant field give necessary explanations in regard to those issues. If the parties are present while the explanation is being conveyed, they may request that the expert provide a more detailed explanation. Where necessary, the State Prosecutor may require a specialized institution to provide an explanation.
(9) The provisions of paragraphs 1 through 8 of this Article shall also be applied if the evidence-related action is undertaken before the order of investigation is rendered.

Obligation to Assist in Investigation
Article 283

If, in conducting the investigation**,** the State Prosecutor or the investigative judge requires police assistance (crime-investigation and technical assistance, etc) or from other state authorities, they shall provide this assistance upon his/her request. When it is estimated that an evidence-related action may not be delayed, the assistance from a company or other legal person may be requested.

Obligation of Keeping a Secret Arising from Investigation
Article 284

Should it be in the interests of criminal proceedings, keeping information as secret, public order, moral or protection of personal or family life of the injured party or the accused person, the person acting in an official capacity who is undertaking an evidence gathering action shall order the persons who are being examined or who are present while the abovementioned actions are being carried out, or who inspect the files of the investigation, to keep as secret certain facts or information they have learned in the course of proceedings and shall advise them that any disclosure of a secret constitutes a criminal offence. This order shall be entered into the record on evidence-related action or shall be noted in the inspected files, along with the signature of the person cautioned.

Maintaining Order during Investigation
Article 285

(1) During the course of the evidence gathering process, the State Prosecutor or investigative judge shall maintain order and protect participants in the proceedings from insults, threats and any other form of assault.
(2) A fine not exceeding €1,000 may be imposed on a participant in the proceedings or other person who, during the evidence gathering process and after given caution, has been disturbing order, giving

the participants of the proceedings offenses, or endangering their safety; The investigative judge shall impose the abovementioned fine at his/her own discretion or upon a motion by the State Prosecutor. If the presence of such person is not necessary, the person may be removed from the place where the evidence gathering action is being carried out.

(3) The accused person may not be fined but s/he may be taken away from the place where the evidence gathering action is being carried out.

(4) If the State Prosecutor disturbs the order, the investigative judge shall proceed pursuant to the provision from Article 321 paragraph 5 of the present Code.

Recess of Investigation
Article 286

(1) The State Prosecutor shall recess an investigation by an order in the following cases:

(1) if the accused person develops a temporary mental illness or temporary mental disorder;

(2) if the habitual residence of the accused person is unknown;

(3) if the accused person has fled or is otherwise out of reach of the state authorities.

(2) Prior to recessing the investigation from paragraph 1 of this Article, all the obtainable evidence on the criminal offence and the guilt of the accused person shall be gathered.

(3) The State Prosecutor shall continue the investigation as soon as obstacles which resulted in the recess cease to exist.

Indictment by Subsidiary Prosecutor
Article 287

(1) Where an injured party assumes prosecution in compliance with Article 59 of the present Code, s/he may a direct indictment.

(2) If the injured party finds necessary to perform certain evidentiary actions prior to bringing the direct indictment, the injured party may file a motion to the investigative judge to take such actions.

(3) If the investigative judge sustains the motion from paragraph 2 of this Article, s/he shall take necessary evidentiary actions without delay and notify the injured party thereof.

(4) If the investigative judge fails to sustain the motion from paragraph 2 of this Article, s/he shall require that the matter be decided by the Panel from Article 24 paragraph 7 of the present Code, which is obliged to issue a decision thereon within three days.

(5) The decision of the Panel referred to in paragraph 4 of this Article may not be subject to appeal.

Bringing Direct Indictment
Article 288

The State Prosecutor shall not conduct an investigation if the gathered information referring to a criminal offence and the previously examined accused person provide sufficient grounds for bringing a direct indictment.

Obtaining Information on the Accused Person
Article 289

(1) Before the investigation is concluded, the State Prosecutor shall obtain information on the accused person referred to in Article 100 paragraph 1 of the present Code if the information are missing or need a check, as well as information on the accused person's previous convictions and, if s/he has still been serving a sentence or another sanction which is connected to deprivation of liberty – the information on his/her behavior while serving the sentence or other sanction. If necessary, the State Prosecutor shall obtain information on the accused person's past, his living conditions as well as on other circumstances concerning his personality where needed. The State Prosecutor may order medical or psychological examinations of the accused person when this is needed in order to supplement information on the defendant's personality.

(2) Where applicable to impose a cumulative sentence comprising the sentences from previous judgments as well, the State Prosecutor shall request certified copies of the final judgments.

Completion of the Investigation
Article 290

(1) The State Prosecutor shall conclude the investigation when s/he finds that the case has been sufficiently clarified and shall make an official annotation thereof.

(2) After the conclusion of the investigation, the State Prosecutor shall, within fifteen days, bring an indictment or discontinue the investigation.

(3) If the investigation has not been completed within six months, the State Prosecutor shall notify thereof the immediately superior prosecutor as to the reasons for not completing the investigation. The immediately superior State Prosecutor shall take such measures as may be necessary to complete the investigation.

(4) The State Prosecutor shall order a n investigation to cease if, during its course or after its completion, s/he finds that:

1) the act the accused person is charged with is not a criminal offense or a criminal offense prosecuted by virtue of office;

2) the act has been granted amnesty, pardon or statute of limitations;

3) there are other obstacles that preclude prosecution;

4) there is no evidence which would back a reasonable suspicion that the accused person has committed a criminal offense.
(5) Within eight days, the order from paragraph 4 of this Article shall be served on the injured party together with an instruction of his/her being entitled to initiate criminal prosecution by bringing a direct indictment within eight days from the date when s/he was served the order.

Chapter XIX
INDICTMENT AND REVIEW OF THE INDICTMENT

Indictment
Article 291

After the investigation is completed, or when pursuant to this Code an indictment without investigation may be brought (Article 288), the proceedings before the court shall be conducted only on the basis of the indictment brought by the State Prosecutor or the subsidiary prosecutor.

Contents of the Indictment
Article 292

(1) The indictment shall contain:

1) the name and surname of the accused person with his/her personal data referred to in Article 100 of the present Code, as well as data about whether and since when s/he has been in detention or whether s/he is at liberty, and if s/he was released from detention before the indictment was brought, for how long s/he had been detained,

2) a description of the act pointing out the legal elements which make it a criminal offense, the time and place of commission of criminal offence, the object upon which and instrument by means of which the criminal offence was committed as well as other circumstances necessary for the precise description of the criminal offence,

3) the statutory title of the criminal offence accompanied by the relevant provisions of the law which according to the Prosecutor's motion are to be applied,

4) an indication of the court before which the main hearing shall be held,

5) proposal of evidence to be presented at the main hearing, including the list of the names and addresses of witnesses and expert witnesses, documents to be read and objects serving as evidence,

6) a statement of reasons describing the state of affairs according to the results of the investigation, indicating the evidence necessary to establish the relevant facts, presenting the accused

person's defense and the Prosecutor's position on the points of defense.
(2) If the accused person is at liberty, it may be proposed in the indictment that s/he be detained or that measures referred to in Article 166 of the present Code be ordered, and if the defendant is already detained, it may be proposed that s/he be released or that other measures referred to in Article 166 of the present Code be ordered. The indictment may contain a proposal to extend the detention of the accused person, in which case the prosecutor must show that other measures cannot serve the purpose for which the detention is ordered.
(3) Several criminal offences or several accused persons may be joined in one indictment only if, pursuant to the provisions of Article 31 of the present Code, a joinder is possible and if a single judgment may be rendered.

Control of the Indictment
Article 293

(1) The indictment shall be submitted to the Panel referred to in Article 24 paragraph 6 of the present Code for control and confirmation.
(2) When the Panel determines that there are errors or discrepancies in the indictment (Article 292) or in the proceedings itself or that a better clarification of the facts of the case is necessary in order to examine the grounds for the indictment, it shall return the indictment ordering the errors to be corrected or that the investigation be supplemented or carried out. The Prosecutor shall be bound, within a term of three days from the day the decision of the Panel is conveyed to him/her, to submit a properly composed indictment or to supplement or conduct an investigation within two months. For justifiable reasons, upon a Prosecutor's request, the Panel may extend this term. If the State Prosecutor fails to comply with this term, s/he shall notify the higher State Prosecutor of the reasons of the failure. If the subsidiary prosecutor fails to comply with this term it shall be deemed that s/he withdraws from prosecution and the proceedings shall be discontinued.
(3) If matters need to be clarified further in order to examine the grounds of the indictment of the subsidiary prosecutor, the Panel shall submit the indictment to the investigating judge to undertake certain evidentiary actions within two months.
(4) If the Panel determines that some other court has jurisdiction over the criminal offence that charges have been brought for, it shall declare that the court to which the indictment was submitted incompetent and after the ruling becomes final it shall refer the case to the competent court.

(5) If the Panel determines that the files contain records or information referred to in Article 211 of the present Code it shall render a ruling that they be excluded from the files. This ruling shall be subject to a separate appeal which shall be decided by a Panel of immediately superior court. After the ruling becomes final the Chair of the Panel referred to in Article 24, paragraph 6 of the present Code shall make sure that the excluded records and information be sealed in a separate cover and be handed over to the investigating judge for the purpose of keeping them apart from other files. The excluded records and information shall not be examined or used in the criminal proceedings.

Discontinuing Proceedings on the Basis of the Control of the Indictment
Article 294

(1) When acting in accordance with Article 293 paragraph 1 of the present Code, the Panel shall decide that there are no grounds for an indictment and shall discontinue the proceedings if it establishes that:

1) the act the defendant is charged with is not a criminal offence,

2) the statute of limitations for the initiation of prosecution has expired or that the offence is covered by amnesty or pardon or that there are other circumstances which permanently exclude prosecution;

3) there is no sufficient evidence supporting reasonable suspicion that the accused person has committed the offence s/he has been charged with.

(2) If the Panel ascertains that the request or the motion of an authorized Prosecutor or an approval for prosecution is lacking, or that there are other circumstances that temporarily bar prosecution, it shall dismiss the indictment by a ruling.

Legal Qualification of the Offence not Binding
Article 295

When rendering a ruling referred to in Article 293, paragraph 3 and Article 294 of the present Code, the Panel shall not be bound by the legal qualification of the offence as stated by the Prosecutor in the indictment.

Confirmation of the Indictment
Article 296

(1) If the Panel does not render any of the rulings referred to in Articles 293 paragraph 4 and Article 294 of the present Code within 8 days, and in complex cases within 15 days after the receipt of the indictment, it shall render a ruling confirming the indictment.

(2) The indictment shall enter into force at the moment a ruling on confirmation is made.
(3) By way of the same ruling the Panel shall decide on motions for a joinder or severance of the proceedings.

Appeal against the Decision of the Panel
Article 297

(1) An appeal may be filed against the Panel decision referred to in Article 292, paragraph 3 of the present Code, and an appeal may be filed by the Prosecutor and the injured party against the decisions referred to in Article 294 of the present Code. Other decisions of the Panel concerning a control of the indictment are not appealable.
(2) If only the injured party filed an appeal against the ruling of the panel and if this appeal is satisfied, it shall be deemed that s/he has assumed prosecution by filing the appeal.

Bringing an Indictment and Detention
Article 298

(1) If an indictment contains a motion to order detention against the accused person or a motion to release him/her, the Panel performing control over the indictment shall decide on it immediately or within 48 hours at the latest.
(2) If the accused person is in detention and the indictment does not contain the motion to release him/her, the Panel referred to in paragraph 1 of this Article shall, by a virtue of an office, and within a term of three days from the day of the receipt of the indictment, examine whether grounds for detention still exist and render a ruling by which a detention shall be extended or vacated. An appeal against this ruling does not stay its execution.

Serving an Indictment on the Accused Person
Article 299

(1) The Panel shall have the indictment served on the accused person who is not detained without delay, and on the defendant who is in detention within a term of 24 hours from the confirmation of the indictment.
(2) If detention is ordered against an accused person by a ruling of the Panel (Article 298), the indictment shall be served on the accused person at the moment of his/her deprivation of liberty, together with the ruling ordering detention.

Chapter XX

AGREEMENT ON THE ADMISSION OF GUILT

Plea Bargaining
Article 300

(1) In the case of criminal proceedings for a criminal offence or concurrence of criminal offences for which a prison sentence of up to 10 years is envisaged, the State Prosecutor or the accused person and his/her defense attorney may propose that an agreement on the admission of guilt be concluded.
(2) When the proposal referred to in paragraph 1 of this Article has been made, the parties and the defense attorney may negotiate the conditions of admitting guilt for the criminal offence or criminal offences with which the accused person is charged.
(3) The agreement on the admission of guilt shall be made in writing and must be signed by the parties and the defense attorney, and can be submitted not later than the first hearing for the main hearing before the first instance court.
(4) If an indictment has not been brought yet, the agreement on the admission of guilt shall be submitted to the Chair of the Panel referred to in Article 24 paragraph 7 of the present Code and after the indictment has been brought, it shall be submitted to the Chair of the Panel.

Subject-matter of the Agreement on the Admission of Guilt
Article 301

(1) By way of an agreement on the admission of guilt, the accused person fully confesses to the criminal offence or concurrence of criminal offences s/he is charged with, whereas the accused person and the State Prosecutor agree on the following:

1) on the penalty and other criminal sanctions which will be imposed on the accused person in accordance with the provisions of the Criminal Code;

2) on the costs of the criminal proceedings and claims under property law;

3) on denouncing the right of appeal by the parties and defense attorney against the decision of the court made on the basis of the agreement on the admission of guilt when the court has fully accepted the agreement.

(2) Agreement on the admission of guilt shall also contain an obligation of the accused person to return the property gain acquired by the commission of the criminal offense as well as objects that have to be forfeited under the Criminal Code within a certain time limit.

(3) The accused person may undertake by means of the agreement on the admission of guilt to perform the obligations referred to in Article 272 paragraph 1 of the present Code, provided that the nature of the obligations is such that it allows the accused person to perform or start performing them before the submission of an agreement on the admission of guilt.

Deliberation on the Agreement on the Admission of Guilt
Article 302

(1) The court shall decide by a ruling whether an agreement on the admission of guilt should be rejected, dismissed or accepted.
(2) If an agreement on the admission of guilt has been submitted before an indictment has been brought, the Chair of the Panel referred to in Article 24 paragraph 6 of the present Code shall decide on it. In such a case, a special clause of the agreement shall contain all the information listed in Article 292 of the present Code.
(3) If an agreement has been submitted after the indictment has been brought, the Chair of the first instance panel shall decide on it.
(4) The Chair of the Panel shall reject an agreement on the admission of guilt submitted after the expiry of the term specified in Article 300 paragraph 3 of the present Code. The decision on rejection shall not be appealable.
(5) The court shall decide on the agreement on the admission of guilt without delay at a hearing attended by the State Prosecutor, accused person and his/her defense attorney, while the injured party and his/her proxy shall be informed of the hearing.
(6) Provisions of Art. 313 to 316 of the present Code shall apply on the holding of a hearing referred to in paragraph 5 of this Article.
(7) The court shall dismiss an agreement on the admission of guilt by way of ruling if the duly summoned accused person does not appear at the hearing. The ruling dismissing the agreement on the admission of guilt cannot be appealed. (8) The court shall accept an agreement on the admission of guilt and render a decision which is in line with the contents of the agreement, if it establishes the following:

1) that the accused person confessed to the criminal offence or offences s/he is charged with voluntarily and consciously, that the confession is in line with the evidence contained in the case files and that there is no possibility that the confession was made as a consequence of an error;
2) that the agreement was concluded in accordance with Article 300 paragraph 1 item 1 of the present Code;
3) that the accused person understands the consequences of the agreement, and particularly that s/he waives the right to a trial

and that s/he may not file an appeal against the decision of the court rendered on the basis of the agreement;

4) that the agreement does not violate the rights of the injured party.
5) that the agreement is in line with the interests of fairness and the sanction serves the purpose for which criminal sanctions are imposed.

(9) If one or more conditions referred to in paragraph 8 of this Article have not been met, the court shall dismiss the agreement on the admission of guilt by a ruling, and the admission of guilt contained in the agreement cannot be used as evidence in criminal proceedings. The agreement and all supporting files shall be destroyed by the Chair of the Panel, of which records shall be made.
(10) The court shall enter into the record the decision accepting, rejecting or dismissing the agreement on the admission of guilt. The decision accepting the agreement on the admission of guilt may be appealed by the injured party, whereas the decision dismissing the agreement may be appealed by the State Prosecutor and by the accused person.
(11) The Panel referred to in Article 24 paragraph 7 of the present Code shall decide on the appeal referred to in paragraph 10 of the present Article, not including the judge who rendered the decision referred to in paragraph 10 of this Article.

Judgment Rendered on Basis of the Agreement on the Admission of Guilt
Article 303

(1) When a ruling on accepting an agreement on the admission of guilt becomes final, the Chair of the Panel shall, without delay, and not later than within three days, render a decision to the effect that the defendant is found guilty in accordance with the accepted agreement.
(2) The decision referred to in paragraph 1 of this Article shall be appealable insofar as it is not in accordance with the concluded agreement.

V THE MAIN HEARING AND JUDGMENT

Chapter XXI
PREPARATIONS FOR THE MAIN HEARING

Scheduling of the Main Hearing
Article 304

(1) The Chair of the Panel shall schedule the day, hour and place of the main hearing by an order.

(2) The Chair of the Panel shall schedule the main hearing at the latest within a term of two months from the day the indictment was confirmed in the court. If within this term no main hearing is scheduled, the Chair of the Panel shall inform the President of the Court of the reasons thereof. The President of the Court shall undertake the measures to schedule the main hearing, as appropriate.
(3) If the Chair of the Panel establishes that the files contain records or information referred to in Article 211 of the present Code, s/he shall render a ruling on their exclusion from the files before the scheduling of the main hearing and when the ruling becomes final, s/he shall seal those information and records in a separate cover and hand them over to the investigating judge for the purpose of keeping them apart from other files.

Preparatory Hearing for the Main Hearing
Article 305

(1) If s/he deems it necessary for the purpose of determining the future course of the main hearing and planning as to which evidence, in what manner and at what time shall be presented at the main hearing, the Chair of the Panel shall, within the period of time specified in Article 304 paragraph 2 of the present Code, summon to a preparatory hearing the parties, defense attorney, injured party, proxy of the injured party, and, as needs be, an expert witness and other persons.
(2) At the hearing referred to in paragraph 1 of this Article, which is held without the presence of the public and of which records are made and signed by the parties and other persons present, the Chair of the Panel shall inform the participants of the future course of the main hearing and ask for their comments thereon and for their proposals as to evidence, and shall invite them to state whether they are available to appear at the main hearing at the time planned by the Chair of the Panel.
(3) At the hearing referred to in paragraph 1 of this Article the parties shall particularly be cautioned that they must, as a rule, make all evidentiary proposals at the preparatory hearing and that if they submit new proposals at the main hearing they shall justify in detail why they did not do so at the preparatory trial, as well as that the court shall reject such proposals unless the parties demonstrate that at the time of the preparatory hearing they did not know or could not have known of certain evidence or facts that should be proven.
(4) Persons referred to in paragraph 1 of this Article may at the preparatory hearing be orally informed as to the time of holding one or more planned hearings of the main hearing, which shall be entered in the records, in which case these persons shall be considered duly summoned to the main hearing.

(5) If a preparatory hearing has been held, the period of time specified in Article 304 paragraph 2 of the present Code shall start to run after the completion of the preparatory hearing.

Place of Holding the Main Hearing
Article 306

(1) The main hearing shall be held in the seat of the court and in the courthouse.
(2) If in certain cases the premises of the courthouse are considered inappropriate for the main hearing, the President of the Court may order the main hearing to be held in another building.
(3) The main hearing may also be held in another location within the jurisdictional territory of the competent court, provided that the President of the Higher Court expresses his/her consent following a substantiated motion from the President of the Court.

Summoning to the Main Hearing
Article 307

(1) The defendant and his/her defense attorney, the Prosecutor and the injured party and their proxies and representatives as well as the interpreter shall be summoned to the main hearing. The proposed witnesses and the expert witnesses shall also be summoned to the main hearing, except those whose examination at the main hearing is considered to be unnecessary according to Chair of Panel's opinion.
(2) With regard to the contents of the summons for the defendant and the witnesses, the provisions of Articles 164 and 112 of the present Code shall be applied. When defense is not mandatory, the defendant shall be instructed in a summons on his/her right to retain a defense attorney, as well as that the main hearing will not be deferred if the defense attorney fails to appear at the main hearing or if the defendant engages a defense attorney at the main hearing.
(3) A summons shall be served on the defendant in such a manner that between the moment it was served and the day of the main hearing there is sufficient time to prepare a defense, but not less than eight days. Upon the request of the defendant or the Prosecutor, and with the consent of the defendant, this term may be shortened.
(4) The injured party who is not summoned to appear as a witness shall be informed in the summons that the main hearing shall be held in his/her absence and that his/her statement on a claim under property law shall be read. The injured party shall be cautioned that his/her failure to appear shall be considered as unwillingness to assume prosecution in the case where the State Prosecutor withdraws the charge.
(5) The subsidiary prosecutor and the private prosecutor shall be cautioned in the summons that if they fail to appear at the main

hearing or fail to send their proxy they shall be deemed to have withdrawn the charge.
(6) The defendant, the witness and expert witness shall be cautioned in the summons about the consequences of failure to appear at the main hearing (Articles 324 and 327).

Obtaining New Evidence
Article 308

(1) Even after the scheduling of the main hearing, the parties and the injured party may request that new witnesses or expert witnesses be summoned to the main hearing and that other new evidence be obtained. The parties must state in their substantiated request which facts are to be established and by which of presented evidence.
(2) The Chair of the Panel may order the obtaining of additional evidence for the main hearing even if there is no motion by the parties.
(3) The parties shall be informed of the decision ordering additional evidence to be obtained before the commencement of the main hearing.

Assignment of Alternate Judges
Article 309

If the main hearing is expected to last for a longer period of time, the Chair of the Panel may request the President of the Court to assign one or two judges to attend the main hearing in order to replace members of the Panel in case of their inability to perform their duties.

Examination of Witnesses and Expert Witnesses outside the Main Hearing
Article 310

(1) If it is known that a witness or expert witness summoned to the main hearing but not yet examined will not be able to appear at the main hearing due to a long-term illness or some other impediments, s/he may be examined in the place where s/he resides.
(2) A witness or expert witness shall be examined and, when necessary, be sworn in by the Chair of the Panel or a judge who sits as a member of the Panel, or s/he shall be examined by the investigating judge of the court in whose jurisdictional territory the witness or expert witness resides.
(3) The parties and the injured party shall be notified about the time and place of the hearing if this is possible due to urgency of the proceedings. If the defendant has been put in detention, the Chair of the Panel shall decide on the need for his/her presence at the hearing. When the parties and the injured party are present at the

hearing they shall have the rights guaranteed in Article 282, paragraph 7 of the present Code.

Postponement of the Main Hearing
Article 311

The Chair of the Panel may, for important reasons and upon the motion of the parties and defense attorney or by virtue of an office, postpone the main hearing by an order for up to 15 days. All summoned persons shall immediately be informed of the postponement.

Withdrawal from Indictment before Commencement of the Main Hearing
Article 312

(1) If the State Prosecutor withdraws from indictment before the commencement of the main hearing, the Chair of the Panel shall notify thereof all persons who were summoned to the main hearing. The injured party shall particularly be instructed of his/her right to assume the prosecution (Articles 59 and 61).
(2) If the injured party does not assume the prosecution, the Chair of the Panel shall discontinue the criminal proceedings by a ruling and shall serve it to the parties and the injured party.
(3) If an injured party acting as a prosecutor has withdrawn from prosecution before the beginning of the main hearing, the Chair of the Panel shall discontinue criminal proceedings and deliver a ruling to such effect to the parties and defense attorney.

Chapter XXII
THE MAIN HEARING

1. PUBLIC NATURE OF THE MAIN HEARING

General Public
Article 313

(1) The main hearing shall be open to the public.
(2) Only adults may attend the main hearing.
(3) Persons attending the main hearing shall not carry arms or dangerous tools, except the guards of the accused person who may be armed.

Exclusion of Public
Article 314

From the opening of the session to the conclusion of the main hearing, the Panel may at any time, by virtue of an office or on the motion of the parties but always after hearing their statements, exclude the public from the entire main hearing or any part of it, if

that is necessary for keeping information secret, protecting public order, preserving morality, protecting the interests of a minor or protecting the personal or family life of the accused person or the injured party.

Limited Exclusion of Public
Article 315

(1) Exclusion of the public shall not relate to parties, the injured party, their representatives and the defense attorney.
(2) The Panel may grant permission that certain officials and scholars, and upon the request of the defendant, his/her spouse or close relatives or his/her extra-marital partner, attend the main hearing *in camera.*
(3) The Chair of the Panel shall admonish the persons attending a main hearing *in camera* that they shall keep secret information learned at the main hearing, and that failure to do so constitutes a criminal offence.

Ruling on the Exclusion of Public
Article 316

(1) The Panel shall decide on the exclusion of the public by a ruling which shall be substantiated and publicly pronounced.
(2) The ruling on the exclusion of the public may be contested only in the appeal against the judgment.

2. DIRECTION OF THE MAIN HEARING

Mandatory Presence at the Mean Hearing
Article 317

(1) The President, members of the Panel, the court clerk and alternate judges shall sit continuously during the main hearing.
(2) It is the duty of the Chair of the Panel to ensure that the Panel is composed according to law and whether reasons exist for the disqualification of members of the Panel and the court clerk (Article 38, Items 1 to 5).

Direction of the Main Hearing
Article 318

(1) The Chair of the Panel shall direct the main hearing, examine the defendant, witnesses and expert witnesses and shall give the floor to the members of the Panel, the parties, the injured party, the proxies, the legal representatives, the defense attorney and expert witnesses.
(2) The parties shall have the right to make objections during the presentment of evidence.

(3) The Chair of the Panel shall decide on the motions and objections of the parties if the Panel does not decide on them.
(4) The Panel shall decide on a motion about which the parties dissent and about concurring motions of the parties which are not accepted by the Chair of the Panel. The Panel shall also decide on an objection to measures undertaken by the Chair of the Panel in directing the main hearing.
(5) The rulings of the Panel shall always be pronounced and entered in the records of the main hearing along with a short statement of reasons.
(6) It shall be the duty of the Chair of the Panel to take care that the case is thoroughly examined, that the truth is established and that everything is eliminated that prolongs the proceedings but does not serve to clarify the matter.

Course of the Main Hearing and Alteration of the Regular Course of the Main Hearing
Article 319

The main hearing shall be carried out in the order prescribed in this Code, but the Panel may order that the regular course of the trial be altered due to special circumstances and particularly due to the number of defendants, the number of criminal offences and the range of evidence.

Protection of Honor of the Court and Participants in the Proceedings
Article 320

(1) The court shall protect its honor, the honor of the parties and other participants in the proceedings from an insult, threat and any other assault.
(2) It shall be the duty of the Chair of the Panel to take care of maintenance of order in the courtroom. S/He may order a search of persons attending the main hearing, and immediately after the opening of the session s/he may admonish the present persons to behave properly and not to disturb the functioning of the court.
(3) The Panel may order that all those attending the main hearing as an audience be removed from the courtroom if the measures for maintaining order prescribed by this Code have proven to be ineffective in ensuring that the main hearing is not disrupted.
(4) Visual and radio recording shall not be allowed at the main hearing unless approved so by the President of the Supreme Court for a particular trial. If recordings at the main hearing are approved, the Panel may for justified reasons order that certain parts of the main hearing not be recorded.

Maintenance of Order and Imposition of Punishment due to Disruption of Order and Procedural Discipline

Article 321

(1) If the defendant, defense attorney, the injured party, proxy, legal representative, witness, expert witness, interpreter or other person attending the main hearing disrupts order, insults the court, parties and other participants to the proceedings or fails to comply with the directions of the Chair of the Panel concerning the maintenance of order, the Chair of the Panel shall warn him/her. If such a warning fails to be successful, the Panel may order the defendant to be removed from the courtroom, while other persons may not only be removed but also punished by a fine in the amount not exceeding € 1.000.

(2) By a decision of the Panel, the defendant may be removed from the courtroom for a certain period of time, and if s/he has already been examined at the main hearing, than for the whole presentation of evidence. Before the presentation of evidence is completed, the Chair of the Panel shall call in the defendant and inform him/her about the course of the main hearing. If the accused continues to disrupt order and offend the dignity of the court, the Panel may remove him/her again from the courtroom. In such a case, the main hearing shall be concluded in the absence of the defendant, and the judgment shall be communicated to him/her by the Chair of the Panel or by a judge, who is the member of the Panel, in the presence of the court clerk.

(3) The Panel may deny further defense or representation at the main hearing to a defense attorney or proxy who after being punished continues to disrupt order, and in such a case the party shall be called on to retain another defense attorney or proxy. If it is impossible for the defendant who has not been examined at the main hearing to do so, or if in the case of mandatory defense it is impossible for the court to assign a new defense attorney without prejudicing the defense, the main hearing shall be recessed or a continuance of the main hearing shall be ordered, and the defense attorney shall be ordered to pay expenses incurred due to the interruption or postponement of the main hearing. If the private prosecutor or subsidiary prosecutor do not retain another proxy, the Panel may decide to continue the main hearing in the absence of a proxy, if it establishes that this would not prejudice the interests of the person whom s/he represents. A ruling thereon shall be entered into the records along with the statement of reasons. An interlocutory appeal may not be filed against this ruling.

(4) If the court removes the subsidiary prosecutor or the private prosecutor or their legal representative from the courtroom, the main hearing shall continue in their absence, but the court shall instruct them that they may retain a proxy.

(5) If the State Prosecutor or a person acting on his/her behalf disrupts order, the Chair of the Panel shall notify the competent State Prosecutor thereof, and s/he may recess the main hearing and request the competent State Prosecutor to appoint other person to represent the prosecution.
(6) After punishing an attorney who disrupts order, the court shall notify about that the Bar Chamber of which s/he is a member.
(7) A ruling imposing punishment is subject to an appellate review, but the Panel may revoke such a ruling.
(8) Other decisions concerning the maintenance of order and the direction of the main hearing are not subject to an appellate review.

3. PREREQUISITES FOR HOLDING A MAIN HEARING

Opening of the Session
Article 322

The Chair of the Panel shall open the session and announce the case of the main hearing and the composition of the Panel. Thereafter, s/he shall determine whether all summoned persons have appeared, and if not, shall check whether the summons were duly served and whether those absent have justified their absence.

Failure of the Prosecutor to Appear at the Main Hearing
Article 323

(1) If the State Prosecutor or person acting on his/her behalf fails to appear at the main hearing scheduled upon an indictment brought by the State Prosecutor, the court shall order a continuance. The Chair of the Panel shall inform the competent State Prosecutor thereof.
(2) If a subsidiary prosecutor or a private prosecutor fails to appear at the main hearing although duly summoned, and their proxy also fails to appear, the Panel shall discontinue the proceedings by a ruling.

Failure of the Defendant to Appear at the Main Hearing and Trying in Absence
Article 324

(1) If a duly summoned defendant fails to appear at the main hearing without justifying his/her absence, the Panel shall issue a warrant to bring him/her to the court by force. If bringing him/her cannot be effected immediately, the court shall decide not to hold the main hearing and that the accused be brought to the court by force for the next session. If the defendant justifies his/her absence before being brought to the court, the Chair of the Panel shall revoke the warrant for apprehension.

(2) The defendant may be tried in absence only if s/he is a fugitive or otherwise unavailable to public authorities and if especially important reasons exist for trying him/her, although s/he is absent.
(3) Upon a motion of the State Prosecutor, the Panel shall render a ruling on the trial in absence of the defendant. The appeal shall not stay the execution of the ruling.

Failure of a Defense Attorney to Appear
Article 325

(1) If a duly summoned defense attorney fails to appear at the main hearing without informing the court of the reason for his/her absence as soon as s/he learns about it, or if the defense attorney leaves the session without authorization, the defendant shall be called on to immediately retain other defense attorney. If the defendant fails to do so, the Panel may decide to hold the main hearing without defense attorney if the defendant agrees with that. If in the case of mandatory defense the defendant cannot immediately retain another defense attorney, or if the court cannot appoint a defense attorney without prejudicing the defense, the court shall order a continuance of the main hearing.
(2) The Panel shall punish by a fine in the amount not exceeding € 1000 a duly summoned defense attorney whose failure to appear causes a postponement of the main hearing and shall order him/her to bear the costs incurred by the postponement of the trial. A ruling thereon accompanied by a brief statement of reasons shall be entered into the trial records.

Holding of the Main Hearing while Expecting Rendering of a Judgment Rejecting the Charge
Article 326

If, pursuant to the provisions of Articles 321, 324 and 325 of the present Code, conditions for a postponement of the main hearing exist due to the absence of the defendant or the defense attorney, the Panel may nevertheless decide to hold the main hearing if, according to the evidence in the file, it is obvious that a judgment rejecting the charge or a ruling referred to in Article 367 of the present Code shall be rendered.

Failure of a Witness and an Expert Witness to Appear
Article 327

(1) If a duly summoned witness or expert witness fails to appear without justified reasons, the Panel may issue a warrant to bring him/her immediately to the court by force.
(2) The main hearing may commence even in the absence of a summoned witness or expert witness, and in such a case, the Panel shall decide in the course of the trial whether the main hearing

should be recessed or deferred due to the absence of the witness or expert witness.
(3) The Panel may punish by a fine in the amount not exceeding € 1.000 a duly summoned witness or expert witness who fails to justify his/her absence and it may order that s/he be brought in by force for the next session. The Panel may revoke its decision on punishment for a justifiable reason.

4. DEFERRAL AND RECESS OF THE MAIN HEARING

Deferral
Article 328

(1) Except for cases envisaged by this Code, the Panel shall render a ruling ordering a deferral of the main hearing if it is necessary to obtain new evidence or if the court determines in the course of the main hearing that the defendant, after committing the criminal offence, has been struck by a temporary mental disorder or if other obstacles to the successful completion of the main hearing exist.
(2) A ruling on the deferral of the main hearing shall, as a rule, state the date and hour of the resumption of the main hearing.
(3) In the ruling referred to in paragraph 2 of this Article, the Panel may order evidence to be obtained which is likely to disappear over a lapse of time.
(4) The ruling referred to in paragraph 2 of this Article is not subject to an appellate review.

Holding the Main Hearing that Has Been Deferred
Article 329

(1) When a deferral of main hearing is ordered, the main hearing must be resumed if the composition of the Panel has changed.
(2) Upon hearing the parties as referred to in paragraph 1 of this Article, the Panel may decide that in such a case the witness or expert witness shall not repeat his/her testimony and that the crime scene investigation shall not be conducted anew, but rather the statements of witnesses and expert witnesses given at the previous main hearing be read or that the records on the crime scene investigation be read.
(3) If the main hearing for which a deferral is ordered is held before the same Panel, it shall be resumed and the President of the Panel shall summarize the course of the previous main hearing, but even in such a case the Panel may order that the main hearing recommence.
(4) If the postponement lasted more than three months, or if the main hearing is held before other Chair of the Panel, it shall be recommenced and all evidence shall be presented anew.

Recess of the Main Hearing
Article 330

(1) Except for cases envisaged by this Code, the Chair of the Panel may order a recess of the main hearing for purposes of rest or at the end of the working day or to obtain certain evidence within a short period of time or for preparation of prosecution or defense.
(2) A recessed main hearing shall always continue before the same Panel.
(3) If the main hearing may not be resumed before the same Panel, or if a recess lasts for more than eight days, it shall be proceeded pursuant to the provisions of Article 329 of the present Code.

5. RECORDS OF THE MAIN HEARING

Manner of Keeping the Records
Article 331

(1) Records shall be kept of the main hearing and it shall contain an essential summary of the entire contents and course of the main hearing.
(2) The Chair of the Panel may order for the entire course of the main hearing or some parts of it to be recorded stenograhically. The stenographic records shall be translated, reviewed and appended to the records within 48 hours.
(3) Regarding audio or audiovisual recording of the course of the main hearing, the provisions of Article 212 of the present Code shall apply.
(4) The Chair of the Panel may, upon a motion of the party or by virtue of an office, order that statements s/he considers particularly important be entered into the records verbatim.
(5) If necessary, and especially if a statement is entered in the records verbatim, the Chair of the Panel may order that this part of the records be read aloud immediately, and it shall always be read if the party, defense attorney or the person whose statement is entered into the records so requires.

Corrections and Insight into the Records
Article 332

(1) The records shall be completed simultaneously with the closing of the session. The records shall be signed by the Chair of the Panel and the court clerk.
(2) The parties and the defense attorney are entitled to review the completed records and its appendices, to make remarks regarding the contents of it as well as to request a correction of the records. After the closing of the session, the parties and defense attorney are entitled to be provided with a copy of the records in an electronic or print form, if they require so.

(3) Corrections of incorrectly written names, numbers and other obvious errors in writing may be ordered by the Chair of the Panel upon a motion of the parties or the person examined or by virtue of an office. Other corrections and supplements of the records may be ordered only by the Panel.
(4) Remarks and motions of the parties regarding the records, as well as corrections and supplements made to the records, shall be noted in the supplement to the records. The reasons for not sustaining certain motions and remarks shall also be noted in the supplement to the records. The Chair of the Panel and the court clerk shall sign the supplement to the records, as well.

Contents of the Records
Article 333

(1) The introduction to the records shall indicate the court before which the main hearing is being held, the time and place of the session, the name and surname of the Chair of the Panel, members of the Panel, court clerk, Prosecutor, defendant and defense attorney, injured party and his/her proxy or legal representative, interpreter, the criminal offence in consideration, and whether the main hearing is being held in public or *in camera*.
(2) The records shall contain in particular the data on the indictment which was read or orally presented at the main hearing and on whether the Prosecutor amended or extended the charge, what motions were filed by the parties, and what decisions were rendered by the Chair of the Panel or the Panel, the evidence presented, whether records or other briefs were read, whether audio or other recordings were reproduced and what remarks the parties made regarding the records or briefs read or the recordings reproduced. If the main hearing was held *in camera*, the records shall indicate that the Chair of the Panel cautioned those present of the consequences of unauthorized disclosure of the classified information they learned about at the main hearing.
(3) The statements of the defendant, witness and expert witness shall be entered into the records in such a manner as to present their substantive content. These statements shall be entered in the records only if they contain changes or supplements to their previous statements. Upon a motion of a party and after the examination of these persons, the Chair of the Panel shall order the records of their previous statement to be read in part or in whole.
(4) Upon a motion of a party, the court shall enter into the records a question and an answer which the Panel rejected as impermissible.

The Pronouncement of the Judgment
Article 334

(1) The records shall state the entire pronouncement of the judgment referred to in Article 379, paragraphs 3, 4 and 5 of the present Code, along with a note on whether the decision was pronounced in public. The pronouncement of the judgment entered in the records of the main hearing is considered to be the original one.
(2) If the court renders a ruling on detention referred to in Article 376) of the present Code, it shall be entered into the records of the main hearing as well.

6. COMMENCEMENT OF THE MAIN HEARING AND EXAMINATION OF THE DEFENDANT

Entering of a Judge and a Panel into the Courtroom
Article 335

(1) All present shall rise while a judge or a Panel is entering or leaving the courtroom.
(2) The parties and other participants in the proceedings shall stand up when addressing the court, except if this is not possible for justifiable reasons or if the examination is differently arranged.

Verifying the Identity of the Defendant and Giving Directions
Article 336

(1) When the Chair of the Panel establishes that all summoned persons have appeared, or when the Panel decides to hold the main hearing in the absence of some of the summoned persons or when the Panel decides to postpone a decision on such issues, the Chair of the Panel shall call on the defendant to give his/her personal data referred to in Article 100, paragraph 1 of the present Code in order to determine his/her identity.
(2) After the identity of the defendant is verified, the Chair of the Panel shall direct the witnesses and the expert witnesses to designated places outside the courtroom where they shall wait until called upon to testify. If necessary, the Chair of the Panel may allow the expert witnesses to remain in the courtroom to observe the course of the main hearing.
(3) If the injured party is present and has not submitted his/her claim under property law yet, the Chair of the Panel shall instruct him/her that s/he may file such a claim in the criminal proceedings and shall instruct him/her of the rights laid down in Article 58 of the present Code.
(4) If the subsidiary prosecutor or private prosecutor has to be examined as a witness they shall not be removed from the courtroom and shall be examined immediately after the defendant has been examined.

(5) The Chair of the Panel may undertake measures necessary to prevent communication of the witnesses, expert witnesses, accused person, subsidiary prosecutor or private prosecutor with each other.

Instructions to the Defendant and the Defense Attorney
Article 337

(1) The Chair of the Panel shall admonish the defendant to follow the course of the main hearing carefully and shall instruct him/her that s/he may present the facts and propose evidence in his/her favor, put questions to co-defendants, witnesses and expert witnesses, give objections and explanations regarding their statements.
(2) The Chair of the Panel shall admonish the parties, the injured party, the proxy of the injured party and the defense attorney that they shall communicate their proposals as to what evidence should be presented immediately, and no later than the termination of the main hearing, and shall particularly admonish them of the provision of Article 399 of the present Code.

Commencement of the Main Hearing and Reading of an Indictment
Article 338

(1) The main hearing shall commence with the reading of the indictment referred to in Article 292, paragraph 1, items 1, 2 and 3 of the present Code or with the reading of a private complaint.
(2) As a rule, the Prosecutor shall read the indictment and the private complaint, but the Chair of the Panel may instead orally present the contents of the indictment brought by the subsidiary prosecutor or the private complaint. The Prosecutor shall be allowed to add his/her statement to the presentation of the Chair of the Panel.
(3) If the injured party is present, s/he may give reasons for his/her claim under property law and if s/he is absent, his/her motion shall be read by the Chair of the Panel.

Clarification of the Indictment and Statement of Guilt
Article 339

(1) After the indictment or the private complaint is read or its contents are orally presented, the Chair of the Panel shall ask the defendant if s/he understands the charge. If the Chair of the Panel is convinced that the defendant has not understood the charge, s/he shall present its contents to him/her once again in a manner that is the easiest for the defendant to understand.
(2) Thereafter, the Chair of the Panel shall call on the defendant to, if s/he wish, enter his/her plea on each account of the charge, to state whether s/he admits that s/he has committed the crime s/he is being charged with and whether s/he pleads guilty, and if s/he pleads

guilty to present all facts and if s/he pleads not guilty to present his/her defense.
(3) The defendant is not bound to enter his/her plea or to present his/her defense.
(4) Co-defendants who have not been examined cannot be present during the examination of the defendant.

Confession
Article 340

(1) If the defendant has pleaded guilty to all counts of the indictment, the Panel may, upon having heard the defendant and after the prosecutor and the defense attorney make a statement thereon, decide not the examine the evidence relating to the criminal offence covered by the indictment and to the guilt of the defendant, but solely the evidence that can affect the decision on a criminal sanction, if it finds:
1) that the confession is clear and complete and that the defendant has explained all the crucial facts which relate to the offence and his/her guilt;
(2) that the confession was made voluntarily, consciously and that the defendant has understood all possible consequences, including the satisfaction of the claims under property law and reimbursement of the expenses of the criminal proceedings;
(3) that the confession is in line with the evidence contained in the indictment and that there is no evidence indicating that the admission of guilt is false.

Examination of the Defendant and Reading of a Previous Statement
Article 341

(1) With regards to the examination of the defendant at the main hearing, the general provisions regulating examination of the accused person referred to in Articles 100 to 106 of the present Code shall apply accordingly.
(2) If the defendant does not answer the questions at all or does not answer to a particular question, his/her previous statement or a part of it shall be read.
(3) If the defendant departs from his/her earlier statement, the earlier statement shall be read to him/her and s/he shall be asked to give reasons for making a different statement and, if needs be, the record of his/her earlier statement shall be read to him/her.
(4) After the examination is completed, the Chair of the Panel shall ask the defendant whether s/he has anything else to add to his/her defense.

Putting Questions to the Defendant
Article 342

(1) After the defendant has presented his/her defense, questions may be put to him/her. The Prosecutor shall put the questions first and then the defense attorney shall put his/her questions. After them the Chair of the Panel and the members of the Panel may put their questions to the defendant with view to eliminating voids, contradictions and incoherence in his/her statement. The injured party, his/her proxy or legal representative, co-defendant and expert witness may directly put questions to the defendant subject to prior approval of the Chair of the Panel. The questions to the defendant, in the same consecutive order referred to in paragraph 1 of this Article may be put several times.

(2) The Chair of the Panel shall forbid a question or an answer to a question already asked if it is considered impermissible (Article 101) or if it is not related to the case. If the Chair of the Panel forbids that a certain question be asked or an answer be given, the parties may request the Panel to decide on it.

Examination of Other Defendants and their Confrontation
Article 343

(1) When the examination of the first defendant is completed, the court shall begin to examine subsequently the others, if any. After each examination, the Chair of the Panel shall inform the examined person of the statements given by the previously examined co-defendants and ask him/her whether s/he has anything to comment. The defendant who was previously examined shall be asked by the Chair of the Panel whether s/he has any comment regarding the statements of the defendant subsequently examined. Each defendant is entitled to put questions to other examined co-defendants.

(2) If the statements of some of the co-defendants differ regarding the same event, the Chair of the Panel may confront the co-defendants.

Temporary Removal of the Defendant due to Refusal of Co-defendant and Witnesses to Make their Statements
Article 344

Exceptionally, the Panel may decide that the defendant be temporarily removed from the courtroom if the co-defendant or witness refuses to give a statement in his/her presence or if the circumstances indicate that they would not tell the truth in the presence of the defendant. Upon the return of the defendant to the courtroom, the statement of the co-defendant or witness shall be read to him/her. The defendant has the right to put questions to the co-defendant or witness and the Chair of the Panel shall ask him/her whether s/he has anything to comment regarding their statements.

Consultation of the Defendant with Defense Attorney
Article 345

In the course of the main hearing the defendant may consult with his/her defense attorney upon the approval of the President of the Panel.

7. EVIDENTIARY PROCEDURE

Presentation of Evidence
Article 346

(1) After the examination of the defendant, the proceedings shall be continued with the presentation of evidence.
(2) Presentation of evidence comprise all facts deemed by the court to be important for a correct adjudication.
(3) The evidence shall be examined in the order determined by the Chair of the Panel. As a rule, the evidence proposed by the Prosecutor shall be presented first, and thereafter the evidence proposed by the defense, and at the end the evidence for which the court by virtue of an office ordered to be presented. If the injured party who is present should testify in the capacity of a witness, his/her examination shall be carried out immediately after the examination of the defendant.
(4) Until the conclusion of the main hearing the parties and the injured party may propose that new facts be clarified and new evidence be obtained and they may repeat motions already rejected by the Chair of the Panel or the Panel.
(5) The Panel may decide to present the evidence that has not been proposed by a motion or if such a motion has been withdrawn.
(6) If a preparatory hearing was held (Article 305 of the present Code), the parties and other persons submitting proposals referred to in paragraph 3 of this Article shall act in accordance with Article 304 paragraph 3 of the present Code, and if the conditions specified in that provision are not met, the Chair of the Panel shall refuse to allow presentation of the proposed evidence.

Examination of Witnesses and Expert Witnesses
Article 347

(1) With regard to the examination of witnesses and expert witnesses at the main hearing, the general provisions regulating their examination shall apply accordingly.
(2) A witness, who has not yet been examined, shall not, as a rule, be present when evidence is presented.
(3) If a witness who is to be examined happens to be minor, the Panel may decide to exclude the public during his/her examination.

(4) If a minor is present at the main hearing in a capacity of the witness or injured party, s/he shall be removed from the courtroom as soon as his/her presence is no longer needed.

Duties of a Witness
Article 348

(1) Before a witness is examined, the Chair of the Panel shall warn him/her of the duty to present to the court everything s/he knows relating to the case and shall caution minors that giving false testimony constitutes a criminal offence.
(2) The Chair of the Panel may call on the witness to take an oath if s/he has not taken an oath during the examination, and if s/he has already taken such an oath during the investigation, the Chair of the Panel may warn him/her about this oath.

Presentation of Findings and Opinions of Expert Witnesses and Duties of Expert Witnesses
Article 349

(1) Before an expert witness is examined, the Chair of the Panel shall admonish him/her to give his/her expert findings and opinion to the best of his/her knowledge and caution him/her that giving false expert findings and opinion constitutes a criminal offence.
(2) The Chair of the Panel may call on the expert witness to take an oath before his/her expert evaluation if s/he has not already given an oath, and if s/he has already taken such an oath, the Chair of the Panel may remind him/her of this oath.
(3) The expert witness shall present orally at the main hearing his/her expert findings and opinion. If before the main hearing the exert witness has put his/her expert findings and opinion in writing, s/he may be allowed to read them aloud, in which case his/her written report shall be added to the records.
(4) Instead of summoning the expert of the institution or body assigned to provide an expert evaluation, the Panel may decide that findings and opinion shall only be read if, because of the nature of expert evaluation a more complete elaboration of their written findings and opinion is not likely to be expected. If it is deemed that this is necessary due to other evidence that has been presented as well as to objections of the parties (Article 358), the Panel may subsequently decide to directly examine experts who gave their expert evaluation.

Putting Questions to Witnesses and Expert Witnesses
Article 350

(1) After the witness or expert witness has been heard, the parties, Chair of the Panel and members of the Panel may put questions to him/her directly, in the consecutive order as determined in Article

342, paragraph 1 of the present Code. The injured party, proxy, legal representative and expert witnesses may ask questions directly, subject to the approval of the Chair of the Panel.
(2) The Chair of the Panel shall forbid a question or reject the answer to the question that has already been asked if the question is impermissible (Article 101), or if it does not relate to the case. If the Chair of the Panel forbids a certain question or an answer, the parties may request that a decision on it is taken by the Panel.

Alteration of Statements of Witnesses and Expert Witnesses and Presentation of Previously Given Statements
Article 351

If during a previous hearing the witness or expert witness stated the facts which s/he is not able to recall, or if s/he changes his/her previous statement, the previous statement shall be presented to him/her or s/he shall be warned of the variance and asked to explain why s/he is not making the same statement as previously and, if necessary, his/her previous statement or part of it shall be read.

Releasing, Temporary Removing and Calling on of Witnesses and Expert Witnesses
Article 352

(1) Witnesses or expert witnesses who have been examined shall remain in the courtroom unless the Chair of the Panel, upon hearing the parties, releases them or order that they be temporarily removed from the courtroom.
(2) Upon a motion of the parties or by virtue of an office, the Chair of the Panel may order that the witnesses or expert witnesses who have been heard be removed from the courtroom and be called on later to be heard again in the presence or absence of other witnesses or expert witnesses.

Examination of Witnesses and Expert Witnesses outside the Courtroom
Article 353

(1) If it becomes known at the main hearing that a summoned witness or expert witness is unable to appear before the court or that his/her appearance involves considerable difficulties, the Panel may, if it deems his/her statement to be important, order that s/he be examined by the Chair of the Panel or judge of the Panel out-of-the main hearing, or that the examination be conducted by an investigating judge of the court within whose jurisdictional territory the witness or expert witness resides.
(2) If it is necessary to carry out a crime scene investigation or reconstruction out-of-main hearing, it shall be carried out by the Chair of the Panel or judge of the Panel.

(3) The parties, defense attorney and the injured party shall always be informed when and where the witness shall be examined and the crime scene investigation or reconstruction be performed, and they shall be instructed of their right to attend these actions. If the defendant is in detention, the Panel shall decide whether his/her presence at these actions is needed. The parties and the injured party who are present at the performance of these actions shall be entitled to rights laid down in Article 282, paragraph 7 of the present Code.

Evidentiary Actions Undertaken by the Investigating Judge Outside the Main Hearing
Article 354

(1) In the course of the main hearing and after the examination of the parties, the Panel may decide to request from an investigating judge to undertake specific actions necessary to clarify certain facts, if undertaking of these actions at the main hearing would be connected with a considerable delay of the proceedings or other considerable difficulties.
(2) When the investigating judge acts upon a request referred to in paragraph 1 of this Article, the provisions related to evidentiary actions shall apply.

Reading of Records of Evidentiary Actions Undertaken Outside the Main Hearing and Insight into Documents and Objects Which Serve as Evidence
Article 355

(1) The records of an out-of-main hearing crime scene investigation, of a search of a dwelling and a person and of seizure of objects, as well as documents, books, files and other briefs of evidentiary value shall be read at the main hearing in order to establish their contents, and if so decided by the Panel, their contents may be orally summarized. If possible, documents of evidentiary value shall be submitted in their original form.
(2) Objects which may serve to clarify the subject matter shall be shown to the defendant in the course of the main hearing and if needed to the witnesses and expert witnesses. If identification of objects is to be carried out at the main hearing, it shall be proceeded pursuant to Article 115 of the present Code.

Exceptions to the Immediate Presentation of Evidence
Article 356

(1) Except for cases specified in this Code, records containing the statements of witnesses, the co-defendants or already convicted participants in the criminal offence as well as records and other documents regarding expert witness findings and opinion may be

read, if ordered so by the decision of the Panel, only in the following cases:

1) if the interrogated person has deceased, developed a disease of the mind or can not be found or if his/her appearance before the court is impossible or significantly complicated due to old age, illness or for other important reasons;

2) if the witnesses or expert witnesses refuse to testify at the main hearing without legal grounds;

3) if the parties consent to reading of the records of the previous hearing of the witnesses or the records of written findings and opinion of the expert witness;

4) if the accused person avails of the right to remain silent during the main hearing, the Panel can decide that the record of his/her statement given in the investigation be read and used as evidence at the main hearing only if the accused person was cautioned as prescribed by Article 100 paragraph 2 of the present Code during his/her examination in the investigation, but the judgment may not be founded solely on this evidence.

(2) Exceptionally, after having heard the parties who do not consent thereto, the Panel may decide that the records of the examination of a witness or expert witness during a previous main hearing be read, although the period of time referred to in Article 329, paragraph 3 has expired, provided that the Panel finds that in connection with other examined evidence it is necessary to learn of the contents of the records or written findings and opinion. After the records or written findings and opinion have been read and objections of the parties heard, the Panel shall, taking into account other examined evidence, decide whether to examine the witness or expert witness directly.

(3) In the case referred to in paragraph 1 of this Article, an audio or audiovisual record of the examination shall always be reproduced if the examination was recorded in such a manner.

(4) Records of the previous examination given by persons granted exemption from the duty to testify (Article 109) may not be read if those persons have not been summoned to the main hearing at all or if, before the first examination at the main hearing, they have availed themselves of their right to refuse to testify. After the presentation of evidence, the Panel shall decide that such records be excluded from the files and be kept separately (Article 211). The Panel shall proceed in the same way with respect to other records and information referred to in Article 211 of the present Code if a decision on their exclusion has not been previously rendered. An interlocutory appeal may be filed against the ruling of the exclusion of the records. After the ruling becomes final, the excluded records and information shall be sealed in a separate cover and handed over to the investigating judge to keep them apart from other files and

they may not be examined or used in the course of the proceedings. The exclusion of records and information must be performed before the file is submitted to the Higher Court upon an appeal filed against the judgment.
(5) The reasons for reading the records shall be stated in the records of the main hearing, and in the course of reading, it shall be stated whether the witness or expert witness has taken an oath.

Reproduction and Tape Recorded Hearing
Article 357

In the cases referred to in Articles 341, 351 and 356 of the present Code as well as in other cases when necessary, the Panel may decide that besides reading the records at the main hearing, a tape recorded hearing be reproduced (Article 212) as well.

Comments of the Parties and the Injured Party
Article 358

After having heard the testimony of each of the witnesses or expert witnesses and after having read each of the records or other documents**,** or reproduced an audio or audiovisual record, the Chair of the Panel shall ask the parties and the injured party if they have any comments to make.

Motions to Supplement the Evidentiary Proceedings
Article 359

(1) After the evidence procedure is completed, the Chair of the Panel shall ask the parties and the injured party whether they have additional evidentiary motions.
(2) If nobody has additional evidentiary motions or if the motion is rejected and the Panel finds that the subject matter has been sufficiently clarified, the Chair of the Panel shall announce that the presentation of evidence is completed.

Amendments of the Charge
Article 360

(1) If the evidence presented at the main hearing indicate that the factual situation as described in the indictment has changed, the prosecutor may orally amend the indictment at the main hearing or may propose a recess of the main hearing for the purpose of the preparation of a new indictment.
(2) In case a new indictment is brought, the court shall ensure that the accused person and defense attorney have enough time to prepare the defense, and if necessary, upon their request, in the case of amended charge, as well.
(3) If the Panel allows a recess of the main hearing for the purpose of the preparation of a new indictment, it shall set the deadline

within which the Prosecutor must bring a new indictment. A copy of the new indictment shall be served on the defendant, but no objection against this indictment is allowed. If the Prosecutor fails to submit the indictment within the term that is set, the Panel shall continue to conduct the main hearing on the grounds of the previous one.

9. CLOSING ARGUMENTS

Sequence of Closing Arguments
Article 361

After the presentation of evidence is completed, the Chair of the Panel shall call on parties, the injured party and defense attorney to present their closing arguments. The Prosecutor presents his/her closing arguments first, followed by the injured party and his/her proxy if s/he has one, defense attorney and eventually the defendant.

Closing Arguments of the Prosecutor
Article 362

(1) In the closing arguments, the Prosecutor shall present his/her assessment of the evidence presented at the main hearing and thereafter shall present his/her conclusions about the facts relevant to the decision and his/her substantiated motion as to culpability of the defendant, the provisions of the Criminal Code and other statutes that should be applied, as well as the aggravating and mitigating circumstances which should be taken into account in sentencing.
(2) The Prosecutor shall propose the punishment in his/her closing arguments, and may also propose a judicial admonition or suspended sentence or security measures in accordance with the Criminal Code.

Closing Arguments of the Injured Party
Article 363

The injured party or his/her proxy may in his/her closing arguments make a statement of reasons to support a claim under property law and point out the evidence regarding the culpability of the defendant.

Closing Arguments of the Defense Attorney
Article 364

(1) In their closing arguments, the defense attorney or the defendant personally shall present the defense and they may comment on the statements made by the Prosecutor, injured party and proxy of the injured party.
(2) Following the defense attorney, the defendant is entitled to present his/her closing argument himself/herself, to state whether

s/he concurs with the defense presented by his/her defense attorney as well as to supplement it.
(3) The Prosecutor, injured party and proxy of the injured party are entitled to respond to the defense while the defense attorney or the defendant are entitled to comment on these responses.
(4) The defendant shall always have the last word.

Closing Arguments and Procedural Discipline
Article 365

(1) There shall be no time limits of the closing arguments of the parties, the defense attorney, injured party and proxy of the injured party**.**
(2) The Chair of the Panel may, upon previously issued warning, interrupt a person who in his/her closing argument offends public order and moral, or offends another person, repeats himself/herself, or elaborates on obviously irrelevant matters. The records of the main hearing must give information on the interruption of the closing argument and the reasons for it.
(3) When more than one person represent the prosecution or more than one defense attorney represent the defense, closing arguments may not be repeated. The representative of the prosecution or defense shall by mutual agreement select the issues about which each shall speak.
(4) After all the closing arguments are completed, the Chair of the Panel shall ask whether anyone wishes to make any further statement.

Closing of the Main Hearing
Article 366

(1) If, after having heard closing arguments from the parties, defense attorney, injured party and proxy of the injured party, the Panel finds that no additional evidence need to be presented, the Chair of the Panel shall declare that the main hearing is closed.
(2) If the Panel decides that additional evidence is to be presented, the Panel shall continue the presentation of evidence and after it is completed it shall again proceed pursuant to Article 361 of the present Code. The Prosecutor, the injured party, proxy of the injured party, the defense attorney and the defendant may only supplement their closing arguments with regard to the evidence subsequently presented.
(3) After having declared the main hearing closed, the Panel shall retire for deliberation and voting for the purpose of reaching a judgment.

10. DISMISSAL OF THE CHARGE

Article 367

In the course of the main hearing or after the closing of the main hearing, the Panel shall dismiss a charge by a ruling if it establishes:

1) that the court lacks subject matter jurisdiction,

2) that the proceedings are conducted without the request of the competent Prosecutor, or the approval of the competent state authority or that the competent state authority has withdrawn the approval given,

3) that there are other circumstances that temporarily bar prosecution.

Chapter XXIII
THE JUDGMENT

1. PRONOUNCEMENT OF THE JUDGMENT

Pronouncement and Announcement of the Judgment
Article 368

(1) Unless the court in the course of deliberation decides that the main hearing should be reopened in order to supplement the proceedings or to clarify specific issues, it shall render a decision.

(2) The decision shall be pronounced and announced in the name of the Republic of Montenegro.

Identity of the Judgment and Charges
Article 369

(1) The judgment shall refer only to the defendant and to the offence the defendant is charged with as specified in the indictment that has been brought, amended or extended at the main hearing.

(2) The court shall not be bound by the Prosecutor's legal qualification of the offence.

Evidence Which Serve as Grounds for the Judgment
Article 370

(1) The court shall ground its decision only on facts and evidence which were directly presented at the main hearing or which are contained in the records or other documents and which were read and presented at the main hearing in accordance with this Code.

(2) The judgment may not be based exclusively on the statement of the witness that is obtained in the manner prescribed in Article 262 of the present Code and read in line with Article 356 paragraph 1 of the present Code.

(3) The court shall conscientiously evaluate every item of evidence individually and its correspondence to the rest of

evidence and, based on such evaluation, it shall reach a conclusion on whether a certain fact has been proved.

2. TYPES OF JUDGMENTS

Judgments on the Merits and Procedural Judgments
Article 371

(1) The court shall render a decision by which the charge shall be rejected or the defendant acquitted of the charge or found guilty.
(2) If the charge contains more than one criminal offence, the decision shall specify whether and for which offence the charge is rejected or whether and for which offence the defendant is acquitted or whether and for which offence the defendant is declared guilty.

Judgment Rejecting the Charges
Article 372

The court shall render a decision rejecting the charges:

1) if the Prosecutor withdrew the charges in the course of the main hearing,

2) if the defendant has already been convicted or acquitted for the same offence by a final judgment, or the charge was rejected by a final judgment or if the proceedings against him/her was discontinued by a final ruling.

3) if the defendant has been exempted from prosecution by an amnesty or pardon, or if the period of limitation for the institution of prosecution has expired, or if there are other circumstances that permanently bar prosecution.

Judgment Acquitting the Defendant
Article 373

The court shall render a decision of acquittal:

1) if the offence for which the defendant is charged with is not a criminal offence according to law,

2) if it has not been proven that the defendant committed the offence s/he is charged with.

Judgment Declaring the Defendant Guilty
Article 374

(1) In a decision declaring the defendant guilty the court shall state:

1) the offence for which the defendant is found guilty, along with a citation of the facts and circumstances that constitute the elements of the criminal offence and those on which the application of a particular provision of the Criminal Code depends,

2) the statutory title of the criminal offence and the provisions of the Criminal Code that were applied,

3) the punishment to which the defendant is sentenced to or released from punishment under the provisions of the Criminal Code,

4) a decision on a suspended sentence,

5) a decision on security measures and forfeiture of property gain,

6) a decision crediting detention or time already served under an earlier sentence, as well as any other deprivation of liberty in connection with the criminal offence.

7) the decision on costs of the criminal proceedings and on the claim under property law.

(2) If the defendant has been fined, the judgment shall indicate the deadline for payment, or way to substitute the fine in case the defendant is not able to pay.

3. PRONOUNCEMENT OF JUDGMENT

Time, Place and Manner of Announcement of the Judgment
Article 375

(1) After the court renders a decision, the Chair of the Panel shall announce it immediately. If the court is unable to render a decision on the same day the main hearing has been completed, it shall postpone the announcement of the decision for not more than three days and shall set the time and place of the announcement. If the decision is not announced within the term of three days from termination of the main hearing, the Chair of the Panel shall inform the President of the Court and state reasons thereof immediately after the term has expired.

(2) The Chair of the Panel shall, in the presence of the parties, their proxies, legal representatives and defense attorney, read out the ordering part of the judgement in open court and briefly state the reasons for such a decision.

(3) The decision shall be announced even if the party, proxy, legal representative or defense attorney is absent. If the defendant is absent, the Panel may order that s/he be orally informed of the judgment by the Chair of the Panel or that the decision only be served on him/her.

(4) If the main hearing was *in camera*, the decision shall always be read out in a public session. The Panel shall decide on whether the announcement of reasons of the decision shall be closed to the public.

(5) All those present shall stand to hear the reading of the judgment.

Detention after Announcement of the Judgment
Article 376

(1) When the court imposes a punishment of imprisonment for a term of less than five years, the Panel shall order detention to the defendant who is at liberty if the reasons referred to in Article 175, paragraph 1, items 1 and 3 of the present Code exist, and it shall do the same for the defendant who was imposed an imprisonment sentence of five years or a more serious one by a first instance court if grounds exist referred to in Article 175, paragraph 1, item 4. The Panel shall vacate detention of the defendant who is in detention if the reasons for which detention was ordered do not exist any longer.

(2) The Panel shall always vacate detention and order that the defendant be released if s/he is acquitted, or the charge is rejected, or if s/he is pronounced guilty but released from punishment or if s/he is sentenced only to a fine, or community service or judicial admonition or suspended sentence is imposed or s/he has already served a sentence due to inclusion of the detention or other deprivation of liberty or the charge has been dismissed (Article 367), save in the case of lack of the subject-matter jurisdiction.

(3) After the announcement of a judgment and until it becomes final, the detention shall be ordered or vacated pursuant to the provision of paragraph 1 of this Article. The decision thereon shall be made by the Panel of the first instance court (Article 24, paragraph 7).

(4) In the cases referred to in paragraphs 1 and 3 of this Article, before rendering a ruling by which a detention is ordered or vacated, the opinion of the State Prosecutor shall be obtained if the proceedings are conducted upon his/her request.

(5) If the defendant is already in detention and the Panel establishes that the grounds for which detention was ordered still exist, or that the grounds referred to in paragraph 1 of this Article exist, it shall render a separate ruling on extension of detention. The Panel shall render the separate ruling when it is necessary to order or vacate detention, as well. An appeal against the ruling does not stay its execution, and the court shall decide on the appeal within a term of three days.

(6) Detention ordered or extended pursuant to the paragraphs 1 to 5 of this Article may last until a judgment becomes final, but at the longest until the term of the sentence imposed by the judgment at first instance expires.

(7) Upon the request of the defendant, who is in detention after being sentenced to imprisonment, the Chair of the Panel may render a ruling on his/her transfer to the penitentiary institution even before the judgment becomes final.

Instructions on the Right to Appeal and Other Warnings
Article 377

(1) After the judgment is pronounced, the Chair of the Panel shall inform the parties of their right to appeal and of their right to respond to an appeal.
(2) If the defendant has been given a suspended sentence, the Chair of the Panel shall admonish him/her of the meaning of a suspended sentence and on the conditions s/he has to adhere to.
(3) The Chair of the Panel shall admonish the parties that they have to report to the court any change of address until the proceedings are concluded.

4. WRITTEN PRODUCTION AND DELIVERY OF THE JUDGMENT

Written Production of the Judgment and Persons to Whom It is Delivered
Article 378

(1) The pronounced judgment shall be issued in writing and dispatched within a month as of its announcement, and in complicated matters and as an exception, within two months. If the judgment is not prepared within these terms, the Chair of the Panel shall inform in writing the President of the Court as to why this has not been done. The President of the Court shall undertake measures in order to have a judgment written as soon as possible.
(2) The judgment shall be signed by the Chair of the Panel and the court clerk.
(3) A certified copy of the judgment shall be delivered to the Prosecutor and pursuant to Article 195 of the present Code to the defendant and defense attorney. If the defendant is in detention, certified copies of the judgment shall be sent within terms specified in paragraph 1 of this Article.
(4) An instruction regarding the right to appeal shall be sent to the defendant, private prosecutor and subsidiary prosecutor.
(5) The court shall send a certified copy of the judgment along with an instruction on the right to appeal to the injured party if s/he is entitled to appeal, to the person who owns an article forfeited under the judgment and to the legal entity against which the forfeiture of property gain was pronounced. A copy of the judgment shall be sent to the injured party who is not entitled to appeal in the case referred to in Article 60, paragraph 2 of the present Code with an instruction on his/her right to petition for reinstatement to the *status quo ante*. The final judgment shall be sent to the injured party if so requested by him/her.
(6) If, by application of the provisions for imposing aggregate sentence for criminal offences committed in concurrence, the court

imposes a sentence taking into account the decisions rendered by other courts, a certified copy of the final judgment shall be sent to these courts.

Contents of the Judgment
Article 379

(1) A written copy of the judgment shall correspond fully to the judgment which is announced. The judgment shall be composed of the introduction, pronouncement and the statement of reasons.
(2) The introduction of the judgment shall contain: the coat of arms of Montenegro, the indication of the court, the statement that the judgment is pronounced in the name of the people of Montenegro, the first name and surname of the Chair and the members of the Panel as well as the name of the court clerk, the first name and surname of the defendant, the criminal offence s/he is charged with, whether s/he was present at the main hearing, the date of the main hearing, whether the main hearing was open to the public, the first name and surname of the Prosecutor, defense attorney, proxy and legal representative present at the main hearing and the date on which the pronounced judgment was announced.
(3) The pronouncement of the judgment shall contain the personal data of the defendant (Article 100, paragraph 1) and the decision declaring the defendant guilty of the offence s/he is charged with or acquitting him/her of the charge, or rejecting the charge against him/her.
(4) If the defendant is found guilty, the pronouncement of the judgment shall contain the necessary information referred to in Article 374 of the present Code, and if s/he is acquitted or the charge is rejected, it shall contain a description of the offence s/he was charged with and the decision on the costs of the criminal proceedings, as well as the decision on the claim under property law if such a claim was submitted.
(5) In the case of concurrence of criminal offences, the court shall indicate in the pronouncement the punishments imposed for each individual offence and afterwards the aggregate punishment imposed for all the offences committed in concurrence.
(6) The statement of the reasons of the judgment shall present the reasons for each count of the judgment.
(7) The court shall clearly and thoroughly indicate which facts and for what reasons are considered to be proven or not proven, with special emphasis on the credibility of contradictory evidence, the reasons for which the motions of the parties were rejected, the reasons for its decision not to examine directly a witness or expert witness but to read the written testimony or expert witness findings (Article 356), the reasons for its decision on legal issues, especially in ascertaining whether the criminal offense was committed and

whether the accused was criminally responsible and in applying specific provisions of the Criminal Code to the defendant and to his/her act, and the reasons for referring the injured party to the civil proceedings.

(8) If the defendant has been sentenced to punishment, the statement of reasons shall indicate the circumstances the court considered in fashioning the punishment. With special emphasize the court shall indicate the reasons for its decision to impose more severe punishment than the punishment prescribed, or for the decision that the punishment be reduced or the defendant be released from punishment, or for the decision that suspended sentence, security measure or forfeiture of property gain be imposed or parole be revoked.

(9) If the defendant is acquitted, the statement of reasons shall particularly indicate the reasons for such a decision referred to in Article 373 of the present Code.

(10) In the statement of reasons for a judgment rejecting the charge and in the statement of reasons for the ruling dismissing the charge, the court shall not assess the main issue, but shall restrict itself solely to the grounds for rejecting the charge or dismissing the charge.

Corrections in the Judgment
Article 380

(1) Errors in names and numbers and other obvious errors in writing and arithmetic, formal defects and disagreements between the written copy of the judgment and the original judgment shall be corrected through a special ruling by the Chair of the Panel, on the motion of the parties or by virtue of an office.

(2) If there is a discrepancy between the written copy of the judgment and the original of the judgment with respect to data referred to in Article 374, paragraph 1, Items 1 to 5 and Item 7 of the present Code, the ruling on the correction shall be delivered to the persons referred to in Article 378 of the present Code. In that case, the period allowed for appeal shall commence from the date of delivery of the ruling against which no interlocutory appeal is allowed.

G. PROCEEDINGS UPON LEGAL REMEDIES

Chapter XXIV
REGULAR LEGAL REMEDIES

1. APPEAL AGAINST FIRST INSTANCE JUDGMENT
1) Right to Appeal

Right to Appeal and Deadline for Appeal
Article 381

(1) An appeal against the first instance judgment may be filed within 15 days from the date when the copy of the decision was delivered.
(2) An appeal filed in due time by an authorized person shall stay the execution of the judgment.

Entities of the Appeal
Article 382

(1) An appeal may be filed by the parties, the defense attorney, the legal representative of the defendant and the injured party.
(2) The spouse of the defendant, direct relative in blood, adoptive parent, adopted child, brother, sister, foster parent and his/her extra marital partner may file an appeal to the benefit of the defendant. In this case, the period allowed for the appeal shall run from the day when the defendant or his/her defense attorney was delivered a copy of the judgment.
(3) The State Prosecutor may file an appeal to the benefit or to the prejudice of the defendant.
(4) The injured party may contest a judgment only regarding the court's decision on the costs of the criminal proceedings, but if the State Prosecutor assumed the prosecution from the subsidiary prosecutor (Article 62, paragraph 2), or if the judgment acquitting the defendant is rendered, the injured party may file an appeal for all the reasons for which the judgment may be appealed (Article 385).
(5) An appeal may be filed by a person from whom the object or the property gain obtained by a criminal offence was forfeited.
(6) The defense attorney and persons referred to in paragraph 2 of this Article may file an appeal without the special authorization of the accused, but not against his/her will, except when the most severe punishment of imprisonment is imposed on the accused.

Waiving and Abandoning an Appeal
Article 383

(1) The defendant may waive the right to appeal only after the judgment was delivered to him/her. The defendant may waive his/her right to appeal even before that if the Prosecutor and the injured party who is entitled to appeal for all the reasons for which

the judgment may be appealed (Article 382, paragraph 4) waive their right to appeal, unless the defendant must serve a prison sentence. The defendant may abandon an appeal already filed until the decision of the second instance court is rendered. The defendant may also abandon an appeal filed by his/her defense attorney or the persons referred to in Article 382, paragraph 2 of the present Code.

(2) The Prosecutor and the injured party may waive the right to appeal from the moment the judgment is announced until the expiry of the term for filing an appeal and they may abandon an appeal that has already been filed until the decision of the second instance court is rendered.

(3) A waiver and abandonment of an appeal may not be revoked.

(4) The defendant may not waive his/her right to appeal or abandon an appeal that has already filed if the most severe prison sentence was pronounced on him/her.

(5) If the defendant, prosecutor and an injured party entitled to file an appeal for reasons that go beyond reimbursement of the trial costs have waived their right of appeal before a written judgment has been made, the justification of the decision shall not contain all the information specified in Article 379 paragraphs 6 to 8 of the present Code, but only a short statement of reasons which have led the court to impose a certain sanction or penalty.

2) Contents of an Appeal

Contents of an Appeal and Removing Shortcomings of an Appeal

Article 384

(1) An appeal shall contain:

1) the indication of the judgment the appeal has been filed against,

2) the ground for contesting the judgment (Article 385),

3) the reasons for the appeal,

4) the motion to vacate or revise the challenged judgment in whole or in part,

5) the signature of the appellant.

(2) If the defendant or other person referred to in Article 382, paragraph 2 of the present Code files an appeal and the defendant does not have a defense attorney or if the appeal is filed by the injured party, subsidiary prosecutor and private prosecutor without a proxy, or the proxy is not from among the members of the Bar, and if the appeal is not composed pursuant to the provisions of paragraph 1 of this Article, the first instance court shall call on the appellant to supplement the appeal within a specified term with a written submission or orally on the records at that court. If the appellant fails to comply with such a summons, the court shall

dismiss the appeal if it does not contain the signature of the appellant, and if the appeal does not contain the indication of the judgment the appeal has been filed against, it shall be dismissed only if it cannot be established to which judgment it relates.
(3) If the appeal is filed by the State Prosecutor, defense attorney or the injured party, injured party as a prosecutor or a private prosecutor who has a proxy and the appeal does not contain the information specified in paragraph 1 of this Article, the court shall dismiss the appeal.
(4) New facts and new evidence may be presented in the appeal, but appellant shall cite the reasons for failing to present them earlier. The defendant who has admitted the grounds for charge in whole (Article 340) may present in the appeal only the new facts and evidence that are relevant to the decision on the punishment. When pointing to new facts, the appellant shall present evidence supporting these facts, and when proposing new evidence, s/he shall state the facts to be proven by this evidence.

3) Grounds for Contesting the Judgment
Article 385

A judgment may be contested on the grounds of:

1) substantive violation of the criminal proceedings provisions,

2) violation of the Criminal Code,

3) the state of the facts being erroneously or incompletely established,

4) the decision on criminal sanctions, forfeiture of property gain, costs of criminal proceedings, claims under property law.

Substantive Violation of the Criminal Proceedings
Article 386

(1) The following constitute a substantive violation of the provisions of criminal procedure:

1) if the court was improperly composed or if a judge who did not participate in the main hearing or who was disqualified by a final decision participated in rendering of a judgment;

2) if the main hearing was held in the absence of a person whose presence at the main hearing was mandatory under law ;

3) if the court violated the provisions of the criminal proceedings related as to whether a charge of an authorized prosecutor or the approval of competent authority existed,

4) if the decision was rendered by the court which could not have rendered the decision due to the lack of subject matter jurisdiction,

5) if the charge has been exceeded as referred to in Article 369, paragraph 1 of the present Code,

6) if the judgment violates the provision of Article 400 of the present Code,

7) if the judgment is grounded on evidence on which according to this Code it cannot be grounded, unless it is obvious, with regard to other evidence, that the same decision could have been rendered without that evidence,

8) if the judgment is incomprehensible, internally contradictory or contradicted to the statement of reasons of the judgment, if the judgment failed to state any reasons or failed to state reasons relating to the relevant facts or if these reasons are entirely unclear or contradictory to a considerable degree or if there is a significant factual contradiction between what has been stated in the statement of reasons of the judgment on the contents of certain documents or records on statements made in the proceedings and the documents or records themselves.

(2) There is also a substantive violation of the provisions of the criminal proceedings if the court, in the preparation of the main hearing or in the course of the main hearing or while rendering the decision fails to apply or incorrectly applies any of the provisions of the present Code, provided that this affected the lawful and proper rendering of the judgment.

Violation of the Criminal Code
Article 387

The following points shall constitute a violation of the Criminal Code:

1) as to whether the act for which the accused is being prosecuted constitutes a criminal offense,

2) as to whether the circumstances exist that preclude criminal prosecution, and especially as to whether the statute of limitation on criminal prosecution applies, or as to whether prosecution is precluded because of amnesty or pardon, or as to whether the cause has already been decided by a final verdict,

3) if a law that could not be applied has been applied to the criminal offense that is the subject matter of the charge,

4) if the decision pronouncing the criminal sanction, forfeiture of property gain or revocation of suspended sentence, has exceeded the authority the court has under the law,

5) if provisions have been violated concerning the crediting of detention, time served and any other deprivation of liberty in connection with the criminal offence.

Erroneously or Incompletely Established Facts
Article 388

(1) The judgment may be contested on the grounds of erroneous or incomplete establishment of facts when the court has established a relevant fact erroneously or has failed to establish such a fact at all.
(2) It shall be taken that the state of facts has been incompletely established when new facts or new evidence so indicate.

Challenging a Judgment with Regard to Decision on Criminal Sanctions, Forfeiture of Property Gain, Costs of the Criminal Proceedings and the Claim under Property Law

Article 389

(1) The judgment or the ruling on judicial admonition may be challenged with regard to a decision on punishment, suspended sentence or judicial admonition when the court, in rendering this decision, does not exceed its statutory power referred to in Article 387, Item 4 of the present Code, but has improperly fashioned the punishment in view of the circumstances that had a bearing on greater or lesser punishment, or when the court has applied or failed to apply provisions relating to the mitigation of punishment, release from punishment, suspended sentence, revocation of a suspended sentence or to a judicial admonition, although grounds for it existed.
(2) A decision on a security measure or forfeiture of property gain may be contested even though there is no violation of law referred to in Article 387, Item 4 of the present Code, if the court rendered this decision incorrectly or did not order a security measure or the forfeiture of property gain although legal conditions for it existed.
(3) A decision on costs of the proceedings may be challenged when it is rendered incorrectly or in breach of statutory provisions.
(4) A decision on the claim under property law may be contested if it has been rendered in breach of statutory provisions.

4) Appellate Proceedings
Filing an Appeal
Article 390

(1) An appeal shall be filed with the court which rendered the decision at first instance in a sufficient number of copies for the court, the opposing party and the defense attorney.
(2) A belated and impermissible appeal as referred to in Articles 404 and 405 of the present Code shall be dismissed by a ruling of the Chair of the first instance Panel.

Response to an Appeal
Article 391

If the appeal has not been dismissed, the first instance court shall deliver a copy of the appeal to the opposing party in accordance with Articles 195 and 196 of the present Code who may within a term of eight days from receiving the copy submit a response to the court. The appeal and the response, together with all the files, shall be delivered by the first instance court to the second instance court.

Proceeding Before a Second Instance Court
Article 392

(1) When the file and an appeal reach the second instance court, the judge rapporteur is assigned immediately in the prescribed manner. If a criminal offence that is automatically prosecuted on the grounds of the charge brought by the State Prosecutor is involved, the judge rapporteur shall deliver the file to the State Prosecutor, who shall review it, submit his/her motion or declare that s/he shall submit the motion at the Panel session and return the file to the court without delay.
(2) When the State Prosecutor returns the file, the Chair of the Panel shall schedule the session of the Panel and notify the State Prosecutor, accused person and his/her defense attorney thereof.
(3) The judge rapporteur may, as appropriate, obtain a report on the violations of the criminal proceedings provisions from the first instance court, and may also, through the same court or through the investigating judge of the court in whose jurisdictional territory the action is to be undertaken, or in other way, check on the allegations stated in the appeal regarding new evidence and new facts or obtain necessary reports or files from other authorities or organizations.
(4) If the judge rapporteur establishes that the files contain records and information referred to in Article 211 of the present Code, s/he shall deliver the files to the first instance court before the session of the second instance Panel is held so that the Chair of the first instance Panel may render a ruling on their exclusion from the file, and when the ruling becomes final s/he shall seal them in a separate cover and hand them over to the investigating judge for the purpose of keeping them apart from other files.

Session of the Panel
Article 393

(1) The defendant and his/her defense attorney, subsidiary prosecutor or private prosecutor who, within the term for appeal or for a reply to an appeal, requested that they be notified of the session or proposed that a hearing be held before the second instance court in accordance with Articles 395 of the present Code

shall be notified of the Panel session. The Chair of the Panel or the Panel may decide that the parties be notified of the Panel session, even if they have not so requested, or that a party who has not requested so, be notified of the Panel session if their presence would be beneficial to the clarification of the case.
(2) If the defendant who is in detention or serving a sentence is notified of the Panel session, the Chair of the Panel shall order that his/her presence be ensured.
(3) The session of the Panel shall begin with the report of the judge rapporteur on the facts of the case. The Panel may request from the parties present at the session necessary explanations as to allegations of the appeal. The parties may propose that certain files be read in order to supplement the report and may, subject to the approval of the Chair of the Panel, give necessary explanations of their positions stated in the appeal or the response to the appeal, without repeating contents of the report.
(4) The session may be held in the absence of the parties who were duly summoned. If the defendant did not report to the court changes of his/her temporary or permanent residence, the Panel session may be held although s/he was not informed of the session.
(5) The court may exclude or restrict the public from the session at which the parties are present in accordance with the conditions set forth in Articles 314 and 315 of the present Code**.**
(6) The records of the Panel session shall be enclosed to the files from the first and second instance court.
(7) The rulings referred to in Articles 404 and 405 of the present Code may be rendered even without the notification of the parties of the Panel session.

Deciding at the Panel Session or at the Hearing
Article 394

(1) The second instance court shall render a decision either at the session of the Panel or at a hearing.
(2) The second instance court shall decide at the session of the Panel whether to hold a hearing, unless otherwise regulated by this Code.

Second Instance Hearing and Summoning of Certain Persons
Article 395

(1) A main hearing before a second instance court shall be held only if it is necessary to present new evidence or to repeat already presented evidence due to erroneous or incomplete establishment of the facts, and if there are justifiable reasons not to refer the case to the first instance court for a retrial.
(2) The following persons shall be summoned for the hearing before a second instance court: the defendant and his/her defense attorney, the Prosecutor, the injured party, the proxies and legal

representatives of the injured party, the subsidiary prosecutor and private prosecutor, as well as those witnesses and expert witnesses the court decided to examine.
(3) If the defendant is in detention, the Chair of the second instance court Panel shall take necessary steps to ensure the accused is present at the hearing.
(4) If the subsidiary prosecutor or the private prosecutor fails to appear at the hearing before the second instance court, the provision of Article 323, paragraph 2 of the present Code shall not be applied.

Sequence of Actions at a Hearing Before a Second Instance Court
Article 396

(1) A hearing before a second instance court shall begin with the report of the judge rapporteur, who shall present the facts of the case without expressing his/her opinion as to whether the appeal is founded.
(2) Upon a motion or by virtue of an office, the judgment or part of the decision which the appeal pertains to shall be read out and, if appropriate, the records of the main hearing shall be read out as well.
(3) After that, the appellant shall be called on to substantiate his/her appeal and then the opposing party shall be called on to reply to him/her. The defendant and his/her defense attorney shall always have the last word.
(4) The parties may present new evidence and facts at the hearing.
(5) A Prosecutor may, with regard to the result of the hearing, withdraw the charge completely or partially or amend the charge to the benefit of the defendant. If the State Prosecutor completely withdraws the charge, the injured party is entitled to the rights set forth in Article 60 of the present Code.

Relevant Application of the Provisions Governing Main Hearing to Proceedings before a Second Instance Court
Article 397

Unless otherwise provided by the provisions of Articles 395 and 396 of the present Code, the provisions regulating the main hearing before a first instance court shall be applied accordingly to the hearing before a second instance court.

5) Scope of Appellate Review of the First Instance Decision

Scope of Reviewing the Judgment
Article 398

(1) A second instance court shall review the part of the decision contested by the appeal, but it shall always review by virtue of an office the following points:

1) as to whether there has been a violation of the provisions of the criminal proceedings set forth in Article 386, paragraph 1 of the present Code,

2) as to whether the Criminal Code has been violated to the detriment of the defendant as referred to in Article 387 of the present Code.

(2) If an appeal filed to the benefit of the defendant does not contain the data referred to in Article 385 of the present Code and the statement of reasons of the appeal, the second instance court shall limit its review to the violations stated in paragraph 1, Items 1 and 2 of this Article, and to the review of the decision on punishment, security measures and the forfeiture of property gain referred to in Article 389 of the present Code.

Limitation on the Right to Invoke an Appellate Reason
Article 399

Reasons referred to in Article 388, paragraph 2 of the present Code can be invoked as grounds for an appeal only if the appellant establishes that at the time of the main hearing s/he did not know of the evidence on which his/her appeal is based or that s/he did propose that certain evidence be presented immediately upon learning of it at the main hearing but his/her proposal was rejected by the Chair of the Panel.

Prohibition of Modification of the Judgment to the Prejudice of the Defendant
Article 400

If an appeal has been filed only in favor of the defendant the decision may not be modified to the detriment of the defendant with regard to a legal qualification of the criminal offence and criminal sanction.

Extended Effect of an Appeal
Article 401

An appeal filed in favor of the defendant due to the state of the facts being erroneously or incompletely established or due to the violation of the Criminal Code shall be deemed to contain an appeal against the decision concerning the criminal sanction and forfeiture of the property gain referred to in Article 389 of the present Code.

Benefit of Coherence (*Beneficium Cohaesionis)*
Article 402

If the second instance court, upon anybody's appeal, finds that the grounds on which the decision was rendered in favor of the defendant, are also of benefit to any of the co-defendants who did not file an appeal or did not file an appeal along the same lines, it shall proceed by virtue of an office as if such an appeal has been filed.

6) Decisions of a Second Instance Court on the Appeal
Article 403

(1) A second instance court may, at the session of the Panel or upon the hearing:
1) dismiss an appeal as belated or inadmissible;
2) reject an appeal as unfounded and confirm the first instance decision;
3) vacate the first instance decision and remand the case to the first instance court for retrial;
4) modify the first instance decision.
(2) The second instance court shall decide a single decision on all the appeals that have been filed against the same decision.

Dismissal of a Belated Appeal
Article 404

A ruling shall be rendered to reject the appeal for being late if it is found that it was filed after the lawful date.

Dismissal of an Inadmissible Appeal
Article 405

A ruling shall be rendered to reject the appeal as inadmissible if it is found that the appeal was filed by a person not authorized to file an appeal or a person who waived the right to appeal, or if it is found that the appeal was abandoned or if after the abandonment the appeal was filed again or the appeal is not allowed under the law.

Rejection of an Appeal
Article 406

When it establishes that the grounds for an appeal and that the violations of law referred to in Article 398**,** paragraph 1 of the present Code do not exist, the second instance court shall by a decision reject the appeal as unfounded and confirm the first instance decision.

Vacating the First Instance Decision and Remanding the Case for Retrial
Article 407

(1) A second instance court shall, when honoring an appeal or by virtue of an office, vacate the first instance decision by a ruling and remand the case for retrial if it establishes a substantial violation of provisions of the criminal proceedings, save in cases referred to in Article 409, paragraph 1 of the present Code or if it considers that, for reasons of the state of the facts being erroneously or incompletely established, a new main hearing should be held before the first instance court.
(2) A second instance court may order that a new main hearing before the first instance court be held before a completely different Panel.
(3) A second instance court may also partially revoke the first instance decision if the certain parts of the decision can be severed out without causing a detriment to a rightful decision.
(4) If the defendant is in detention, a second instance court shall review whether the reasons for detention still exist and render a ruling on the extension or termination of detention. This ruling is not subject to an appellate review.
(5) When a first instance judgment was overruled twice, the second instance court will render a judgment on its own, at a court session or after the held hearing.

Other Decisions of the Second Instance Court
Article 408

(1) If a second instance court establishes that some of the reasons referred to in Article 367 of the present Code exist, it shall vacate the first instance decision by a ruling and dismiss the charge.
(2) If, while reviewing an appeal, the second instance court establishes that it has subject matter jurisdiction over the case as a first instance court, it shall vacate the first instance decision, remand the case to its Panel and notify the first instance court thereof.
(3) If only an appeal in favor of the defendant has been filed, and if it is established that a Higher Court has jurisdiction over the case as a first instance court, the decision may not be vacated only for this reason.

Revision of the First Instance Decision
Article 409

(1) A second instance court shall, when honoring an appeal or by virtue of an office, revise the first instance decision by a decision if it establishes that the decisive facts have been correctly ascertained in the first instance, and that in view of the state of the facts established, a different decision must be rendered when the law is

properly applied, and, according to the state of the facts, also in the case of violations referred to in Article 386, paragraph 1, Items 3, 5 and 6 of the present Code.
(2) If a second instance court establishes that legal conditions for imposing a judicial admonition are met, it shall revise the first instance decision by a ruling and impose a judicial admonition.
(3) If, due to the revision of the first instance decision, conditions are met for ordering or termination of detention pursuant to Article 175, paragraph 1 item 4 and Article 376 paragraph 2 of the present Code, the second instance court shall render a separate ruling thereon against which the appeal shall not be allowed.

Statement of Reasons in a Second Instance Decision
Article 410

(1) In the statement of reasons in its decision or in its ruling, the second instance court shall assess the allegations in the appeal and cite the violations of law which it took into account.
(2) When the first instance decision is vacated due to substantial violations of provisions of the criminal proceedings, the statement of reasons shall indicate which provisions have been violated and what these violations referred to in Article 386 consist of.
(3) When the first instance decision is vacated for the reasons of the state of the facts being erroneously or incompletely established, the failures in establishing the state of the facts shall be stated as well as why new evidence and facts are important for rendering a correct decision, and omissions of the parties that influenced the first instance decision may also be indicated.

Returning the Files to the First Instance Court
Article 411

(1) The second instance court shall return all files to the first instance court, together with sufficient number of copies of its decision required for delivery to the parties and other persons concerned.
(2) The second instance court shall deliver its decision together with the files to the first instance court within a term of four months at the latest, and if the defendant is in detention, at the latest within a term of three months from the day it received the files from that court.

Retrial before the First Instance Court
Article 412

(1) The first instance court to which the case was remanded for trial shall proceed on the basis of the previous indictment. If the first instance decision was partially vacated, the first instance court shall

proceed on the basis of the part of the indictment to which the vacated part of the decision relates.
(2) At the retrial the parties may present new facts and new evidence.
(3) The first instance court shall undertake all procedural actions and consider all disputed issues which were specified by the decision of the second instance court.
(4) When rendering a new decision, the first instance court shall be bound by the prohibition referred to in Article 400 of the present Code.
(5) If the defendant is in detention, the Panel of the first instance court shall proceed pursuant to the provision of Article 179, paragraph 2 of the present Code.

2. APPEAL AGAINST THE SECOND INSTANCE DECISION

Appeal Filed with a Third Instance Judgment
Article 413

(1) An appeal may be filed against the decision of a second instance court with a third instance court only in the following cases:

1) if the second instance court has imposed the most severe punishment of imprisonment or if it has confirmed the first instance decision that imposed such a punishment,

2) if the second instance court, upon conducting the main hearing, has established the state of facts differently from the first instance court and has based its decision on the newly established state of the facts,

3) if the second instance court has revised the decision of acquittal rendered by the first instance court and rendered a decision declaring the defendant guilty.

(2) A third instance court shall decide on the appeal filed against the second instance decision pursuant to the provisions of the present Code regulating the second instance proceedings.
(3) Provisions of Article 402 of the present Code shall be applied to the co-defendant who was not entitled to file an appeal or did not file an appeal against the second instance decision.

3. AN APPEAL AGAINST THE RULING

Admissibility of the Appeal against a Ruling
Article 414

(1) Parties and persons whose rights have been violated may file an appeal against a ruling of the investigating judge and against other rulings of the first instance court, unless the appeal is explicitly declared to be inadmissible by this Code.

(2) Unless otherwise prescribed by this Code, rulings rendered by the Panel prior to and in the course of the investigation are not subject to an appellate review.
(3) The investigating judge shall decide on appeals against the rulings of the State Prosecutor, if otherwise not provided by this Code.
(4) Rulings rendered for the purpose of preparing the main hearing and the decision may be contested solely in an appeal against the decision.
(5) Rulings rendered by the Supreme Court are not subject to an appellate review.

General Deadline for Filing an Appeal
Article 415

(1) An appeal shall be filed with the court that rendered the ruling.
(2) Unless this Code stipulates otherwise, an appeal against the decision shall be filed within three days from the day the ruling was delivered.

Stay of Execution of a Ruling
Article 416

Unless otherwise prescribed by this Code, an appeal taken against a ruling shall stay the execution of the ruling.

Deciding on an Appeal against a Ruling
Article 417

(1) Unless otherwise prescribed by this Code, the second instance court shall decide at a session of the Panel on an appeal against a ruling of the first instance court.
(2) Unless otherwise prescribed by this Code, an appeal against the ruling of an investigating judge shall be decided by the Panel referred to in Article 24, paragraph 7 of the present Code.
(3) When deciding on an appeal, the court may, by a ruling, dismiss the appeal as belated or inadmissible or reject the appeal as unfounded or may honor the appeal and revise or vacate the ruling and, if necessary, remand the case for retrial.
(4) When reviewing an appeal, the court shall by virtue of an office establish whether the first instance court had subject matter jurisdiction or whether the ruling was rendered by an authorized authority.

Appropriate Application of Other Provisions
Article 418

(1) The provisions of Articles 382, 384, 390 and 392, paragraphs 1, 3 and 4 and Articles 400 and 402 of the present Code shall apply accordingly to the proceedings on an appeal against a ruling.

(2) If an appeal is filed against the ruling referred to in Article 471 of the present Code, the State Prosecutor shall be notified of the Panel's session while other persons shall be notified under the conditions referred to in Article 393 of the present Code.
(3) Unless otherwise prescribed by this Code, the court shall deliver its decision on the appeal together with the files to the court that rendered the ruling at the latest within one month from the day it received the files from that court.

Appropriate Application of the Provisions of the present Code
Article 419

Unless otherwise prescribed by this Code, the provisions of Articles 414 and 418 of the present Code shall be applied accordingly to all other rulings rendered pursuant to this Code.

Chapter XXV
EXTRAORDINARY LEGAL REMEDIES

1. REOPENING OF CRIMINAL PROCEEDINGS

General provision
Article 420

A criminal proceeding that was completed with a final ruling or final judgement may be repeated at the petition of an authorized person only in cases and under the conditions provided by this Code.

Reversing a Judgement without a New Trial
(Quasi Criminal Rehearing)
Article 421

(1) A final judgment may be reversed without a criminal rehearing, if:

1) in two or more judgements against the same sentenced person, a number of sentences were imposed with final force and effect, without having applied provisions on fixing a single sentence for concurrent criminal offences;

2) while imposing a single sentence, by means of applying provision on concurrent criminal offences, the sentence already covered in the sentence imposed on basis of provisions on concurrent criminal offences in a previous judgement was considered as determined;

3) the final judgement imposing a single sentence for several criminal offences could partly not be enforced due to amnesty, pardon or for other reasons.

(2) In case referred to in paragraph 1, item 1 of this Article, the court shall reverse the previous judgements by means of a new judgement as regards the decisions on the sentence and impose a single sentence. For the adoption of a new judgement, a first instance court shall be competent that has adjudicated in the matter in which the most severe type of sentence was imposed, and in congenial sentences – the court that has imposed the highest sentence, and if the sentences are equal – the court which was the last to impose a sentence.
(3) In case refererred to in paragraph 1, item 2 of this Article, a court shall reverse its judgment if it has wrongfully considered the sentence already included in a previous judgement while imposing a single sentence.
(4) In case refererred to in paragraph 1, item 3 of this Article, a court that has adjudicated in the first instance shall reverse its previous judgment and impose a new sentence or it shall establish how much of the sentence imposed by means of a previous judgment is to be enforced.
(5) A new judgement shall be rendered by the court sitting in a Panel, at the motion of the State Prosecutor or of the sentenced person, after the opposing party has been heard.
(6) In case referred to in paragraph 1, items 1 and 2 of this Article, if judgements of other courts were considered while imposing a sentence, a certified copy of the new final judgement shall be delivered to those courts as well.

Resuming Proceedings
Article 422

(1) If the indictment was dismissed due to the lack of an authorized prosecutor's request or a required approval of a state authority or some other circumstances existed which temporarily precluded the Prosecutor, criminal proceedings shall be resumed as soon as the reasons for rendering the afore noted decision cease to exist.
(2) If the indictment was dismissed by a final ruling in line with Article 367, paragraph 1, item 1 of the present Code because the court lacked subject-matter jurisdiction, the proceedings shall be resumed before the competent Court upon the request of an authorized prosecutor.

Reopening of the Proceedings Completed by the Ruling
Article 423

(1) If, besides the cases defined in Article 422 of the present Code, the criminal proceedings were suspended by final ruling during the investigation or prior to the commencement of the

trial, the reopening of the criminal proceedings may be granted in line with Article 428, paragraph 3 of the present Code if new evidence is submitted on the basis of which the court may establish that the conditions are met for the reopening of the criminal proceedings.
(2) The criminal proceedings suspended by a final ruling prior to commencement of the trial may be reopened when the State Prosecutor waives the Prosecutor, and the injured party has not assumed Prosecutor, if it is proven that the waiver resulted from the criminal offence of misuse of power by the State Prosecutor. With regards to proving the criminal offence by the State Prosecutor provisions of Article 424, paragraph 2 of the present Code, shall be applied.
(3) If the proceedings are suspended because the subsidiary Prosecutor waived the Prosecutor, or it is considered pursuant to this Code that the subsidiary Prosecutor has waived the Prosecutor, the injured party as a subsidiary Prosecutor cannot request the reopening of the proceedings.

Reopening of the Proceedings in Favour of the Accused Person
Article 424

(1) The criminal proceedings completed by a final judgment may be reopened in favour of the accused person if:

1) the decision is based on a false document or false testimony of a witness, expert witness or interpreter,

2) the decision resulted from a criminal offence committed by the judge or person who undertook evidentiary actions,

3) if new facts or new evidence are presented which on their own or in relation to previous evidence appear likely to bring about the acquittal of the person who was convicted or to his/her conviction on the basis of a less severe criminal law,

4) if a person was tried more than once for the same criminal offence or if more than one person was convicted of the criminal offence which could have been committed only by one person or by some of them,

5) if, in the case of a conviction for a continuing criminal offence or any other offence which under law includes several acts of the same kind or several acts of a different kind, new facts or new evidence are presented indicating that the convicted person did not commit an act covered by the adjudicated offence, provided that these facts are likely to lead to the application of a less severe law or are likely to affect substantially the fixing of punishment,

6) if the European Court of Human Rights or another court established by a ratified international treaty finds that human rights and freedoms have been violated in the course of the

criminal proceedings and that the judgment is based on such violations, provided that the reopening of the proceedings can remedy such violation,

(2) In the cases referred to in paragraph 1, Items 1 and 2 of this Article, it must be proven by a final judgment that the abovementioned persons were found guilty of the cited criminal offences. If the proceedings against these persons cannot be conducted due to their death or circumstances barring prosecution, the facts under paragraph 1, items 1 and 2 of this Article, may be established by presenting other evidence as well.

Reopening of the Proceedings to the Detriment of the Accused Person

Article 425

(1) The criminal proceedings completed by a final judgment may be reopened to the detriment of the accused person if:

1) it is proven that the decision resulted from the criminal offence committed by the judge, or person who undertook evidentiary actions,

2) the decision dismissing the charge was rendered because the State Prosecutor waived the prosecution, and it is proven that this waiver resulted from the criminal offence of misuse of power by the State Prosecutor,

3) new facts are presented or evidence submitted, which alone, or in relation to the previous evidence, can bring about the conviction of the acquitted person or the punishment of the convicted person under more severe criminal law,

(2) Reopening of the criminal procedure to the detriment of the acquitted or convicted person shall not be allowed if more than six months have passed from the day when the Prosecutor learned the new facts or received the new evidence.

Persons Entitled to Submit a Request for Reopening of Criminal Proceedings

Article 426

(1) A request for the reopening of criminal proceedings may be submitted by the parties and defense attorney and, after the death of the convicted person, in his favor, by the State Prosecutor and the persons referred to in Article 382, paragraph 2 of the present Code.

(2) The request for the reopening of the criminal proceedings to the benefit of the accused person may also be submitted after the convicted person has served a sentence, notwithstanding the statute of limitation, amnesty or pardon.

(3) If the court competent to decide on the reopening of the criminal proceedings referred to in Article 427 of the present Code learns that reason for the reopening of the criminal proceedings exists, it shall notify the convicted person or person entitled to submit a request in favor of the convicted person thereon.

Contents of Request and the court Competent to Decide on the Request
Article 427

(1) The Panel (Article 24, paragraph 6) of the court that tried the case at first instance in the previous proceedings shall decide on the request for the reopening of the criminal proceedings.
(2) The request shall state the legal grounds on which the reopening of the trial is sought and what evidence substantiate the facts on which the request is founded. If the request fails to contain this information, the court shall call on the person who submitted the request to supplement his request within a specified term.
(3) If possible, a judge who participated in rendering the decision in the previous proceedings shall not sit as a member of the Panel that decides on the request.

Deciding on a Request for Reopening of Criminal Proceedings
Article 428

(1) The court shall dismiss a request by a ruling if it determines on the basis of the request itself and the file of the previous proceedings that the request was submitted by an unauthorized person, or that there are no legal grounds for reopening of the proceedings, or that the facts and evidence on which the request is founded have already been presented in a previous request for retrial which was rejected by a final Court's ruling, or that the facts and evidence presented are clearly inadequate to allow for the reopening, or that the person submitting the request did not proceed in accordance with Article 427, paragraph 2 of the present Code.
(2) If the court does not dismiss the request, it shall serve a copy of the request to the opposing party who is entitled to reply to the request within a term of eight days. Upon receipt of the reply or when the term for the reply expires, the Chair of the Panel shall order that facts be clarified and evidence be obtained that were called upon in the request and the reply thereto.
(3) After the clarification of facts and obtaining the evidence referred to in paragraph 2 of this Article, the court will decide immediately by a ruling on the request to reopen the proceedings

pursuant to Article 423 of the present Code. In other cases, in regard with the criminal offences that are automatically prosecuted, the Chair of the Panel shall order that the file be delivered to the State Prosecutor, who shall return the file with his opinion without delay or within a term of one month at the latest.

Permission to Reopen the Proceedings
Article 429

(1) When the State Prosecutor returns the files, the court shall, unless it orders that the clarification of facts and the obtaining of evidence referred to in Article 428, paragraph 2 of the present Code be supplemented, either accept the request for the reopening of criminal proceedings or reject the request.
(2) If the court establishes that the reasons for which it allowed the reopening of the proceedings also exist for other co-accused who did not submit the request, it shall proceed by virtue of office as if such a request exists.
(3) In the ruling granting the reopening of the criminal proceedings, the court shall decide that a new main hearing be scheduled immediately, or that the case be referred back for investigation, or it shall order that an investigation be conducted if there was no investigation before.
(4) If the request to reopen a criminal proceedings has been filed on behalf of a convicted person, and the court deems in view of the evidence submitted that in the reopened proceedings the convicted person may receive such a punishment that would call for his/her release once time already served had been credited, or that s/he might be acquitted of the charge, or that the charge might be rejected, it shall order that execution of the decision be postponed or terminated.
(5) When a ruling granting retrial becomes final, the execution of the punishment shall be stayed, but the court shall, upon the motion of the State Prosecutor, order detention if the conditions referred to in Article 175 of the present Code exist.

Rules of the Reopened Proceedings
Article 430

(1) The new proceedings conducted on basis of a ruling granting the criminal rehearing shall be conducted in accordance with the same provisions of the law that have been applied in the previously completed procedure with final force and effect. In the course of the new proceedings, the court shall not be bound by rulings rendered in the previous proceedings.

(2) If the new proceedings are discontinued before the beginning of the trial, the court shall vacate the previous decision by a ruling discontinuing the proceedings.
(3) When the court renders a decision in a new proceedings, it shall pronounce that the previous decision is partially or entirely revoked or that it remains in force. When fixing the punishment pronounced in the new decision, the court shall make allowance for time served under the earlier sentence and if the reopening was permitted only for some of the offences for which the accused person was convicted, the court shall pronounce a new aggregate sentence pursuant to the provisions of the Criminal Code.
(4) If the request for the reopening of the proceedings is submitted in favor of the convicted person, in the new proceedings, the court shall be bound by the prohibition referred to in Article 400 of the present Code.

New Trial in Cases the Trial was Conducted in the Accused Person's Absence

Article 431

(1) The criminal proceedings within which a person has been convicted while absent, pursuant to Article 324, paras. 2 and 3 of the present Code, shall be reopened notwithstanding the requirements prescribed by Article 424 of the present Code if:

1) the convicted person and his/her defense attorney submit a request for the reopening of the proceedings within six months from the day the conditions are met for trial in the presence of the convicted person or

2) a foreign state approves the issuance of the request provided the proceedings is reopened.

(2) Upon the expiry of the term referred to in paragraph 1, item 1 of this Article, the reopening of the proceedings shall be granted solely under the conditions referred to in Art. 424 and 426 of the present Code.

(3) Within the ruling granting the reopening of criminal proceedings in cases referred to in paragraph 1 of this Article, the court shall order that the indictment be served to the convicted person in case it has not been served before, or the court may order the case to be remanded for further inquiry, or to conduct investigation in case it has not been conducted.

(4) When rendering a new decision, in cases referred to in paragraph 1 of this Article, the court shall be bound to proceed pursuant to the prohibition referred to in Article 400 of the present Code.

Relevant Application
Article 432

The provisions of the present Code referring to the criminal rehearing shall be applied accordingly also in the case where a request is submitted to alter a final judicial decision based on a law or other regulation which has ceased to be valid on basis of a decision of the Constitutional Court of Montenegro (hereinafter: Constitutional Court).

2. EXTRAORDINARY MITIGATION OF PUNISHMENT

Permissibility of Request
Article 433

Mitigation of a punishment pronounced by a final judgment which has not been executed or served, shall be permitted when, after the decision becomes final, circumstances appear which did not exist at the time the decision was rendered or did exist but were unknown to the court, provided that they would clearly lead to a less severe sentence.

Persons Authorized to Submit the Request
Article 434

(1) A request for extraordinary mitigation of punishment may be submitted by a State Prosecutor, convicted person and his/her attorney, as well as the persons referred to in Article 382 paragraph 2 of the present Code.
(2) A request for extraordinary mitigation of punishment shall not stay the execution of punishment.

Deciding on a Request for Extraordinary Mitigation of Punishment
Article 435

(1) A Court designated by law shall decide on a request for extraordinary mitigation of punishment.
(2) A request for extraordinary mitigation of punishment shall be submitted to the court which rendered the first instance judgement.
(3) The Chair of the Panel of the First instance court shall dismiss by a ruling a request submitted by an unauthorized person.
(4) The First instance court shall inquire whether grounds for mitigation exist and, after having obtained the opinion of the State Prosecutor if the proceedings was conducted upon his request, it shall deliver the files along with its substantiated motion to the Competent Court to decide on the request for extraordinary mitigation of punishment.

(5) If a criminal offence for which the proceedings were conducted upon the request of the State Prosecutor is involved, the court that decides on a request for extraordinary mitigation of punishment, before rendering a ruling, shall deliver the files to the competent State Prosecutor. The State Prosecutor may submit a written motion to the court.
(6) The court shall reject a request by a ruling if it establishes that legal conditions for extraordinary mitigation of punishment are not met. If the request is honored, the court shall by a judgement revise the final judgement regarding the decision on punishment.

Revocation of Judgement
Article 436

The court shall revoke a judgement by which it honored the request for extraordinary mitigation of punishment if it is proved (Article 425, paragraph 2) that the judgement was based on a false document or the false testimony of a witness or expert witness.

3. REQUEST FOR THE PROTECTION OF LEGALITY

Reasons for Submitting the Request for the Protection of Legality
Article 437

(1) The Supreme State Prosecutor may submit a request for the protection of legality against final judgments and against the judicial proceedings which preceded such final decisions, if the law has been violated.
(2) The Supreme State Prosecutor may submit the request referred to in paragraph 1 of this Article if the European Court of Human Rights or another court established by a ratified international treaty has found that human rights and freedoms have been violated in the course of the criminal proceedings and that the judgment was based on such violations, and the competent court did not allow reopening of the criminal proceedings, or if the violation done by the judgment can be removed through the quashing of the decision or its reversal without retrial.
(3) The Supreme State Prosecutor may also submit the request referred to in paragraph 1 of this Article if a judgment is based on the law or other enactment which has been declared invalid by the Constitutional Court, in which case the request for the protection of legality may be submitted if the competent court did not allow reopening of the criminal proceedings, of if the

violation done by the judgment can be removed through the quashing of the decision or its reversal without retrial.

Accused Person's Proposal for the Submission of the Request for the Protection of Legality

Article 438

(1) The accused person who is sentenced to an unsuspended penalty of imprisonment of a year or more or to juvenile detention and the defense attorney of such an accused person may, within a month of receiving the final judgment, request from the Supreme State Prosecutor's Office, in a written and well-grounded proposal, to file a request for the protection of legality against the final judgment if they deem that the Criminal Code has been violated to the detriment of the accused person by that judgment or if in the criminal proceedings which preceded the judgment a right of the accused person to defense was violated and this violation affected the rendering of a lawful and proper judgment.

(2) The proposal referred on paragraph 1 of this Article may not be submitted by the accused person who has not filed an appeal against the judgment, except where the second instance Court has imposed imprisonment of a year or more instead of exemption from a penalty, court admonition, suspended sentence or a fine, or juvenile detention instead of an educational measure.

(3) The Supreme State Prosecutor shall dismiss by a ruling the proposal referred to in paragraph 1 of this Article if s/he finds there is no reason to file a request for the protection of legality.

(4) The accused person and their attorney may file an appeal with the Supreme Court against the decision referred to in paragraph 3 of this Article within eight days of the receipt of the decision.

(5) The appeal referred to in paragraph 4 of this Article shall be decided by a three-judge Panel of the Supreme Court which shall either dismiss the appeal as groundless and confirm the decision referred to in paragraph 3 of this Article 3 or shall allow the appeal if it establishes that the reasons invoked by the accused person or the defense attorney are likely to exist.

(6) If the Panel of the Supreme Court allows the appeal referred to in paragraph 5 of this Article, it shall proceed as if a request for the protection of legality has been submitted, in which case the Supreme State Prosecutor has both the right and the duty to participate in the proceedings as if it were them who submitted the request for the protection of legality.

The Competent Court
Article 439

(1) The Supreme Court shall decide on the request for the protection of legality.

(2) The request for the protection of legality shall not be allowed against a judgement by which the Supreme Court decided on a request for the protection of legality.

Deciding on the Request for the Protection of Legality
Article 440

(1) The court shall decide on a request for the protection of legality at a Panel session.

(2) Prior to presenting a case for the decision, the judge rapporteur shall deliver a copy of the request to the accused person and his defense attorney, and if necessary, s/he may obtain additional information on the violation of law alleged in the request.

(3) The State Prosecutor shall always be notified of the session.

(4) The Supreme Court may, taking into account the contents of the request, order the execution of a final decision be postponed or stayed.

(5) The Supreme Court shall be bound to deliver its decision along with the files to a First instance court or a Higher Court within four months from the day the request was submitted at the latest.

Confinement to Deciding, Privilege of Cohesion and Ban on *reformatio in peius*
Article 441

(1) When deciding on a request for the protection of legality, the Supreme Court shall confine itself to reviewing those violations that the State Prosecutor set forth in their request.

(2) If the court establishes that the grounds on which it rendered a decision in favor of the convicted person also exist for any co-accused regarding whom a request for the protection of legality was not submitted, it shall proceed by virtue of an office as if such a request was submitted.

(3) When rendering a decision, the court shall be bound by the prohibition referred to in Article 400 of the present Code.

Rejection of the Request for the Protection of Legality
Article 442

The Supreme Court shall by its judgement reject as groundless a request for the protection of legality if it establishes that the

violation of law which the State Prosecutor stated in their request does not exist.

Accepting the Request for the Protection of Legality
Article 443

(1) If the Supreme Court establishes that a request for the protection of legality is well-grounded, it shall render a judgement whereby it shall, according to the nature of the violation of law, either reverse the final decision or vacate in whole or in part both the decisions of the first instance court and the second instance court or only the decision of the Second instance court and remand the case for a new decision or retrial to the first instance court or the second instance court, or it shall confine itself only to establish the violation of law.
(2) If a request for the protection of legality was submitted to the detriment of the accused person and the Supreme Court establishes that it was well grounded, it shall only establish that the violation of law existed, without affecting the final decision.
(3) If, pursuant to the provisions of the present Code, the second instance court was not authorized to remove the violation of law made by the first instance decision or in the court proceedings that preceded it, and the court deciding on the request for the protection of legality which was submitted in favor of the accused person establishes that the request was well grounded and that, in order to remove the violation of law which occurred, the first instance decision should be vacated or reversed, it shall vacate or reverse the decision at second instance as well, although the latter did not violate the law.

Reopening of Criminal Proceedings on a Request for the Protection of Legality
Article 444

If, while the Supreme Court decides on a request for the protection of legality, submitted in favor of the accused person, a grounded suspicion arises as to the accurateness of the relevant facts established in the decision against which the request was submitted, so that it is not possible to decide on the request for the protection of legality, the Supreme Court shall by rendering the judgment in which it decides on the request for the protection of legality vacate such a decision and order that a new main hearing be held before the same Court or another first instance court having subject matter jurisdiction.

Retrial
Article 445

(1) If the final judgement is vacated and the case is remanded for retrial, the previous indictment or the part of it which relates to the vacated part of the judgement shall be taken as the basis for trial.
(2) The court shall be bound to undertake all procedural actions and discuss all issues pointed out by the Supreme Court which decided on the request.
(3) Parties may present new facts and new evidence before the first instance court as well as before the second instance court.
(4) When rendering a new decision, the court shall be bound by the prohibition set forth in Article 400 of the present Code.
(5) If, in addition to the decision of the first instance court, the decision of the second instance court is also vacated, the case shall be remanded to the first instance court through the second instance court.

D. SPECIAL PROVISIONS ON SUMMARY PROCEEDINGS, PROCEEDINGS ON THE IMPOSITION OF CRIMINAL SANCTIONS WITHOUT HOLDING A TRIAL, AND PROCEEDINGS ON THE IMPOSITION OF JUDICIAL ADMONITION

Chapter XXVI
SUMMARY PROCEEDINGS

Cases where Summary Proceedings are Applied
Article 446

In the proceedings for criminal offences punishable by fine or imprisonment for a term not exceeding five years as a principal punishment, the provisions of Articles 447 to 460 of the present Code shall be applied, and unless these provisions provide otherwise, other provisions of the present Code shall be applied accordingly.

Motions to Indict in the Summary Proceedings
Article 447

(1) The criminal proceedings shall be instituted upon the bill of indictment of the State Prosecutor, a subsidiary Prosecutor or upon a private action.

(2) A bill of indictment and a private action shall be submitted in the number of copies as needed for the court and for the accused person.

Detention in the Course of the Summary Proceedings
Article 448

(1) For the purpose of an uninterrupted conduct of the criminal proceedings a detention may be ordered against a person against whom there is a grounded suspicion of having committed an offence if:

1) ili s/he is in hiding or his/her identity cannot be established or if there are other circumstances indicating a risk of flight,

2) if special circumstances indicate that s/he shall complete the attempted criminal offence or perpetrate the criminal offence he threatens to commit.

(2) Before a bill of indictment is submitted, a detention may last only for the time necessary to conduct evidentiary actions, but no longer than eight days. The Panel (Article 24, paragraph 7) shall decide on an appeal against a ruling on detention.

(3) From the moment a bill of indictment is submitted until the conclusion of the trial, the provisions of Article 179 of the present Code shall be applied accordingly in respect with detention, and the Panel shall review every month whether the grounds for detention still exist.

(4) When the accused person is in detention, the court shall proceed as expeditiously as possible.

Instituting Prosecution
Article 449

(1) If a criminal charge was submitted by an injured party and the State Prosecutor fails within a term of one month to prefer a motion to indict, or to notify the injured party of the dismissal of the criminal charge, the injured party shall be entitled to institute a prosecution in the capacity of a prosecutor by submitting a bill of indictment to the court.

(2) If in the case defined in paragraph 1 of this Article, the injured party waives the prosecution, or it is considered according to law that the injured party has waived the prosecution, the State Prosecutor may, irrespective of the conditions prescribed for the reopening of the proceedings, reopen the proceedings, if the criminal charge of the injured party has not been dismissed.

Contents of the Motion to Indict
Article 450

(1) Bill of indictment or a private action shall state: the name and surname of the accused person along with his/her personal data if known, a brief description of the criminal offence, an indication of the court before which the main hearing shall be held, a motion on the evidence to be presented at the main hearing and the motion that the accused person be pronounced guilty and convicted under the law.
(2) A bill of indictment may contain a motion to order detention against the accused person. If the accused person is in detention or was in detention while evidentiary actions were undertaken, the bill of indictment shall state for how long s/he was in detention.
(3) When the State Prosecutor finds that the main hearing is not required he may include in the bill of indictment a proposal that a decision on penalizing, or pronouncing a criminal sanction be issued in accordance with Articles 461 and 462 of the present Code.

Preliminary Examination of the Bill of Indictment
Article 451

(1) When the court receives a bill of indictment or a private action, the judge shall first examine whether the court has jurisdiction to try the case and whether there are grounds for the dismissal of the bill of indictment or the private action.
(2) If the judge does not render any of the rulings referred to in paragraph 1 of this Article, they shall deliver the charge to the accused person and immediately schedule the main hearing. If the main hearing is not scheduled within a term of one month from the day of receipt of the bill of indictment or the private action, the judge shall inform the President of the Court on the reasons thereof, who will undertake measures for the main hearing to be held as soon as possible.

Referring a Case to a Competent Court
Article 452

(1) If the judge establishes that another court has jurisdiction over the case, s/he shall declare him/herself incompetent and refer the case to the competent court after the ruling becomes final, and if s/he establishes that a Higher Court has jurisdiction over the case, s/he shall refer the case to the competent State Prosecutor representing the prosecution before the Higher Court for further action. If the State Prosecutor considers that the court which referred the case to him/her has jurisdiction to try the case,

s/he shall request disposition from the Panel of the court before which he represents the prosecution.
(2) After the trial is scheduled, the court may not by virtue of an office declare the lack of territorial jurisdiction.

Rejection or Dismissal of Bill of Indictment
Article 453

(1) The judge shall reject a bill of indictment or a private action if s/he establishes that the reasons referred to in Article 294, paragraph 1, items 1 and 2 of the present Code exist, and if evidentiary actions have been undertaken, s/he shall do the same for the reason prescribed by item 3 of that Article.
(2) The judge shall dismiss by a ruling a bill of indictment or a private action if s/he establishes that reasons for the discontinuance of proceedings referred to in Article 294, paragraph 2 of the present Code exist.
(3) A ruling with a concise statement of reasons shall be delivered to the State Prosecutor, subsidiary prosecutor or private prosecutor as well as to the accused person.

Summons to the Main Hearing
Article 454

(1) The judge shall summon to the main hearing the accused person and his/her defense attorney, the Prosecutor, the injured party and their legal representatives and proxies, witnesses, expert witnesses and an interpreter, and if necessary s/he shall obtain objects that should serve as evidence at the main hearing.
(2) The summons served on the accused person shall state that s/he may appear at the main hearing with evidence in his/her favor, or that s/he should propose presentation of evidence to the court in a timely manner so that it can be obtained for the purposes of the main hearing. The accused person shall be admonished in the summons that the main hearing will be held even in his/her absence if conditions for such trial are met referred to in Article 457 of the present Code. Along with the summons the accused person shall also be served a copy of the bill of indictment or the private action, and s/he shall be instructed that s/he is entitled to retain the defense attorney, but in the case of a non-mandatory defense, a continuance of the main hearing need not be granted due to absence of the defense attorney from the main hearing or due to the fact that a defense attorney has been engaged at the main hearing.
(3) A summons shall be served on the accused person in such a way as to leave him/her an adequate time between the serving of the summons and the day of the main hearing for the

preparation of the defense, but not less than eight days. Upon the accused person's consent, this term may be shortened.

Place of Holding the Main Hearing
Article 455

The main hearing shall be held in the seat of the court. In urgent cases, particularly when a crime scene investigation should be carried out, or when this is necessary to facilitate the presentation of evidence, the main hearing may, with approval of the President of the Court, also be held at the place of the commission of the criminal offence, or at the place where the crime scene investigation should be carried out if these places fall within the jurisdictional territory of the court in question.

Objection Regarding Jurisdiction as to Place
Article 456

(1) Objection regarding jurisdiction as to place may be raised until the commencement of the main hearing at the latest.
(2) The judge who has undertaken evidentiary actions shall not be disqualified from participation in the main hearing.

Accused Person's Failure to Appear
Article 457

If the accused person fails to appear at the main hearing, even though s/he was duly summoned or if the summons could not be delivered to him/her for failure to report to the court his/her change of address or residence, the court may decide that the main hearing be held in his/her absence as well, under the condition that his/her presence is not necessary and that s/he was interrogated beforehand.

The Course of a Trial
Article 458

(1) The main hearing shall commence with the announcement of the main contents of the bill of indictment or private action. If conceivable, the main hearing shall proceed in an uninterrupted sequence.
(2) In the case of the accused person's complete confession made in the course of the main hearing, the court shall, along with the mutual motion of the parties, recess the presentation of evidence and impose a criminal sanction unless there is a suspicion as to the truthfulness of the confession.
(3) Subject to the conditions referred to in paragraph 2 of this Article, the court may impose the following criminal sanctions:

judicial admonition, suspended sentence, fine, community service and imprisonment for a term not exceeding one year, and along with those - one or several of the following measures: seizure of objects, prohibition to drive a motor vehicle and forfeiture of property gain.
(4) If in the course of the main hearing or after its conclusion the judge establishes that a Higher Court has subject matter jurisdiction to try the case, he shall refer the case to the competent State Prosecutor. If the judge establishes that some other reason referred to in Article 367 of the present Code exists, he shall dismiss the charge by a ruling.
(5) After the conclusion of the main hearing, the court shall pronounce a judgement immediately, and announce it followed by substantial reasons thereof. A written copy of the judgement shall be issued within eight days from the day of its announcement.
(6) An appeal may be filed against the judgement within eight days from the day the copy of the judgement is served.
(7) Immediately upon the announcement of the judgement, the parties and injured party may waive the right to appeal. In such a case a copy of the judgement shall be delivered to the party and injured party only if they so require. If, after the announcement of the judgement, both parties and the injured party waive their right to appeal and if none of them has required that the judgement be served on them, the written copy of the judgement need not contain a statement of reasons.
(8) After the verdict has been pronounced, provisions of Article 376 of the present Code shall be applied accordingly also in regard with vacation of detention.
(9) When the court imposes an imprisonment sentence, it may order detention to the accused person, or prolongation of detention, provided that the grounds referred to in Article 448, paragraph 1 of the present Code exist. In such a case detention may last until the judgment becomes final, but at the longest until the term of the sentence imposed to the accused person by the first instance court expires.

Reconciliation Hearing
Article 459

(1) Before scheduling a main hearing for criminal offences subject to private prosecution, the judge may summon only the private Prosecutor and the accused person to a hearing for the preliminary clarification of the matter if s/he considers it expedient for the prompt termination of the proceedings. Along

with the summons, the accused person shall be served a written copy of the private complaint.
(2) If a reconciliation of the parties and the withdrawal of the private action do not take place, the judge shall take statements from the parties and call on them to submit their motions regarding the evidence to be obtained.
(3) If the judge does not establish that conditions exist for the dismissal of the charge, he shall render a decision with regard to the evidence to be examined at the main hearing and shall, as a rule, immediately schedule the main hearing and notify the parties thereon.
(4) If a private prosecutor and the accused person do not propose evidence neither before appearing in court nor when they appear before the court and the judge considers that obtaining evidence is not necessary and no other reasons exist for the explicit scheduling of the main hearing, he may immediately open the main hearing and after presenting the available evidence, render a decision on the private action. The private prosecutor and the accused person shall explicitly be admonished of this possibility in the summons.
(5) If the private prosecutor fails to appear upon summoning pursuant to paragraph 1 of this Article, the provision of Article 57 of the present Code shall be applied.
(6) If the accused person fails to appear, the provision of Article 457, paragraph 3 of the present Code shall be applied, provided that the judge decided to open the main hearing.

Presence of the Parties at the Session of an Appeal Panel Allowed Only in Exceptional Cases
Article 460

(1) When a second instance court decides on an appeal against a judgement of the first instance court rendered in the summary proceedings, both parties shall be notified of the session of the Panel of the second instance court only if the Chair of the Panel or the Panel considers that the presence of the parties or one of the parties would be advantageous for the clarification of the matter.
(2) Before the session of the Panel the Chair of the Panel shall submit the files to the State Prosecutor if a criminal offence is involved for which the proceedings are carried out upon his request, and the State Prosecutor may submit his written motion.

Chapter XXVII
PROCEEDINGS FOR ISSUANCE OF A PENAL ORDER WITHOUT HOLDING A MAIN HEARING

Penal Order
Article 461

(1) For criminal offences punishable by a fine or the sentence of imprisonment for a maximum term not exceeding three years as a principal punishment, upon a motion of the State Prosecutor, and with the consent of the accused person, the judge may issue a penal order even without holding a main hearing.
(2) The motion for the issuance of a penal order referred to in paragraph 1 of this Article, the State Prosecutor shall submit in a bill of indictment if he finds that it is not necessary to hold a main hearing.
(3) If a property law claim is submitted, an authorized person shall be directed to the civil proceedings.

Pronouncement of Sanctions and Measures
Article 462

(1) By way of the order referred to in Article 461, paragraph 1 of the present Code, the judge may impose a fine, community service, suspended sentence or a court admonition, and one or more of the following measures: seizure of objects and prohibition to drive a motor vehicle.
(2) A fine may be pronounced in the amount not exceeding €3.000, and prohibition to drive a motor vehicle may be pronounced for a maximum term not exceeding two years.

Prerequisites for Issuance and Contents of the Penal Order
Article 463

(1) Prior to determining whether the prerequisites are met for the issuance of the penal order, the judge shall examine the bill of indictment pursuant to Article 451, paragraph 1 and determine whether grounds for proceeding referred to in Art. 452 and 453 of the present Code exist. If the judge determines that prerequisites for the issuance of a penal order are not met, s/he shall submit the charge report to the accused person and schedule the main hearing immediately.
(2) If the judge concurs with the motion of the State Prosecutor, he shall obtain information on previous convictions and, if necessary, on the accused person’s personality, and thereafter he shall, subsequent to the interrogation of the accused person, and with his consent, issue a penal order

(3) The penal order shall state the following: that the State Prosecutor's motion is satisfied; personal data of the accused person; the criminal offence for which he is found guilty with stating the facts and circumstances which constitute elements of the criminal offence and on which depends the application of a particular provision of the Criminal Code; the statutory title of the criminal offence and the provisions of the Criminal Code and other statutes that have been applied; the decision on a fine or measure pronounced as well as the decision on directing the authorized person to the civil proceedings in regard with his property law claim; the statement of reasons for the pronouncement of a punishment or measure.

Serving the Penal Order and the Right to Appeal
Article 464

(1) The penal order shall be delivered to the State Prosecutor and the accused person.
(2) An appeal against the penal order may be filed within a term of eight days. The appeal may be filed only against the decision on punishment and due to the violation of the provisions of Article 461 of the present Code.

SPECIAL PROVISIONS ON IMPOSITION OF JUDICIAL ADMONITION

Imposition of Judicial Admonition
Article 465

(1) Judicial admonition is imposed by a ruling.
(2) Unless otherwise provided in this Chapter, the provisions of the present Code concerning the judgement of conviction shall accordingly apply to the ruling on judicial admonition.

Contents of the Ruling on Judicial Admonition
Article 466

(1) The ruling on judicial admonition, together with essential reasons, shall be announced immediately after the completion of the main hearing. On this occasion, the accused person shall be admonished that a punishment is not imposed on him for the criminal offence he has committed, because it is expected that a judicial admonition shall influence him to the sufficient extent not to commit criminal offences any more. If the ruling on judicial admonition is announced in the accused person's absence, the court shall include such a warning in the statement of reasons. The provisions of Article 458, paragraph 7 of the

present Code shall apply to the waiver of the right to appeal and to the issuance of a written copy of the ruling.
(2) Beside the personal data of the accused person, the pronouncement of the ruling on judicial admonition shall only state that judicial admonition is imposed on the accused person for the offence he is charged with and the statutory title of the criminal offence. The pronouncement of the ruling shall also state the data required and referred to in Article 374, paragraph 1, items 5 and 7 of the present Code.
(3) In the statement of reasons for the ruling, the court shall state the reasons it was guided by in the imposition of judicial admonition

Grounds for Contesting the Ruling on Judicial Admonition
Article 467

(1) The ruling on judicial admonition may be contested for the reasons referred to in Article 385, items 1 to 3 of the present Code, but also because the circumstances which justify the imposition of judicial admonition do not exist.
(2) If the ruling on judicial admonition contains a decision on security measures, on the forfeiture of property gain, on the costs of criminal proceedings, or on a property law claim, this decision may be contested because the Court did not correctly apply the security measure or the forfeiture of property gain, or because it rendered a decision on the costs of criminal proceedings or on a property law claim in violation of the legal provisions.

Violations of Criminal Code
Article 468

Violation of the Criminal Code shall exist in the case of the imposition of judicial admonition if the Criminal Code was violated concerning the issues referred to in Article 387, items 1 to 4 of the present Code.

Second Instance Court's Decision on Appeal
Article 469

(1) If an appeal against the ruling on judicial admonition is filed by the prosecutor to the detriment of the accused person, the second instance court may find the defendant guilty and impose a punishment or suspended sentence if it establishes that the first instance court correctly established the relevant facts, and that upon the correct application of the law punishment or suspended sentence may be imposed.

(2) Upon an appeal against the ruling on judicial admonition, the second instance court may render a ruling dismissing the charge, or a judgement dismissing the charge or acquitting the accused person if it establishes that the first instance court correctly established the relevant facts and that the rendering of one of these decisions is conceivable upon the correct application of the law.
(3) When the conditions referred to in Article 406 of the present Code are met, the second instance court shall render a ruling rejecting the appeal as unfounded and confirm the ruling of the first instance court on judicial admonition.

Part Three

SPECIAL PROCEEDINGS

Chapter XXIX
PROCEEDINGS FOR IMPLEMENTATION OF SECURITY MEASURES, FORFEITURE OF PROPERTY GAIN, CONSFISCATION OF PROPERTY WHOSE LEGAL ORIGIN IS NOT PROVED, AND REVOCATION OF A SUSPENDED SENTENCE

1. PROCEEDINGS FOR IMPLEMENTATION OF SECURITY MEASURES

General provisions on the imposition of the measure of mandatory treatment and confinement to a mental institution, or of out-patient psychiatric treatment
Article 470

(1) If a accused person committed a criminal offence in the state of mental incapacity, the State Prosecutor shall submit to the court a motion to impose a security measure of compulsory psychiatrist treatment and confinement of that perpetrator in a medical institution or motion for compulsory psychiatric treatment of the perpetrator at liberty, if conditions for the imposition of such a measure prescribed by the Criminal Code are fulfilled.
(2) In the case of paragraph 1 of this Article, the accused person who is in detention shall not be released but shall be temporarily placed in an appropriate medical institution or in some other suitable premises until the completion of the proceedings for implementation of the security measures.
(3) After the motion referred to in paragraph 1 of this Article is submitted, the accused person must have a defense attorney.

Imposition of Measures of Mandatory Treatment and Confinement to a Mental Institution, or of Out-Patient Psychiatric Treatment and Discontinuance of Proceedings for the Application of Such Measures

Article 471

(1) The competent court to decide at first instance shall, upon holding the trial, decide on the imposition of the security measures of compulsory psychiatrist treatment and confinement in a medical institution or compulsory psychiatrist treatment out of the institution.

(2) Along with the persons who must be summoned for the trial, physiatrists from the medical institution entrusted to testify on mental capacity of the accused person shall also be summoned as expert witnesses. The accused person shall be summoned if s/he is capable to be present at the trial. The spouse of the accused person, his parents or legal guardian shall be notified of the trial, and with respect to the circumstances, other close relatives as well.

(3) If the Court, upon the presentation of evidence, establishes that the accused person has committed a certain criminal offence and that at the time of the perpetration of the criminal offence s/he was not mentally capable, it shall decide, after interrogation of the summoned persons and upon findings and opinions of the expert witnesses, whether to impose on the accused person a security measure of compulsory psychiatrist treatment and confinement in a medical institution or compulsory psychiatrist treatment out of the institution. When deciding which of these security measures to impose, the court shall not be bound by the motion of the State Prosecutor.

(4) If the Court establishes that the accused person was not mentally incapable when s/he committed the offence, it shall discontinue the proceedings for the implementation of security measures.

(5) Except for the injured party, all other persons referred to in Article 382 of the present Code are entitled to file an appeal against the ruling of the court within eight days from the day the ruling is served.

Imposition of Measures after Amendment of the Motion to Indict at the Trial

Article 472

The security measures referred to in Article 470, paragraph 1 of the present Code, may also be imposed when, at the trial, the State Prosecutor amends the indictment or the bill of indictment by submitting a motion for the imposition of those measures.

Imposition of Punishment and Security Measures
Article 473

When the court imposes a punishment on a person who has committed a criminal offence in the state of diminished mental capacity, it shall also impose a security measure of compulsory psychiatric treatment and confinement in a medical institution by the same judgement, provided that it establishes that the statutory conditions, prescribed by the Criminal Code, are met.

Submitting Final Decision to the Competent Court to Decide on Deprivation of Legal Capacity
Article 474

The final decision by which the security measure of compulsory psychiatric treatment and confinement in a medical institution or compulsory psychiatric treatment out of the institution is imposed from Articles 471 and 473 of the present Code, shall be submitted to a competent court to decide on a deprivation of legal capacity. The juvenile welfare authority shall also be notified of the decision.

Examining Justification of Imposed Measures
Article 475

(1) Every nine months, the Court which imposed a security measure shall, by virtue of an office, review whether the treatment and confinement in a medical institution are still necessary. The medical institution, the juvenile welfare authority and person against whom the security measure is imposed may submit a motion to such court to take decision on discontinuance of the measure. After the State Prosecutor is heard, the Court shall discontinue the application of this measure and order the perpetrator be released, provided that it establishes, upon the opinion of a physician, that a necessity for the treatment and confinement in a medical institution cease to exist, or it may order his/her compulsory treatment out of the institution. If the motion for discontinuance of the measure is dismissed, it may be submitted again within six months from the day the decision has been rendered.
(2) When the perpetrator with diminished mental capacity is being released from the institution in which s/he spent less time than a term of the imprisonment s/he has been sentenced to, the Court shall by a ruling decide whether this person is to serve the rest of the punishment or shall be released on parole. Against the perpetrator who is released on parole, the security

measure of compulsory psychiatric treatment out of the institution may be imposed if the statutory conditions are met.
(3) After the State Prosecutor is being heard and by virtue of an office or upon a motion of the medical institution in which the accused person is treated or should have been treated, the Court may impose on the perpetrator against whom the security measure of compulsory psychiatric treatment out of the institution is applied the security measure of compulsory psychiatric treatment and confinement in a medical institution, provided that it establishes that the perpetrator fails to undergo the treatment or discontinues it willfully, or that notwithstanding the treatment s/he still poses a danger for other people so that his compulsory treatment and confinement in a medical institution is needed. If necessary, before it renders a decision, the Court shall also obtain an opinion of the psychiatrist and interrogate the accused person, provided that his/her condition allows for such interrogation.
(4) The Court shall render the decisions referred to in paragraphs 1, 2 and 3 of this Article at the Panel session referred to in Article 24, paragraph 7 of the present Code. The State Prosecutor and the defense attorney shall be notified of the Panel session. Before rendering a decision, if necessary and possible, the perpetrator shall be interrogated.

Proceedings in Case of Motion to Impose Security Measure of Compulsory Treatment of Alcohol Addiction and Security Measure of Compulsory Treatment of Drug Addiction

Article 476

(1) After it obtains the findings and opinion of an expert witness, the Court shall decide on the imposition of the security measure of compulsory treatment of alcohol and drug addiction. The expert witness shall also give a statement regarding possibilities for the accused person's treatment.
(2) If the compulsory treatment out of the institution is ordered against the perpetrator by a suspended sentence, and if he fails to undergo the treatment or discontinues it by his own decision, after having heard the State Prosecutor and the perpetrator, the Court may by virtue of an office or upon a motion of the institution in which the perpetrator is treated or should have been treated, order the revocation of the suspended sentence or the enforcement of the security measure of compulsory treatment of alcohol and drug addicts in a medical institution or other specialized institution. If deems necessary, before rendering a decision, the Court shall obtain an opinion of the expert witness.

Proceedings for the Imposition of the Security Measure of Seizure of Objects

Article 477

(1) Objects which must be seized according to the Criminal Code shall also be seized when the criminal proceedings are not terminated with a conviction, provided that this is required by considerations of public safety or by ethical reasons.
(2) The authority before which proceedings has been held at the time it was terminated or discontinued shall render a separate ruling thereon.
(3) The ruling on the seizure of objects referred to in paragraph 1 of this Article shall also be rendered by the Panel referred in Article 24 paragraph 7 of the present Code when a conviction does not include such a decision.
(4) A certified copy of the decision on the seizure of objects shall be delivered to the owner of the object if he is known.
(5) The owner of the object is entitled to file an appeal against the decision referred to in paragraphs 2 and 3 of this Article if he considers that there is no legal ground for the seizure of the object. If the ruling referred to in paragraph 2 of this Article is not rendered by a court, the Panel of the competent court referred to in Article 24, paragraph 7 to try at first instance shall decide upon the appeal. If the decision on the seizure is made by the Panel of the first instance court referred to in Article 24 paragraph 7 concerning the case referred to in paragraph 3 of this Article, the appeal shall be decided by the Panel of the immediately superior Court.

2. PROCEEDINGS FOR THE CONFISCATION OF PROPERTY GAIN

General Provisions on Confiscation of Property Gain

Article 478

(1) Property gain obtained as a result of the commission of a criminal offence shall be established as such in the investigatory proceedings, preliminary proceedings and at the trial by virtue of an office.
(2) In the course of the investigatory proceedings, preliminary proceedings and at the trial, the court and other authorities shall obtain evidence and investigate circumstances that are relevant to the establishment of property gain.
(3) If the injured party submits a property law claim regarding the recovery of items acquired in consequence of the commission of a criminal offence or regarding the amount which corresponds to the

value of the items, the property gain shall only be established for the part which exceeds the property law claim.

Confiscation of Property Gain from Third Persons who have been Transferred the Property Gain

Article 479

(1) When the confiscation of property gain obtained as result of the commission of a criminal offence from other persons is being considered, the person to whom the property gain was transferred or the person for whom it was obtained, or the representative of the legal entity shall be summoned for interrogation in the pre-trial proceedings and at the trial. The summons shall contain an admonition that the proceedings will be held even in his/her absence.

(2) The representative of the legal entity shall be heard at the trial after the interrogation of the accused person. The court shall proceed in the same manner regarding other person referred to in paragraph 1 of this Article, unless s/he is summoned as a witness.

(3) The person to whom the property gain was transferred or the person for whom it was obtained or the representative of the legal entity is entitled to propose presentation of evidence concerning the establishment of the property gain and, upon the authorization of the Chair of the Panel, to pose questions to the accused person, witnesses and expert witnesses.

(4) Exclusion of the public from the trial shall not relate to the person to whom the property gain was transferred or for whom it was obtained or the representative of the legal entity.

(5) If the Court establishes that the confiscation of property gain comes into consideration while the trial is in progress, it shall recess the trial and summon the person to whom the property gain was transferred or for whom it was obtained, or the representative of the legal entity.

Determining the Amount of Property Gain by Free Evaluation

Article 480

The amount of property gain shall be determined at the discretion of the court if its assessment entails disproportionate difficulties or a significant delay in the proceedings.

Imposing Provisional Security Measures

Article 481

When the conditions for the confiscation of property gain are met**,** the court shall, by virtue of an office or upon the proposal of the

State Prosecutor, impose provisional security measures, pursuant to the provisions governing the enforcement proceedings. In such a case, the provisions of Article 243 of the present Code shall accordingly apply.

Imposing Confiscation of Property Gain
Article 482

(1) Court may order the confiscation of property gain by a conviction, by a penal order issued without trial, by a ruling on a judicial admonition or by a ruling on the application of a corrective measure, as well as by a ruling on the imposition of a security measure of compulsory psychiatric treatment and confinement in a medical institution, or compulsory psychiatric treatment out of the institution.
(2) In the pronouncement of the judgement or the ruling the court shall state which valuable item, money amount, or other property gain is to be confiscated.
(3) A certified copy of the judgement or the ruling shall also be delivered to the person to whom the property gain was transferred or for whom it was obtained, as well as to the representative of the legal entity, provided that the court orders the confiscation of property gain from such a person or a legal entity.

Request for Retrial Regarding the Confiscation of Property Gain
Article 483

The person referred to in Article 479 of the present Code may submit a request for retrial regarding the decision on the confiscation of property gain.

Appropriate Application of Provisions Regulating an Appeal
Article 484

The provisions of Article 383, paragraphs 2 and 3 and Articles 391 and 395 of the present Code shall be applied accordingly in regard to an appeal filed against the decision on the confiscation of property gain.

Appropriate Application of other Provisions of the present Code
Article 485

Unless otherwise provided by the provisions of this Chapter, in regard with the implementation of security measures or the confiscation of property gain, other provisions of the present Code shall be applied accordingly.

3. CONFISCATION OF PROPERTY WHOSE LEGAL ORIGIN HAS NOT BEEN PROVED

Request for Confiscation of Property and Contents of Request
Article 486

(1) After the finality of the judgement finding the accused person guilty of the criminal offence for which the Criminal Code prescribes the possibility of extended confiscation of property from the convicted person, his/her legal successor or the person to whom the convicted person has transferred the property and who cannot prove the legality of its origin, the State Prosecutor shall, at the latest within one year, submit the request for the confiscation of the property of the convicted person, his/her legal successor or a person to whom the convicted person has transferred the property for which there is no evidence on the legality of its origin.

(2) The request from paragraph 1 of this Article shall contain the data on the convicted person, his/her legal successor or the person to whom the convicted person has transferred the property, indication of property to be confiscated, evidence on the property owned by the convicted person, his/her legal successor or the person to whom the property has been transferred, and on their legal proceeds, as well as circumstances indicating the obvious discrepancy between the total property and the legal proceeds of the convicted person, his/her legal successor and the person to whom the convicted person has transferred the property.

(3) The request from paragraph 1 of this Article shall be served without delay to the convicted person, his/her legal successor or the person to whom the convicted person has transferred the property, along with a warning stating that s/he shall prove the legal origin of the property at the Panel session referred to in Article 24, paragraph 7 of the present Code, as well as that the property will be confiscated if its legal origin has not been proved.

Deciding on the Request for the Confiscation of Property
Article 487

(1) Pursuant to Article 314 of the present Code, the Panel referred to in Article 24, paragraph 7 of the present Code shall decide on the request referred to in Article 486 of the present Code at the session from which the public may be excluded.

(2) The following shall be invited to the Panel session: State Prosecutor, convicted person, his/her legal successor or a person

to whom the convicted person has transferred his/her property, and his/her proxy.
(3) If the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property does not prove by plausible documents or in absence of plausible documents, in some other manner, the legal origin of the property, the Panel shall issue a ruling on the confiscation of the property.
(4) If the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property proves by plausible documents or in some other manner the legality of the property origin or of the part of property, the Panel shall issue a ruling on total or partial dismissal of the request referred to in Article 486, paragraph 1 of the present Code.
(5) The panel referred to in Article 24, paragraph 7 of the present Code shall dismiss the request if it was submitted after the expiry of the deadline referred to in Article 486, paragraph 1 of the present Code.

Contents of the Request on Confiscation of Property
Article 488

(1) The ruling referred to in Article 487, paragraph 3 of the present Code shall contain the data on the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property, on the property being confiscated, and the decision on the costs of safekeeping and administration of the provisionally seized property referred to in Article 96 of the present Code. If the confiscation of the property would bring into question the sustenance of the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property or the persons who they are legally obliged to support, the ruling shall indicate that a portion of the property is exempted from confiscation.
(2) The ruling on property confiscation shall be delivered to the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property, his/her proxy, State Prosecutor, and the state authority which, pursuant to the law, shall administrate the confiscated property.

Appeal against the Ruling on Confiscation of Property
Article 489

(1) Convicted person, his/her legal successor of the person to whom the convicted person has transferred his/her property and his/her proxy may appeal against the ruling referred to in Article 487, paragraph 3 of the present Code within eight days; the State

Prosecutor may appeal against the ruling referred to in Article 487, paragraph 4 of the present Code.
(2) An immediately superior court shall decide on the appeal referred to in paragraph 1 of this Article.

4. PROCEEDINGS FOR REVOCATION OF SUSPENDED SENTENCE

Article 490

(1) When a court orders in a suspended sentence that the punishment will be imposed if the convicted person does not restore property gain, does not make compensation for damages or does not fulfill other obligations, and if the convicted person fails to fulfill these obligations within a specified term, the court which tried the case at first instance shall conduct the proceedings for the revocation of the suspended sentence upon a motion of the authorized prosecutor or by virtue of an office.
(2) The judge assigned to the case shall interrogate the convicted person, if he is available, and conduct the necessary actions for the purpose of establishing facts and obtaining evidence important for the decision.
(3) Thereafter, the Chair of the Panel shall schedule a session of the Panel and notify the prosecutor, the convicted person and the injured party thereon. If the duly notified parties and the injured party fail to appear, this shall not prevent the session of the Panel from being held.
(4) If the court establishes that the convicted person has failed to fulfill an obligation ordered by the judgement, the court shall render a judgement revoking the suspended sentence and ordering the punishment determined in the suspended sentence to be imposed, or ordering a new term within which the obligation must be fulfilled, or discharging the convicted person of obligation or replacing the obligation with other obligation. If the court determines that there are no grounds for rendering any of these decisions, it shall by a ruling discontinue the proceedings for the revocation of the suspended sentence.
(5) An appeal against the judgment referred to in paragraph 4 of this Article may also be filed by the injured if his/her interests have been affected by the judgment.

Chapter XXX
PROCEEDINGS FOR REHABILITATION, FOR TERMINATION OF LEGAL CONSEQUENCES OF CONVICTION AND SECURITY MEASURES

Rendering a Ruling on Legal Rehabilitation by Virtue of an Office
Article 491

(1) When, under the Criminal Code, rehabilitation occurs by the lapse of a certain period of time and provided that the convicted person within that period does not commit a new criminal offence the authority in charge of keeping criminal records shall by virtue of an office render a ruling on rehabilitation, except for the case of imposing a suspended sentence.
(2) Before rendering a ruling on rehabilitation, the necessary inquires shall be conducted and, in particular, data shall be obtained on whether the criminal proceedings are pending against the convicted person for any new criminal offence committed before the completion of the rehabilitation proceedings.

Rendering a Ruling on Legal Rehabilitation at the Request of the Convicted Person
Article 492

(1) If the competent authority does not render a ruling on rehabilitation, the convicted person may request that a determination be made that the rehabilitation has occurred by force of Criminal Code.
(2) If the competent authority fails to comply with the request of the convicted person within a term of thirty days from the day of receipt of the request, the convicted person may request that the court which rendered the verdict at first instance render a ruling on the rehabilitation.
(3) The court shall decide on the request of the convicted person after receiving the opinion of the State Prosecutor.

Rehabilitation of a Person on whom a Suspended Sentence is Imposed
Article 493

If the suspended sentence is not revoked even one year after the lapse of the probation period, the court which tried the case at first instance shall render a ruling on the rehabilitation. This ruling shall be served on the convicted person, the State Prosecutor and the authority in charge of keeping the criminal records.

Rehabilitation on the Basis of a Judgment
Article 494

(1) The proceedings for the judicial rehabilitation shall be instituted upon a petition of the convicted person.
(2) The petition shall be submitted to the court that tried the case at first instance.
(3) The judge assigned to the case shall inquire whether the term prescribed by law has elapsed, and thereafter he shall conduct the necessary inquiries to determine the facts indicated by the petitioner and obtain evidence on all circumstances important for the decision.
(4) The court may request records on behavior of the convicted person from the police authority in whose region s/he has resided after serving the sentence, and may request such a records from the administration of the institution in which the convicted person has served the sentence.
(5) After the inquiries referred to in paragraph 3 of this Article have been made, and after having heard the State Prosecutor, the judge shall submit the files with a substantiated motion to the Panel of the court which tried the case at first instance.
(6) The petitioner and the State Prosecutor may appeal against the decision of the court on the rehabilitation rendered upon the petition.
(7) If the court rejects the petition because the convicted person does not deserve the rehabilitation due to his behavior, the convicted person may again submit a petition after one year from the day the ruling on the rejection of the petition becomes final.

Prohibition of Disclosing the Data on Rehabilitation and Discontinuance of Legal Consequences of Conviction
Article 495

A certification issued to the citizens upon the criminal record must not state the rehabilitation and the discontinued legal consequences of conviction.

Discontinuance of Security Measures
Article 496

(1) A petition for discontinuance of the security measure of prohibiting the engagement in a profession, activity or duty or the security measure of prohibiting the operation of a motor vehicle or a petition for discontinuance of the legal consequence of conviction regarding the acquirement of certain rights shall be submitted to the court which tried the case at first instance.

(2) The judge assigned to the case shall inquire whether the term prescribed by law has expired, and thereafter he shall conduct the necessary inquiries to determine the facts indicated by the petitioner and obtain evidence on all circumstances important for the decision.
(3) The court may request a record on behavior of the convicted person from the police authority in whose region he has resided after the principal sentence is served, remitted or purged by the statute of limitations, and may request such a record from the administration of the institution in which the convicted person has served the sentence.
(4) After conducting the inquiries referred to in paragraph 2 of this Article and after obtaining the opinion of the State Prosecutor, the judge shall submit the files with a substantiated motion to the Panel of the court which tried the case at first instance.

New Petition for Discontinuance of Security Measures
Article 497

When the court rejects the petition for discontinuance of the security measures or the legal consequences of conviction, a new petition may be submitted only after one year from the day the ruling on the rejection of the previous petition becomes final.

Chapter XXXI
PROCEEDINGS FOR COMPENSATION OF DAMAGES, REHABILITATION AND EXERCISE OF OTHER RIGHTS OF UNJUSTIFIABLY CONVICTED PERSONS, PERSONS ILLEGALLY OR GROUNDLESSLY DEPRIVED OF LIBERTY

Persons Entitled to Seek Compensation of Damages for Unjustifiable Conviction
Article 498

(1) The right to compensation of damages for unjustifiable conviction shall be held by a person against whom a criminal sanction was imposed by a final decision or who was pronounced guilty but whose punishment was remitted, and subsequently, upon an extraordinary legal remedy, the new proceedings was finally discontinued or the convicted person was acquitted by a final decision or the charge was rejected, except in the following cases:

1) if the proceedings was discontinued or the charge was dismissed because in the new proceedings the subsidiary prosecutor or private prosecutor waived the prosecution, provided that the waiver occurred on the basis of an agreement with the accused person,

2) in the new proceedings the charge was dismissed by a ruling because the court lacked jurisdiction and the authorized prosecutor has initiated prosecution before the competent court.

(2) A convicted person i.e. an acquitted person, is not entitled to compensation of damages if he caused the criminal proceedings through a false confession in the investigatory procedure or otherwise, or caused his conviction through such statements during the proceedings, unless he was forced to do so.

(3) In the case of conviction for offences committed in concurrence, the right to compensation of damages may also relate to respective criminal offences in regard to which the conditions for approving compensation are met.

Statute of Limitations of Compensation Claim
Article 499

(1) The right to compensation of damages becomes time-barred within three years from the day of effectiveness of the judgement at first instance acquitting the accused person or dismissing the charges, or from the day of effectiveness of the ruling at first instance discontinuing the proceedings, and, if a Higher Court decided on an appeal - from the day of receipt of the decision of a Higher Court.

(2) Before bringing a compensation claim to the court, the injured party shall submit his/her request to the ministry competent for the affairs of the judiciary in order to reach a settlement on the existence of damage and the type and amount of compensation.

(3) In the case referred to in Article 498, paragraph 1, item 2 of the present Code, the request may be heard only if the authorized prosecutor has not initiated prosecution before a competent court within a term of three months from the day of receipt of the final decision. If, after this term has elapsed, the authorized prosecutor initiates prosecution before the competent court, the proceedings for compensation of damages shall be discontinued until the conclusion of the criminal proceedings.

Compensation Claim
Article 500

(1) If the request for the compensation of damages is not accepted or if a ministry competent for the affairs of the judiciary does not render a decision within a term of three months from the day the request is submitted, the injured party may bring a compensation claim to the competent court. If a settlement was only reached on one part of the claim, the injured party may file a compensation claim regarding the rest of the claim.

(2) While the proceedings referred to in paragraph 1 of this Article are pending, the period of limitation referred to in Article 499, paragraph 1 of the present Code, does not run.
(3) The compensation claim shall be filed against Montenegro.

Inheritance of the Right to Compensation of Damages
Article 501

(1) Heirs shall inherit only the right of the injured party to compensation of property damage. If the injured party has already filed a claim, the heirs may resume the proceedings within the limits of the already filed compensation claim.
(2) Pursuant to the rules on the compensation of damages specified by the Law on Torts, after the death of the injured party, his heirs may resume the proceedings for the compensation of damages or institute the proceedings provided that the injured party died before the period of limitation expired and provided that the injured party did not waive this claim.

Persons Entitled to Compensation of Damages
Article 502

(1) Entitled to compensation of damages shall also be the person:
1) who was detained or deprived of liberty by the police or the State Prosecutor or his/her liberty was limited by a court decision as a consequence of a criminal offence, but criminal proceedings were not instituted or were discontinued by a final ruling or such person was acquitted by a final judgement or the charge was dismissed;
2) who served a sentence of imprisonment, and upon the request for retrial, or a request for the protection of legality a sentence of a shorter duration than the sentence served was imposed on him/her, or non-custodial criminal sanction was imposed or s/he was pronounced guilty but the punishment was remitted;
3) who, due to an error or an unlawful action of state authorities, was deprived of liberty without legal grounds, or kept in detention or penitentiary institution for a longer period of time than prescribed;
4) whose time in detention exceeded his/her sentence.
(2) A person deprived of liberty pursuant to Article 264 of the present Code without legal ground is entitled to compensation of damages if detention was not ordered against him/her or if the time during which s/he was deprived of liberty was not included in the punishment for the criminal offence or misdemeanor.
(3) A person who caused his/her deprivation of liberty, i.e. detention, by illicit acts is not entitled to compensation of

damages. In the cases referred to in paragraph 1, item 1 of this Article, a person is not entitled to compensation of damages, despite the existence of circumstances referred to in Article 498, paragraph 1 of the present Code, or if the proceedings were discontinued pursuant to Article 249 of the present Code.
(4) In the damages proceedings regarding the cases referred to in paragraphs 1 and 2 of this Article, the provisions of this Chapter shall apply accordingly.

Making Public the Decision Declaring Previous Conviction Unjustified

Article 503

(1) If the case related to unjustifiable conviction or illegal deprivation of liberty of some person is announced in the media and the reputation of that person is damaged thereby, the court shall, upon his/her request, publish in newspapers or through other media the announcement on a decision declaring that the previous conviction was unjustified or that the deprivation of liberty was illegal. If the case is not announced in the media, such an announcement shall, upon this person's request, be delivered to a state authority, local government authority, company, other legal entity or physical person or his/her employer, and, if necessary for his/her rehabilitation – to other organizations. After the death of a convicted person, his spouse, children, parents, brothers and sisters are entitled to submit such a request.
(2) The request referred to in paragraph 1 of this Article may also be submitted if the compensation claim was not submitted.
(3) Besides the conditions referred to in Article 493 of the present Code, the request referred to in paragraph 1 of this Article may also be submitted when the legal qualification of the offence was altered upon an extraordinary judicial remedy if, due to the legal qualification in the original judgement, the reputation of the convicted person was seriously damaged.
(4) The request referred to in paras. 1, 2 and 3 of this Article shall be submitted to the court which tried the case at first instance within six months from the day the decision referred to in Article 499, paragraph 1 of the present Code becomes final. The Panel referred to in Article 24, paragraph 7 of the present Code shall decide on the request. While deciding on the request, the provisions of Article 498, paras. 2 and 3, and Article 502, paragraph 3 of the present Code, shall apply accordingly.

Annulment of Entry of an Unjustified Conviction into the Criminal Record

Article 504

The court which tried the case at first instance shall by virtue of an office issue a ruling which annuls the entry of an unjustified conviction into the criminal record. The ruling shall be delivered to an authority in charge of the criminal record. Data from the criminal record concerning the annulled entry shall not be available to anyone.

Limitation on Reviewing, Transcribing or Copying Files

Article 505

A person allowed to inspect, transcribe and copy files (Article 203) concerning unjustifiable conviction or illegal deprivation of liberty may not use data from such files in a manner which would be detrimental to the rehabilitation of the person against whom the criminal proceedings were conducted. The President of the court shall remind the person allowed to inspect, transcribe or copy the files thereon, and this shall be noted on the file and signed by this person.

Recognition of Employment Related Rights

Article 506

(1) A person whose employment or social security was terminated due to an unjustifiable conviction or illegal deprivation of liberty shall have the same years of service or years of social security recognized as if s/he had been employed during the time of the loss of years of service due to an unjustifiable conviction or illegal deprivation of liberty. A period of unemployment shall also be included in the years of service or social security if caused by the unjustifiable conviction or illegal deprivation of liberty but not by the guilt of this person.

(2) When deciding on a right affected by the length of years of service or years of social security, the competent authority or institution shall take into account the years of service or social security recognized by the provision of paragraph 1 of this Article.

(3) If the authority or institution referred to in paragraph 2 of this Article does not take into account the years of service or social security recognized by the provision of paragraph 1 of this Article, the injured party may request that the court referred to in Article 500, paragraph 1 of the present Code establishes that the recognition of such a period occurred by force of law. A civil action shall be brought against the authority or institution which

contests the recognition of years of service, and against Montenegro.
(4) Upon the request of the authority or institution competent for the realization of the right referred to in paragraph 2 of the present Code, the specified contribution shall be paid out from budget funds for the period of time for which the person is entitled pursuant to paragraph 1 of this Article.
(5) The years of social security recognized pursuant to the provision of paragraph 1 of this Article shall be fully included in the years of pension.

Chapter XXXII
PROCEEDINGS FOR THE ISSUANCE OF A WANTED NOTICE AND PUBLIC ANNOUNCEMENT

Finding the Accused Person and Notification of his/her Address
Article 507

If permanent or temporary residence of the accused person is unknown, when it is necessary pursuant to the provisions of the present Code, a court or the State Prosecutor shall request the police authority to look for the accused person and inform them on his/her address.

Conditions for the Issuance of Wanted Notice
Article 508

(1) The issuance of a wanted notice may be ordered if the accused person is in flight and that criminal proceedings are instituted against him/her for a criminal offence subject to public prosecution and punishable by imprisonment for a term of three years or a more severe punishment, provided that a warrant for apprehension or a ruling on detention exists.
(2) The issuance of a wanted notice shall be ordered by the court before which the criminal proceedings are pending.
(3) The issuance of a wanted notice shall also be ordered if the accused person escapes from the administrative institution competent for the execution of criminal sanctions where s/he is serving the sentence, regardless of the severity of the punishment, or escape from the institution where s/he is serving an institutional measure. In such a case, the order shall be issued by the head of the institution.
(4) The order of the court or the head of the institution for the issuance of a wanted notice shall be delivered to the police authorities for execution.

Issuance of Public Announcement
Article 509

(1) When information concerning particular objects in relation to a criminal offence are required or if these objects need to be located, and in particular if this is necessary to determine the identity of unknown corpse, the issuance of a public announcement shall be ordered, containing a request that the required information be communicated to the authority conducting the proceedings.
(2) The police authority may publish photographs of corpses and missing persons if grounds for suspicion exist that the death or disappearance of such persons occurred because of a criminal offence.

Withdrawal of the Order on the Issuance of a Wanted notice or Public Announcement
Article 510

The authority which ordered the issuance of a wanted notice or a public announcement shall withdraw it immediately after the wanted person or the object has been found, or after the period of limitation for the institution of the prosecution or punishment has expired, or when other reasons appear indicating that wanted notice or the public announcement is no longer necessary.

Issuance of Wanted Notice and Public Announcement
Article 511

(1) Wanted notice and public announcement shall be issued by the police.
(2) Media may be used in order to inform the public of the wanted notice or public announcement.
(3) If it is likely that the person in regard to whom a wanted notice has been issued is abroad, an international wanted notice may also be issued, provided that the approval of the Ministry of Justice is obtained.
(4) Upon a request of a foreign authority, a wanted notice may also be issued in regard with the person for whom a suspicion exists that s/he is in Montenegro, provided that the request contains the statement that his/her extradition shall be requested in the case s/he is founded.

Chapter XXXIII
TRANSITIONAL AND FINAL PROVISIONS

Specific Provision on the Counting of Terms
Article 512

If on the day when this Code enters into force any term is still running, such a term shall be counted pursuant to the provisions of the present Code, except if the term was longer pursuant to the provisions of the previous regulations.

Application of the Provisions of the Previously Valid Code
Article 513

(1) If a request for the opening of an investigation has been submitted under the provisions of the Criminal Procedure Code (Official Gazette of RoM, No. 71/03 and 47/06) up to the day the present Code starts to be applied, the investigation shall be completed in accordance with those provisions.
(2) If a decision has been rendered before the day the present Code enters into force against which, according to the provisions of the Criminal Procedure Code ("Official Gazette of RoM", No. 71/03 and 47/06) a legal remedy was allowed, and if such a decision is not yet delivered or the term for submitting the legal remedy is still running, or the legal remedy has been submitted but the decision has not been rendered yet, the provisions of that Code shall apply regarding the right to legal remedy and the proceedings on legal remedy.

Adoption of Bylaws
Article 514

The bylaws envisaged by this Code shall be adopted within a term of nine months from the day of the present Code’s entry into force.

Cessation of Validity of a Previous Act
Article 515

By entry into force of the present Code, the Criminal Procedure Code (Official Gazette of RoM, No. 71/03 and 47/06) shall cease to be valid except for the provisions of Chapter XXIX which shall apply until the adoption of a law regulating the proceedings against minors and other issues related to the position of juvenile offenders.

Implementation of Certain Provisions
Article 516

(1) Provisions of Articles 90, 486, 487, 488 and 489 of the present Code will be enforced from the day of enforcement of the provisions of the Criminal Code which will govern the extended confiscation of property.

(2) Provisions of Chapter XX of the present Code shall be applied after six months as of the entry into force of the present Code.

(3) Provisions of Art. 109, 158, 272, 273 and 461 of the present Code shall be applied as of the day of entry into force of the present Code.

(4) In procedures for criminal offences of organized crime, corruption, terrorism and war crimes, the present Code shall be applied as of 26th August 2010.

Entry into Force
Article 517

This Code shall enter into force eighth days from the day of publication in the "Official Gazette of Montenegro", and it will be enforced as of 1st September 2011.