<u>Official Gazette of the Republic of Slovenia 8/2006</u> of **26 January 2006**

296. Criminal Procedure Act (official consolidated text) (ZKP-UPB3), page 745.

Pursuant to Article 153 of the Rules of Procedure of the National Assembly, at its session on 20 December 2005, the National Assembly of the Republic of Slovenia approved the official consolidated text of the Criminal Procedure Act, comprising:

– Criminal Procedure Act – ZKP (Official Gazette of the Republic of Slovenia, no. 63/94 of 13 October 1994),

– Corrigendum to the Criminal Procedure Act – ZKP (Official Gazette of the Republic of Slovenia, no. 70/94 of 11 November 1994),

– Act Amending the Criminal Procedure Act – ZKP-A (Official Gazette of the Republic of Slovenia, no. 72/98 of 23 October 1998),

– Act Amending the Act Amending the Criminal Procedure Act – ZKP-B (Official Gazette of the Republic of Slovenia, no. 6/99 of 29 January 1999),

– Act Amending the Act Amending the Criminal Procedure Act – ZKP-C (Official Gazette of the Republic of Slovenia, no. 66/2000 of 26 July 2000),

– Act Amending the Criminal Procedure Act – ZKP-D (Official Gazette of the Republic of Slovenia, no. 111/01 of 29 December 2001),

– Act Amending the Public Prosecutor Act – ZKP-A (Official Gazette of the Republic of Slovenia, no. 110/02 of 18 December 2002),

– Act Amending the Criminal Procedure Act – ZKP-E (Official Gazette of the Republic of Slovenia, no. 56/03 of 13 June 2003),

– Act Amending the Criminal Procedure Act – ZKP-F (Official Gazette of the Republic of Slovenia, no. 43/04 of 26 April 2004), and

– Act Amending the Criminal Procedure Act – ZKP-G (Official Gazette of the Republic of Slovenia, no. 101/05 of 11 November 2005).

No. 713-01/93-10/106
Ljubljana, 20 December 2005
EPA 542-IV

President
of the National Assembly
of the Republic of Slovenia
France Cukjati, MD

CRIMINAL PROCEDURE ACT

official consolidated text

(ZKP-UPB3)

SECTION ONE

GENERAL PROVISIONS

Chapter One

FUNDAMENTAL PRINCIPLES

Article 1

(1) This Act determines the rules whereby no innocent person shall be convicted and whereby the perpetrator of a criminal offence shall only be sentenced under the conditions provided by criminal law and within a lawfully conducted procedure.

(2) Before a final court judgement (hereinafter judgement) has been passed, the freedom and rights of an accused may only be restricted under the conditions provided by this Act.

Article 2

Penal sanctions on perpetrators of criminal offences may only be imposed by competent courts and in a procedure instituted and conducted in accordance with this Act.

Article 3

Any person accused of a criminal offence shall be deemed innocent until his guilt has been determined in a final judgement.

Article 4

(1) Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

(2) The suspect shall have the right to the services of a counsel from the moment of apprehension onwards.

(3) Any restriction on the freedom of the suspect that involves forced detention shall be considered as apprehension.

(4) If a suspect who has been apprehended does not have the means to retain a counsel by himself, the police shall, upon request of the suspect, appoint a counsel for him at the expense of the state if this is in the interest of justice.

Article 5

(1) The accused shall at the first interrogation be informed of the offence he is charged with and of the grounds on which the charge has been brought against him.

(2) The accused shall be enabled to make a statement on all the facts and evidence which incriminate him and to state all facts and evidence in his favour.

(3) The accused shall not be obliged to plead his case or to answer any questions; if he pleads his case he shall not be obliged to incriminate himself or his close relatives, nor to confess guilt.

Article 6

(1) Criminal proceedings shall be conducted in the Slovenian language.

(2) If in accordance with the Constitution the language of the Italian or the Hungarian minority is also used as the official language of the court, criminal proceedings may be conducted in the languages of these minorities in the manner defined by law.

Article 7

(1) Charges, appeals and other submissions shall be filed with the court in the Slovenian language.

(2) In those areas in which members of the Italian or Hungarian national minority reside, members of these national minorities shall be allowed to file submissions in the Italian or the Hungarian language if these languages are used as official languages of the court.

(3) A foreigner who has been deprived of freedom shall have the right to file submissions with the court in his language; in other cases foreign subjects shall be allowed to file submissions in their languages solely on the condition of reciprocity.

Article 8

(1) Parties, witnesses and other participants in the proceedings shall have the right to use their own languages in investigative and other judicial actions and at the main hearing. If a judicial action or the main hearing is not conducted in the languages of these persons, the oral translation of their statements and of the statements of others, and the translation of documents and other written evidence, must be provided.

(2) Persons referred to in the preceding paragraph shall be informed of their right to have oral statements and written documents and evidence translated for them; they may waive translation rights if they know the language in which the proceedings are conducted. The fact that they have been informed of their right, as well as their statements in this regard, should be entered in the record.

(3) The translation shall be done by a court interpreter.

Article 9

(1) Summons, orders and other written material shall be served in the Slovenian language.

(2) Those courts in which the Italian or Hungarian language are in official use shall also serve summons in the Italian or Hungarian language. Court orders and other written material shall be served in the Italian or Hungarian language only where the procedure is conducted in both official languages. Participants in proceedings may waive having court orders and other written material served on them in the Hungarian or the Italian language. The waiver should be entered in the record.

(3) A person who has been deprived of freedom shall be served the written material referred to in the first paragraph of this Article in the language which he uses in the proceedings, unless he has waived the right to translation consistent with the second paragraph of the preceding Article of this Act.

Article 10

(1) No person shall be prosecuted and punished for a criminal offence of which he has been acquitted or convicted under a legal ruling, or if criminal proceedings against him were suspended or charges against him dismissed through a legal ruling.

(2) A final court decision may only be reversed through extraordinary legal remedies in favour of the convicted person.

Article 11

The forcing of a confession or of any other statement from the accused or from any other participant in the proceedings is prohibited.

Article 12

(1) The accused shall have the right to conduct his own defence or to avail himself of the expert assistance of a defence counsel chosen by himself from among lawyers.

(2) If the accused does not retain counsel, the court shall appoint defence counsel for him where so provided by this Act.

(3) If the accused does not have the means to retain counsel, the state shall, upon his request, provide him with defence counsel at the expense of the state and under conditions defined by this Act.

(4) The accused shall be given the appropriate time and conditions to prepare his defence.

Article 13

A person who has been wrongfully convicted of a criminal offence or deprived of freedom without good cause shall have the right to rehabilitation and indemnification, as well as other rights provided by this Act.

Article 14

The accused or other participants in the procedure who, out of ignorance, might omit to perform an act or to exercise their rights in the course of proceedings shall be instructed by the court as to the rights to which they are entitled under this Act and of the consequences of failure to perform such an act.

Article 15

The court shall undertake to ensure that proceedings are conducted without unnecessary delay and that any abuse of the rights of participants in the proceedings is rendered impossible.

Article 16

(1) The prosecutor and the accused shall have the status of equal parties in criminal procedure, unless otherwise provided by this Act.

(2) The prosecutor shall state the facts on which he bases charges and provide evidence of these facts.

(3) The accused shall have the right to state facts and provide evidence in his favour.

Article 17

(1) The court and state bodies participating in criminal procedure shall establish the facts relevant for passing a lawful decision completely and according to the truth.

(2) They shall examine with equal attention those facts which incriminate the accused and those facts which are in favour of the accused.

Article 18

(1) The right of the court and of state bodies participating in criminal proceedings to evaluate the facts presented shall not be bound or limited by any specific formal rules of evidence.

(2) The court may not base its decision on evidence obtained in violation of human rights and basic freedoms provided by the Constitution, nor on evidence which was obtained in violation of the provisions of criminal procedure and which under this Act may not serve as the basis for a court decision, or which were obtained on the basis of such inadmissible evidence.

Article 19

(1) Criminal procedure shall be instituted upon request of the authorised prosecutor.

(2) In cases involving offences liable to prosecution *ex officio*, the public prosecutor shall be the authorised prosecutor. In cases involving offences liable to private prosecution a private prosecutor shall be the authorised prosecutor.

(3) If the public prosecutor finds that there are no grounds to institute or continue criminal proceedings, the injured party may assume prosecution by himself subject to conditions determined by this Act.

Article 20

The public prosecutor shall be bound to institute criminal prosecution if there is reasonable suspicion that a criminal offence liable to prosecution *ex officio* has been committed, unless provided otherwise by this Act.

Article 21

(1) In criminal proceedings cases shall be judged by panels of judges.

(2) In district courts cases shall be judged by a single judge.

Article 22

Where it is provided that the instituting of criminal proceedings entails the limitation of certain rights and the law does not provide otherwise, the consequences shall apply as from the moment the charge sheet has entered into force. In criminal offences carrying as the principal penalty a fine or imprisonment of up to three years, the consequences shall apply as from the day the sentence was passed, whether or not it has become final.

Article 23

(1) If the application of criminal law depends on the prior ruling on a question of law that falls under some other procedure or under the competence of some other state authority, the criminal court may decide on such question by itself in accordance with the provisions applying to evidence in criminal proceedings. The decision on such question of law shall only apply to the specific case considered by the court.

(2) If a ruling on a question referred to in the preceding paragraph was passed in court in some other procedure, or was passed by some other state authority, such ruling shall not be binding on the criminal court in determining if a specific criminal offence was committed.

Chapter Two

JURISDICTION OF COURTS

1. Subject-matter jurisdiction and composition of courts

Article 24

In criminal matters courts shall administer justice within the bounds of their subject-matter jurisdiction as provided by law.

Article 25

(1) In first instance:

1) in circuit courts, cases of criminal offences carrying a sentence of fifteen or more years imprisonment shall be heard by panels of two professional judges and three juror judges; criminal offences carrying less severe sentences, and criminal offences of libel committed by the press, radio, television or other mass media shall be tried before circuit courts, by panels of one professional judge and two juror judges;

2) in district courts, cases of criminal offences carrying as principal penalty a fine or a prison term of up to three years, shall be heard by a judge sitting alone;

3) a district court judge sitting alone shall in procedures of extraordinary legal remedies and in special procedures be additionally competent to decide on the following procedural acts which under this Act fall within the competence of the presiding judge or of the panel of judges referred to in the sixth paragraph of this Article, namely:

a) to decide on petitions for the reopening of criminal proceedings (first paragraph of Article 412);

b) to dismiss requests for extraordinary mitigation, and to propose a motion to the supreme court (third and fourth paragraphs of Article 419);

c) to dismiss requests for protection of legality (second paragraph of Article 422);

č) to decide on a change of protective measures (second paragraph of Article 496);

d) to decide on the remission of a suspended sentence (third and fourth paragraphs of Article 506);

e) to decide on the quashing of a conviction (fifth paragraph of Article 511);

f) to decide on termination of protective measures (fourth paragraph of Article 513).

(2) In second instance, cases shall be heard before higher courts by panels of three judges.

(3) In third instance, cases shall be heard before the supreme court by a panel of five judges.

(4) Acts of investigation shall be conducted by the investigating judge of the circuit court, and acts of investigation in proceedings before the district court shall be conducted by a district court judge sitting alone.

(5) The president of the court and the presiding judge of the panel of judges shall rule in cases provided by this Act.

(6) Circuit courts shall, in panels of three judges, hear appeals against rulings by investigating judges of circuit courts, appeals against decisions passed by individual judges of district courts in their conducting of acts of investigation, and appeals against other decisions if so provided by this Act; rule in first instance outside the main hearing; conduct proceedings and pass judgements under the provisions of Article 517 of this Act; propose motions in cases provided by this Act or some other law.

(7) Petitions for extraordinary mitigation of sentences shall be decided in the supreme court by a panel of three judges.

(8) Requests for protection of legality shall be decided in the supreme court by a panel of five judges, and appeals against decisions referred to in the third paragraph of this Article shall be decided by a panel of seven judges.

2. Territorial jurisdiction

Article 26

(1) Territorial jurisdiction shall as a rule be vested in the court in whose territory a criminal offence was committed or attempted.

(2) Private charges may be filed at the court in whose territory the accused permanently or temporarily resides.

(3) If a criminal offence was committed or attempted in the territories of different courts or on the border between these territories, or the territory in which the offence was committed or attempted cannot be ascertained, the competent court shall be the court which, upon request filed by the authorised prosecutor, had instituted proceedings first or, if proceedings have not been instituted, the court at which the request to institute proceedings was filed first.

Article 27

If a criminal offence was committed on board a domestic ship or domestic aircraft while the ship was in a domestic port or the aircraft in a domestic airport, the competent court shall be the court in whose territory the port or the airport is situated. In other cases involving the commission of a criminal offence on board a domestic ship or a domestic aircraft the competent court shall be the court in whose territory the domicile port of the ship or domicile airport of the aircraft is situated, or the court in whose territory is situated the domestic port or airport in which the ship or the aircraft first lands.

Article 28

(1) If a criminal offence was committed by means of a printed medium, the competent court shall be the court in whose territory the text was printed. If that territory is not known or the text was printed abroad, the competent court shall be the court in whose territory the printed medium has been distributed.

(2) Where the law provides that criminal liability rests with the author of the printed medium, the competent court shall be the court in whose territory the author permanently resides or the court in whose territory occurred the event to which the printed medium relates.

(3) The provisions of the preceding two paragraphs shall apply, *mutatis mutandis*, to printed matter or statements announced over radio or television.

Article 29

(1) If the place in which a criminal offence was committed is not known or is outside the territory of the Republic of Slovenia, the competent court shall be the court in whose territory the accused permanently or temporarily resides.

(2) If the court in whose territory the accused has a permanent or temporary residence has started proceedings, that court shall retain jurisdiction even after the place of the commission of the criminal offence has become known.

(3) If neither the place of commission of a criminal offence nor the permanent or temporary residence of the accused are known, or are both situated outside the Republic of Slovenia, the competent court shall be the court in whose territory the accused was caught or reported himself.

Article 30

If criminal offences were committed in the Republic of Slovenia and abroad, the competent court shall be the court with jurisdiction over the criminal offence committed in the Republic of Slovenia.

Article 31

If it is impossible to determine under the provisions of this Act which court has territorial jurisdiction in a specific case, the supreme court shall designate one of the courts of subject-matter jurisdiction as the court competent to conduct the proceedings.

3. Joinder and severance of proceedings

Article 32

(1) Where one person is accused of several criminal offences, some of which fall within the jurisdiction of a district court and others within the jurisdiction of a circuit court, the competent court shall be the circuit court. If competent courts are of the same type, cases shall be heard by the court which, upon the request of the authorised prosecutor, first instituted the proceedings, or the court at which the request for the instituting of the proceedings was filed first.

(2) The provisions of the preceding paragraph shall also apply to the determination of competence in cases where the injured party is at the same time the perpetrator of a criminal offence against the accused.

(3) Co-perpetrators shall as a rule be tried by the court which, having jurisdiction over one of them, first instituted the proceedings.

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

(5) Cases referred to in the preceding paragraph shall all be heard jointly and determined by a single judgement.

(6) The court may also rule that joint proceedings be conducted and a single judgement passed where several persons are accused of several criminal offences, if there is mutual connection between the committed criminal offences and if the same evidence is presented. If some of these offences fall within the competence of the circuit court and others within the competence of the district court, the joint proceedings may only be conducted before the circuit court.

(7) The court may rule that joint proceedings be conducted and a single judgement be pronounced if one person is tried for several criminal offences in separate proceedings conducted before the same court, or if several persons are tried for the same criminal offence.

(8) The decision to try cases jointly shall be taken by the court competent for conducting joint proceedings. No appeal shall be permitted against a ruling whereby cases are joined or the proposal for a joinder is rejected.

Article 33

(1) Until the conclusion of the main hearing the court which has competence under the preceding Article may for weighty reasons or for reasons of expedience rule that individual criminal proceedings or proceedings against individual accused persons be separated and conducted separately or referred to another competent court.

(2) No appeal shall be permitted against a ruling whereby the court orders severance of proceedings or rejects a proposal for severance.

4. Transfer of territorial jurisdiction

Article 34

(1) If for judicial or factual reasons the competent court cannot proceed, it shall be bound to advise the next higher court thereof, which shall transfer the case to another competent court in its territory.

(2) No appeal shall be permitted against a ruling from the preceding paragraph.

Article 35

(1) The court of immediate common higher instance may transfer a case to another court of subject-matter jurisdiction in its territory if it is obvious that the proceedings will thereby be facilitated or if other cogent reasons for the transfer exist.

(2) The court may issue a ruling pursuant the preceding paragraph on the motion of the investigating judge, a judge sitting alone or a judge presiding over a panel of judges, or on the motion of the accused, the injured party, the private prosecutor or the public prosecutor competent to prosecute before the court which decides on the transfer of territorial jurisdiction, if criminal proceedings are conducted at the request of the public prosecutor.

(3) No appeal shall be permitted against a ruling from the first paragraph of this Article.

5. Consequences of non-jurisdiction and disputes over jurisdiction

Article 36

(1) Courts shall exercise particular circumspection over their subject-matter and territorial jurisdictions. A court which establishes that a specific case does not fall within its jurisdiction shall immediately declare itself not competent therein and refer the case to the competent court.

(2) If a circuit court establishes during the main hearing that the case considered falls within the jurisdiction of a district court, it shall not refer the case to the district court, but shall continue the proceedings and decide in the matter.

(3) Once the charge sheet has come into effect the court may not declare itself without territorial jurisdiction, nor may the parties raise the objection of territorial non-jurisdiction.

(4) The court found to be without jurisdiction to hear a case shall nevertheless perform those procedural actions which it would be unsafe to postpone.

Article 37

(1) If the court to which the case has been referred finds that the competent court is indeed the court which has referred the case or some other court, it shall institute proceedings to settle the jurisdictional dispute.

(2) If an appeal against a ruling by which a court of first instance declared itself without jurisdiction is considered by a court of second instance, the decision of the court of second instance shall in respect of jurisdiction also be binding on the court to which the case was referred, provided that the court of second instance is competent to decide the jurisdictional dispute between these courts.

Article 38

(1) Jurisdictional disputes between courts shall be decided by the court of immediate common higher instance.

(2) In adjudicating disputes over jurisdiction the court may at the same time adjudicate *ex officio* the transfer of territorial jurisdiction, provided that conditions from the first paragraph of Article 35 of this Act are fulfilled.

(3) No appeal shall be permitted against a ruling on a dispute over jurisdiction or on the transfer of territorial jurisdiction.

(4) Until the jurisdictional dispute between courts is settled, each court shall be bound to perform those procedural actions which it would be unsafe to postpone.

Chapter Three

EXCLUSION

Article 39

A judge or juror judge may not perform judicial duties:

1) if he himself has suffered harm through the criminal offence;

2) if he is married to or lives in a domestic partnership with the accused, the defence counsel, the prosecutor, the injured party and their legal representatives or attorneys, or if he is related to the aforesaid persons by blood in direct line at any remove or collaterally up to four removes, or related through marriage up to two removes;

3) if his relationship with the accused, the defence counsel, the prosecutor or the injured party is that of a custodian or a ward, adopter or adoptee, foster parent or foster child;

4) if he had conducted acts of investigation in connection with the same criminal offence, or took part in determining objections to the charge sheet or a request of the presiding judge referred to in Articles 271 and 284 of this Act, or conducted the preparatory procedure as a judge for juvenile offenders and a motion for punishment has been submitted, or took part in the proceedings as prosecutor, defence counsel, legal representative or attorney of the injured party or plaintiff, or was examined in the matter as a witness or an expert;

4.a) if in the course of determining any question within the proceeding he became acquainted with evidence which under this Act must be excluded from the files (Article 83), he may not in the same matter decide on the charge or appeal or extraordinary legal remedy against the decision that determined the charge, unless the content of evidence is of such nature that it obviously could not influence his decision;

5) if he took part in the passing in a lower court of a decision in the same matter or took part in the passing in the same court of a decision challenged by an appeal or a request for the protection of legality;

(6) if circumstances exist that give rise to doubts over his impartiality.

Article 40

(1) As soon as a judge or juror judge finds any reason warranting his exclusion under points 1 to 4 or point 5 of the preceding Article, or if he believes that there exists a reason for his exclusion referred to in point 4a or 6 of the preceding Article, he must cease all work on the case in question and notify the president of the court, who shall decide on the exclusion and, if he excludes the judge, order that the case be assigned to another judge in accordance with the court rules. If the exclusion relates to the president of the court, the vice-president of the court shall rule on this matter as the president of the court; if however the vice-president must also be excluded, the president shall appoint a substitute from among the judges of this court, or, if that proves impossible, the president shall ask the president of the immediately higher court to assign a substitute.

(2) There shall be no appeal against the decision from the preceding paragraph upholding the request for exclusion. A judge or juror judge may appeal against a decision rejecting a request for exclusion. The panel (sixth paragraph of Article 25) shall decide on any appeal against a decision of the president of a local or district court; an appeal against a decision of the president of a higher court or the Supreme Court shall be decided by a panel of three high court or Supreme Court judges.

(3) If it is necessary to perform an act in a case and postponement of that act would present a risk, the president of the court shall order that the act be performed by another judge pending the decision on the request for exclusion of the judge, in accordance with the court rules on the assigning of cases.

Article 41

(1) Exclusion of a judge may also be requested by the parties in the case.

(2) A party shall be bound to request exclusion of a judge or a juror judge as soon as he learns of the existence of grounds for exclusion and no later than before the conclusion of the main hearing. He may only request that a judge or juror judge be excluded during the main hearing for the reasons referred to in points 4a or 6 of Article 39 of this Act if the reason warranting exclusion arose after the main hearing had commenced and, if it arose earlier, only if the party did not know or could not have known about it.

(3) A party shall only have time until the beginning of the session of the panel to request that a higher court judge be excluded. If the hearing is being held before a court of second instance (Article 380), the provisions of the preceding paragraph shall apply *mutatis mutandis* to the party's request that a judge be excluded.

(4) In challenging a judge or a juror judge participating in the case considered, or in challenging a higher court judge, a party shall be bound to specify the name of the judge challenged.

(5) A party shall be bound to set forth in its request for exclusion the circumstances which in his opinion provide the legal basis for exclusion. A party need not repeat in the request for exclusion the reasons cited in a previous request which was rejected, or cite the reasons already cited by the judge, juror judge or other party in the case on the basis of which the request was rejected.

Article 42

(1) The request for exclusion referred to in the preceding article shall be decided by the president of the court.

(2) If the exclusion request relates to the president of the court or to the president of the court and a judge or a juror judge, the ruling thereon shall be rendered by the president of the immediately higher court; if the president of the supreme court is challenged, the ruling thereon shall be rendered by a plenary session of the supreme court.

(3) Before a ruling on exclusion is rendered, the judge, the juror judge or the president of the court shall be heard and, if necessary, other inquiries shall be made.

(4) No appeal shall be permitted against a ruling whereby exclusion is granted. A ruling rejecting a request for exclusion may be challenged by means of a special appeal; if the ruling was rendered after the charges were filed, that ruling may only be challenged in an appeal against the judgement.

(5) If the party acted in a manner contrary to the provisions of the second to fifth paragraphs of the preceding article, or if it is clear from its contents that the request is obviously without foundation and has been submitted in order to delay proceedings or undermine the authority of the court, the request shall be rejected wholly or in part. The decision rejecting the request shall be issued by the investigating judge, the judge or the panel hearing the case. The judge or president of the court whose exclusion is being requested may take part in the decision-making. No appeal shall be permitted against a ruling rejecting the request.

Article 43

(1) As soon as a judge or juror judge learns that his exclusion has been requested, he must immediately discontinue any further action in connection with the case, unless it involves an unlawful or clearly groundless request for exclusion which is rejected (fifth paragraph of Article 42). If it is necessary to perform an act in a case and postponement of that act would present a risk, the provisions of the third paragraph of Article 40 of this Act shall be applied.

(2) If the request for the exclusion of a judge or juror judge is upheld, the acts performed by that judge or juror judge after he learned that reasons for his exclusion had been adduced shall not be procedurally valid.

Article 44

(1) The provisions referring to the request for exclusion of judges and juror judges shall apply, *mutatis mutandis*, to public prosecutors and persons who under the Public Prosecutor Act are authorised to represent the public prosecutor in an action at law, as well as to recording clerks, interpreters, professionals and experts unless these are subject to some other provisions (Article 251). The exclusion of a public prosecutor may not be requested for reasons referred to in point 4a or 6 of Article 39 of this Act.

(2) Exclusion of the public prosecutor and assistant public prosecutor shall be decided by the head of the Public Prosecutor's Office. Exclusion of the head of the Public Prosecutor's Office shall be decided by the head of the immediately higher Public Prosecutor's Office. Exclusion of the Public Prosecutor General of the Republic of Slovenia shall be decided by the minister responsible for justice.

(3) Exclusion of recording clerks, interpreters, professionals and experts shall be decided by the panel of judges, the presiding judge of the panel, or by a judge sitting alone.

(4) Exclusion of police officers who perform investigative actions in accordance with this Act shall be decided by the investigating judge. If a recording clerk takes part in these actions, his exclusion shall be decided by the official who conducts the actions.

Chapter Four

PUBLIC PROSECUTOR

Article 45

(1) The basic right and basic duty of the public prosecutor shall be the prosecution of perpetrators of criminal offences.

(2) In respect of criminal offences prosecuted *ex officio*, the public prosecutor shall have the jurisdiction:

1) to take the necessary steps concerning the detection of criminal offences, tracing of perpetrators and directing of preliminary criminal proceedings;

2) to request that investigations be undertaken;

3) to file and represent a charge sheet or summary charge sheet before the competent court;

4) to file appeals against judgements that have not become final and apply extraordinary legal remedies against final judicial decisions.

(3) The public prosecutor shall also discharge other duties provided by this Act.

(4) The public prosecutor shall in his capacity as a party to criminal proceedings have rights equal to that of the accused, excepting those rights vested in him as a state official.

Article 46

Pursuant to the Public prosecutor Act, the public prosecutor shall have jurisdiction in legal actions before appropriate courts.

Article 47

Territorial jurisdiction of the public prosecutor shall be determined consistent with the provisions applying to the jurisdiction of the court in the territory to which the prosecutor has been assigned.

Article 48

Where it would be unsafe to postpone the performance of procedural acts, such acts may also be performed by a prosecutor who does not have jurisdiction, subject to his advising immediately the competent public prosecutor thereof.

Article 49

The public prosecutor shall perform all procedural acts for which he is authorised under law by himself or through intermediary persons who under the Public prosecutor Act are authorised to deputise for him in criminal proceedings.

Article 50

Jurisdictional disputes between public prosecutors shall be adjudicated by the common immediately higher public prosecutor.

Article 51

The public prosecutor may decide to abandon prosecution at any time pending the conclusion of the main hearing before a court of first instance; in proceedings before a court of higher instance he may abandon prosecution in cases provided by this Act.

Chapter Five

INJURED PARTY AND PRIVATE PROSECUTOR

Article 52

(1) In the case of criminal offences prosecuted upon a motion or under private charges, the time limit for making the motion or filing private charges shall be three months from the day the authorised person learned of the criminal offence and its perpetrator.

(2) If the prosecutor has filed private charges against the criminal offence of slander, until the conclusion of the main hearing the accused may bring an action against the prosecutor who has

returned the slander (counter-action) even after the expiry of the time limit from the preceding paragraph. In this case the court shall adjudicate the matter in a single judgement.

Article 53

(1) The motion shall be filed with the state agency authorised to receive crime reports (Article 147), and private action shall be brought to the competent court.

(2) If the injured party has himself reported a crime or claimed indemnification through criminal proceedings, he shall be considered to have thereby also made a motion for prosecution.

(3) Where the injured party has reported a crime or made a motion for prosecution and it is established in the course of proceedings that a criminal offence subject to prosecution under private charges is involved, the report or the motion shall be considered as a private charge filed in time, provided that the report or the motion was made during the time limit prescribed for filing private charges. A private charge filed in time shall be considered as a motion made in time by the injured party if it is established in the course of proceedings that a criminal offence liable to prosecution upon a motion is involved.

Article 54

(1) In the case of minors and persons without any contractual capacity, the motion or private charges shall be filed by their legal representatives.

(2) A minor who has attained the age of sixteen years may make the motion or file private charges by himself.

Article 55

Should the injured party or the private prosecutor die before the expiry of the period for making the motion or bringing a private action, or should he die while the proceedings are in progress, his spouse or a person with whom he has lived in a domestic partnership, as well as his children, parents, adoptees, adopters, brothers and sisters may within three months of his death make the motion, or bring private charges, or declare that the proceedings should continue.

Article 56

If several persons are injured by a criminal offence, the prosecution shall start or continue on the motion or private charges of any of these persons.

Article 57

The injured party and private prosecutor may until the conclusion of the main hearing withdraw the motion or drop private charges by submitting a statement to that effect to the court which conducts the proceedings. In that case they shall forfeit the right to make the motion or file charges anew.

Article 58

(1) If after being duly summoned the private prosecutor fails to appear at the main hearing, or the summons could not be served on him for failure on his part to inform the court of a change of his address or place of residence, he shall be deemed to have withdrawn the charge.

(2) The presiding judge shall grant reinstatement of the case to the private prosecutor who for a legitimate reason was prevented from attending the main hearing or from informing the court of the change of address or residence, provided that he files an application for reinstatement of the case within eight days of the removal of the obstacle.

(3) After a lapse of three months from the day of default, reinstatement of the case may not be requested.

(4) No appeal shall be permitted against a ruling which grants reinstatement of the case.

(5) The decision to discontinue criminal proceedings issued on the basis of the first paragraph of this Article shall become final after the expiry of the terms referred to in the second and third paragraphs of this Article.

Article 59

(1) The injured party and the private prosecutor shall during the investigation be entitled to call attention to all facts and offer evidence relevant to establishing the commission of a criminal offence, the perpetrator thereof and the indemnification claims of the injured party and the prosecutor.

(2) At the main hearing they shall be entitled to produce evidence, pose questions to the witnesses and experts and comment on and clarify their depositions, and make other statements and motions.

(3) The injured party, the injured party in his capacity as prosecutor and the private prosecutor shall be entitled to inspect the file and the material evidence. The injured party may be denied the right to inspect the file until he has been interrogated as a witness.

(4) The investigating judge and the presiding judge shall acquaint the injured party and the private prosecutor with the rights they are entitled to under the first, second and third paragraphs of this Article.

Article 60

(1) If the public prosecutor finds that there are no grounds to prosecute a criminal offence by virtue of office or to prosecute some of the accused participants he shall within eight days inform the injured party thereof and shall instruct him that he may start prosecution by himself. The same procedure shall be applied by the court when the public prosecutor abandons prosecution.

(2) The injured party shall be entitled to institute or continue prosecution within eight days from the day he received the information from the preceding paragraph.

(3) If the public prosecutor withdraws the charge sheet the injured party may continue prosecuting under the preferred charge sheet or file a new charge sheet.

(4) Where the injured party has not been informed that the public prosecutor has failed to begin prosecution, the injured party may within three months from the day the public prosecutor dismissed the crime report declare before the competent court that he wishes to continue prosecuting.

(5) When informing him that he may begin prosecution, the public prosecutor or the court shall also instruct the injured party of the steps he may take to exercise that right.

(6) If the injured party in his capacity as prosecutor dies before the term for starting the prosecution expires, or if he dies while the proceedings are in progress, his spouse or the person with whom he had lived in domestic partnership, as well as his children, parents, adoptees, adopters, brothers and sisters may within three months of his death institute prosecution or declare that the prosecution be continued.

Article 61

(1) If the public prosecutor withdraws the charge sheet at the main hearing the injured party shall be bound to declare forthwith if he intends to continue prosecuting. If the injured party after being duly summoned fails to appear at the main hearing, or the summons could not be served on him for failure on his part to inform the court of a change of his address or place of residence, it shall be considered that he does not intend to continue prosecuting.

(2) The presiding judge of the court of first instance shall grant reinstatement of the case to the injured party who was not duly summoned or, although duly summoned, was by legitimate reasons prevented from appearing at the main hearing at which, following the withdrawal of the charge sheet by the public prosecutor, a ruling was passed to reject charges, provided that within eight days from the day he was served the ruling the injured party requested reinstatement of the case and declared in the request that he wished to continue prosecuting. In that case a new main hearing shall be scheduled and the previous ruling shall be invalidated by a ruling issued on the basis of the new main hearing. If

a duly summoned injured party fails to appear at the new main hearing, the previous ruling shall remain in force.

(3) In the case referred to in the preceding paragraph the provisions of the third and fourth paragraphs of Article 58 of this Act shall be applied.

(4) The ruling by which the charge in the instance referred to in the first paragraph of this Article was rejected shall become final after the expiry of the terms for filing an application for reinstatement of the case.

Article 62

(1) If within the time limit prescribed by law the injured party fails to institute or to continue prosecution, or the injured party in his capacity as prosecutor fails to appear at the main hearing although duly summoned, or the summons could not be served on him because of his failing to inform the court of a change of his address or place of residence, it shall be considered that he has abandoned prosecution.

(2) In a case where the injured party after being duly summoned fails to appear at the main hearing, the provisions of the second to fourth paragraphs of Article 58 of this Act shall be applied.

Article 63

(1) The injured party in his capacity as prosecutor shall have the same rights as the public prosecutor, excepting those vested in the public prosecutor as a state official.

(2) In proceedings conducted at the request of the injured party in his capacity as prosecutor, the public prosecutor shall be entitled to take over and act for the prosecution at any time pending the conclusion of the main hearing.

Article 64

(1) Where the injured party is a minor or a person without any contractual capacity, his legal representative shall be entitled to make all statements and perform all acts which the injured party is entitled to make or perform under this Act.

(2) An injured party who has attained the age of sixteen shall be entitled to make statements and perform procedural acts by himself.

Article 65

(1) The private prosecutor, the injured party and the injured party in his capacity as prosecutor, as well as their legal representatives, may exercise their rights in connection with the proceedings through the intermediary services of an attorney.

(2) If a criminal offence punishable by imprisonment of more than three years is tried in court, the court may, upon petition of the injured party acting as the prosecutor, appoint an attorney for the injured party if that is in the interest of the proceedings and if the injured party cannot afford to pay the expenses of representation. The petition shall be decided upon by the investigating judge or the presiding judge, and the attorney shall be appointed by the president of the court from among members of the Bar.

(3) In criminal proceedings conducted as a result of criminal offences against sexual inviolability referred to in Chapter XIX of the Penal Code, a criminal offence of neglect of minors and cruel treatment referred to in Article 201 of the Penal Code or a criminal offence of trafficking in human beings pursuant to Article 387.a of the Penal Code, an injured party who is a minor shall, from the initiation of the criminal proceedings onwards, have an attorney to care for his rights, particularly in connection with the protection of his integrity during examination before the court and during the assertion of a claim for indemnification. To injured parties who are minors without an attorney the court shall assign *ex officio* an attorney from among the members of the Bar.

Article 66

The private prosecutor, the injured party acting as prosecutor, the injured party, and their legal representatives and attorneys shall be bound to report to the court any change of their addresses or places of residence.

Chapter Six

DEFENCE COUNSEL

Article 67

(1) The accused may have legal counsel at any stage of the proceedings.

(2) Prior to the first interrogation, the accused shall be instructed that he is entitled to retain defence counsel and that defence counsel may attend his interrogation.

(3) Defence counsel may also be retained by the legal representative of the accused, the spouse of the accused or the person with whom the accused lives in domestic partnership, by his relatives by blood in direct line, the adopter, the adoptee, brother, sister or foster parent.

(4) Only lawyers may be engaged as defence counsel, but they may delegate articled clerks to deputise for them. Before the supreme court only a lawyer may act as counsel for the defence.

(5) Defence counsel shall be bound to submit the power of attorney to the body that conducts the proceedings. The accused may give the power of attorney to his lawyer orally, to be entered in the record at the body that conducts the procedure.

Article 68

(1) Defence counsel may not defend two or more accused persons in the same criminal matter.

(2) The accused may retain several defence counsels but it shall be considered that defence is secured if only one defence counsel takes part in the proceedings.

Article 69

(1) The injured party, the spouse of the injured party or of the prosecutor, the person with whom the injured party or the prosecutor lives in domestic partnership, and persons to whom the injured party or prosecutor are related by blood in direct line to any remove or collaterally up to four removes or by marriage up to two removes, may not be counsel for the defence.

(2) A person summoned as a witness may not be counsel for the defence, except where under this Act he is exempt from the obligation to testify and declares that he will not testify, or where defence counsel is heard as a witness under point 2 of Article 235 of this Act.

(3) A person who was the judge or the public prosecutor in the same matter may not act as defence counsel.

Article 70

(1) If the accused is deaf, dumb or otherwise incapable of defending himself successfully, or if criminal proceedings are conducted against the accused for a criminal offence punishable by thirty years of imprisonment, or if he is brought before an investigating judge according to Article 157 of this Act, the accused shall have defence counsel from the very first interrogation.

(2) The accused shall be bund to have defence counsel in proceedings under Article 204.a of this Act for as long as he is subject to a detention order.

(3) The accused shall be bound to have defence counsel at the time the charge sheet is served on him if the law prescribes a punishment of eight years imprisonment or a more severe punishment for the criminal offence he is charged with.

(4) If in the cases of mandatory defence referred to in the preceding paragraphs the accused fails to retain defence counsel by himself, the president of the court shall appoint defence counsel *ex officio* for the further course of criminal proceedings until the finality of the judgement; if the accused has been sentenced to thirty years in prison or if he is deaf, dumb or otherwise incapable of defending

himself successfully, he shall have defence counsel appointed for him for the extraordinary judicial review as well. If defence counsel is appointed *ex officio* after the charge sheet has been filed, the accused shall be informed thereof at the time the charge sheet is served on him. If in the case where defence is mandatory the accused remains without defence counsel and fails to retain one by himself, the president of the court before which the proceedings are conducted shall appoint defence counsel *ex officio*.

(5) Only a lawyer may be appointed as defence counsel.

Article 71

(1) If defence is not mandatory, an accused person who by reason of his material situation cannot afford to retain counsel may upon request have defence counsel appointed for him *ex officio* if that is in the interest of justice.

(2) The accused may file a request from the preceding paragraph after the charge sheet has been served. The request shall be decided by the judge presiding the panel and defence counsel shall be appointed by the president of the court. The provision of the fifth paragraph of the preceding article shall apply to the question of who may be appointed as defence counsel.

(3) A lawyer appointed by the police *ex officio* as defence counsel for a suspect (fourth paragraph of Article 4) shall also discharge that duty in the proceedings under Article 204.a of this Act and in the criminal proceedings against the accused, under the same conditions as a defence counsel appointed by the court.

Article 72

(1) In instances where the grounds for mandatory defence referred to in Article 70 of this Act cease, and also where the accused takes another defence counsel in place of the assigned defence counsel, the assigned defence counsel shall be dismissed.

(2) The assigned defence counsel may only move to be withdrawn from the case for valid reasons.

(3) The withdrawal of defence counsel in cases referred to in the first and second paragraphs of this Article shall in the procedure before the main hearing be decided by the investigating judge or the presiding judge, in the main hearing by the panel of judges, and in the appeal procedure by the presiding judge of the court of first instance or the panel of judges competent to decide in the procedure on appeal. There shall be no appeal against this decision.

(4) The president of the court may upon petition by or with the consent of the accused withdraw appointed defence counsel if the latter does not discharge his duty properly, and appoint a new one in his stead. The withdrawal of defence counsel shall be reported to the Bar.

Article 73

After a motion for criminal prosecution has been filed by the authorised prosecutor, or individual acts of investigation have been performed by the investigating judge prior to his ordering the investigation, defence counsel shall be entitled to examine and copy papers and inspect the collected items of evidence.

Article 74

If the accused is in detention, defence counsel may communicate with him in writing or orally without supervision.

Article 75

(1) Defence counsel shall be entitled to do anything the accused is entitled to do, to the advantage of his client.

(2) The rights and duties of defence counsel shall cease if the accused withdraws the power of attorney.

Chapter Seven

SUBMISSIONS AND RECORDS

Article 76

(1) Private charges, charge sheets and summary charge sheets brought by the injured party in his capacity as prosecutor, as well as petitions, legal remedies and other statements and reports, shall be filed in writing or communicated orally to be entered in the records.

(2) Submissions from the preceding paragraph must be intelligible, shall contain all matter necessary for procedural action, and shall be signed.

(3) Unless otherwise provided by this Act, the court shall ask the submitter of an unintelligible or incomplete submission to correct and supplement it; should he fail to do so within a set time limit, the court shall dismiss the submission.

(4) In the request addressed on the submitter to correct or supplement his submission, the court shall inform him of the consequences of failing to do so.

Article 77

(1) Submissions which under this Act are bound to be served on the adverse party shall be sent to the court in as many copies as are needed by the court and the adverse party.

(2) If such submissions are not sent to the court in a sufficient number of copies, the court shall request the submitter to send the required number of copies within a set time limit. Should the submitter fail to observe the order the court shall secure the required number of copies at the expense of the submitter.

Article 78

(1) The court shall impose a fine on defence counsel, the attorney, legal representative, injured party, private prosecutor or injured party in his capacity as prosecutor if in the submission or in speech they insult the court or any participant in the proceedings. The fine shall amount to a minimum of one-fifth of the last officially announced average net monthly salary per employee in the Republic of Slovenia, and to a maximum of three times the amount of that salary. The ruling on the fine shall be rendered by the investigating judge or the panel before which the abusive statement was made; if the insult is contained in the submission, the ruling on the fine shall be rendered by the court which is to decide on the submission. An appeal shall be permitted against this ruling. An insult made by a public prosecutor or a person deputising for him shall be reported to the competent public prosecutor. The imposing of a fine on a lawyer or an articled clerk shall be reported to the Bar.

(2) Punishment referred to in the preceding paragraph shall have no effect on the prosecution or the meting out of criminal sanctions for a criminal offence committed by insult.

Article 79

(1) Each act performed during the criminal procedure shall be entered in the record simultaneously with the performance of the act or, if that is impossible, immediately afterwards.

(2) Records shall be kept by a recording clerk. Only the record of house search or personal search, or the record of acts performed outside the official premises of the body which conducts the procedure may be drawn up by those who perform the acts if it is impossible to secure a recording clerk.

(3) The recording clerk shall keep a record by entering in it what the person who performs an act dictates to him.

(4) The person being interrogated shall be entitled to dictate by himself the answers to be recorded. He may be divested of that right if he abuses it.

Article 80

(1) Information entered in the record shall include: the name of the state agency before which the procedural act is performed, the place where the proceeding takes place, the day and time of the beginning and conclusion of the proceeding, the names of persons present with an indication of their role in the proceeding, and the criminal matter in connection with which the procedural act is taking place.

(2) The record shall include the essential data on the course and contents of the proceeding. The essential content of depositions and statements made shall only be recorded, and it shall be recorded in a narrative form. Questions shall only be recorded if necessary for the understanding of the answer or if so demanded by the person who asks a question. The identity of the person who asks a question must be clear from the record. If necessary, the question asked and the answer thereto shall be recorded verbatim. If in the course of the proceedings, objects or papers are confiscated, that fact shall be indicated in the record and the objects confiscated shall be enclosed with the record or the name of the person with whom they are placed for safekeeping shall be indicated.

(3) Where acts such as inspection, search of premises or persons or identification of persons or objects are involved (Article 242) the record shall also contain data relevant to the nature of such an act or to the identification of individual objects (description, measurements and size of objects or traces, marks on objects and other data); if sketches, drawings, plans, sound or video recordings and similar were made, these shall be entered in, and the objects shall be appended to, the record.

Article 81

(1) Records shall be kept neatly, without deletions, additions or changes. Parts that are crossed out must remain legible.

(2) Changes, corrections and additions shall be noted down at the end of the record and certified by the persons required to sign the record.

Article 82

(1) The interrogated person and those whose presence during the performance of procedural acts is obligatory, as well as the parties, the defence counsel and the injured party, if present, shall have the right to read the record through or to demand that it be read to them. They shall be informed of that right by the person conducting the proceedings, and the record shall show if they were given that information and if the record was read to them. The record shall always be read if not made by a recording clerk and a note thereon shall be entered in the record.

(2) The record shall be signed by the interrogated person. If the record contains several pages, each page shall be signed by the interrogated person.

(3) The interpreter, if any, the witnesses whose presence during the acts of investigation is mandatory and, in case of a search of person or premises, the person who was searched or whose dwelling was searched, shall put their signatures at the end of the record. If the record is not made by a recording clerk (second paragraph of Article 79), it shall be signed by those present at the proceeding. If there are no such persons, or such persons cannot understand the contents of the record, the record shall be signed by two witnesses, except where it is impossible to secure their presence.

(4) An illiterate person shall leave the print of his right-hand index finger in the place provided for signature, and the recording clerk shall write his name and surname under the fingerprint. Where it is impossible to obtain the print of the right-hand index finger and another fingerprint, or a left-hand fingerprint is taken instead, the finger and the hand from which the print was obtained shall be indicated in the record.

(5) If the interrogated person is without hands, he shall read the record by himself; if he is illiterate, the record shall be read to him and a note thereon entered in the record. If the interrogated person declines to sign the record or to leave a fingerprint, a note thereon shall be entered in the record together with the reason for refusal.

(6) If a procedural act could not be performed without interruption, the day and hour of the interruption and the day and hour of the resumption shall be noted in the record.

(7) Any objection to the contents of the record shall be entered therein.

(8) At the end of the record the person who performed the procedural act and the recording clerk shall attach their signatures.

Article 83

(1) Before the public prosecutor submits a request for investigation (first paragraph of Article 168) or a motion for non-investigation (first paragraph of Article 170) to the investigating judge, or files a charge sheet without investigation (sixth paragraph of Article 170) or a summary charge sheet on the basis of a crime report (second paragraph of Article 430), or files a motion for execution of individual acts of investigation (first paragraph of Article 431) or for issue of a punitive order (first paragraph of Article 445.a) with a judge sitting alone, the public prosecutor shall exclude from the documents he will send to the court the information which the police has gathered from the suspect before the latter was instructed as provided in the fourth paragraph of Article 148 of this Act. The public prosecutor shall make an official note on the exclusion, enclose it with the papers he will send to the court and keep the excluded information in his file. If the record of the interrogation of the suspect (second paragraph of Article 148.a), the records of the acts of investigation performed (Articles 164-166) or other evidence which in the opinion of the public prosecutor may not serve as basis for the decision of the court are enclosed with the crime report, he shall send the papers containing such evidence to the investigating judge or a judge sitting alone who shall deal with them as provided by the second and third paragraphs of this Article.

(2) Where this Act provides that a court decision may not be based on a deposition by the suspect or accused, witness or expert, or on the records, objects, recordings, reports or pieces of evidence, the investigating judge or the judge who carries out individual acts of investigation shall issue *ex officio*, or on the motion of a party, a decision excluding the aforesaid evidence from the files as soon as he establishes that the statements or evidence of such a nature are involved. He shall act in the same manner in respect of the information referred to in the preceding paragraph unless the public prosecutor has already excluded it, as well as in respect of the information disclosed to the police by persons who may not be examined as witnesses (Article 235) or who under this Act have renounced testimony (Article 236) or may not under this Act be appointed as experts (Article 251). The parties may request the exclusion of records and other evidence only until the opening of the main hearing and may request it in the main hearing only if they were not able do it before.

(3) The decision on the exclusion or on the rejection of a party's motion for the exclusion referred to in the preceding paragraph may be challenged by a special appeal. Once the decision becomes final, the excluded records and other evidence shall be sealed in a separate envelope and kept apart from other files, and it shall not be allowed to inspect them or use them in criminal proceedings except in instances referred to in the fourth paragraph of this Article.

(4) The provision of the preceding paragraph notwithstanding, the president of the court who decides the request for exclusion of a judge for reasons set out in point 4.a of Article 39 of this Act as well as the panel who decide on legal remedy against the decision in the main cause, shall be allowed to inspect and use the records and other evidence that were excluded from the files under a final decision if that is necessary for determining whether the grounds for the exclusion of a judge exist. After being inspected and used, the excluded records and other evidence shall again be sealed in a separate envelope with an indication thereon of who inspected them and when they were inspected.

(5) The provisions of the preceding paragraph shall apply *mutatis mutandis* when the court of second instance determines an appeal against a judgement whereby the appeal also challenges the decision on the exclusion of evidence (fourth paragraph of Article 340).

Article 84

(1) The investigating judge may order that an act of investigation be recorded by a sound recording or video recording device. The investigating judge shall inform thereof the person to be interrogated in advance.

(2) The recording must contain data referred to in the first paragraph of Article 80 of this Act, information necessary for identification of the person whose statement is being recorded and

information as to the capacity in which the person is giving the statement. If statements of several persons are being recorded, the recording must show clearly which persons made which statements.

(3) If so requested by the interrogated person, the recording shall immediately be reproduced, and his corrections and explanations shall also be recorded.

(4) The fact that the act of investigation was recorded by a sound recording or video recording device, the person who did the recording, the fact that the interrogated person was informed of the intended recording in advance and that the recording was reproduced, as well as the place where the recording is kept if not appended to the file shall be entered in the record of the act of investigation.

(5) The investigating judge may order that the sound recording be completely or partly transcribed on paper. The transcription shall be examined and certified by the investigating judge and enclosed with the record of the act of investigation performed.

(6) The sound and video recordings shall be kept by the court for as long as the file of the criminal case is kept.

(7) The investigating judge shall be bound to permit persons who have a legitimate interest to record the investigative proceeding with a sound recording or video recording device.

(8) The provisions of paragraphs one to seven of this Article shall apply *mutatis mutandis* to sound or video recordings of some other act of investigation, with the exception of interrogation, and to acts of investigation performed by the police.

Article 85

As regards records of the main hearing, the provisions of Articles 314 to 317 of this Act shall also apply.

Article 86

(1) Consultation and voting shall be registered in a separate record.

(2) The record of consultation and voting shall set down the course of voting and the adopted decision.

(3) The record of consultation and voting shall be signed by all members of the panel and by the recording clerk. Individual opinions which were not set down in the record shall be enclosed with the record of consultation and voting.

(4) The record of consultation and voting shall be sealed in a separate envelope. It may only be examined by a higher court while deciding on a legal remedy. In that case the higher court shall seal the record in a separate envelope on which it shall indicate that it has examined the record.

Chapter Eight

TIME LIMITS

Article 87

(1) Time limits prescribed by this Act may not be extended unless explicitly permitted by law. The time limit which this Act provides for the protection of the right to defence and other procedural rights of the accused may be shortened if so requested by the accused in writing or stated orally before the court and entered in the record.

(2) Statements for which time limits are provided shall be considered to have been made in the proper time if the authorised recipient receives them before the set time limit expires.

(3) If a statement is dispatched by registered mail or by telegraph, the day of delivery to the post office shall be considered as the day of delivery to the addressee.

(4) The accused who is in detention may make a statement from paragraph two above orally, to be entered in the record at the court where the case is pending, or may send it to a prison administration; persons serving prison terms or inmates of institutions enforcing security or educational measures may deliver such statements to the warden. The day on which the oral statement is entered in the record or

a written statement is delivered to the administration of an institution shall be considered as the day of delivery to the authorised recipient.

(5) If, by reason of ignorance or plain error on the part of the sender, a submission subject to a limited time limit is served or dispatched to a court which lacks jurisdiction in the matter in the proper time, and the submission reaches the court with jurisdiction after the expiry of the term, such submission shall be deemed to have been filed in the proper time.

Article 88

(1) Time limits shall be counted in hours, days, months and years.

(2) The hour or day on which the delivery or announcement was made, or the hour or day of the occurrence of the event from which the time limit is to be counted, shall not be included in the computation and the first following hour or day shall be counted as the beginning of the time limit. One day shall be considered to comprise twenty four hours, and months and years shall be counted according to the calendar.

(3) The set time limits expressed in months or years shall be considered to expire with the expiry of the day in the last month or year which by its number corresponds to the day on which the time limit under the second paragraph of this Article began. If such a day does not exist in the last month, the time limit shall be considered to expire on the last day of that last month.

(4) If the last day of the time limit coincides with a public holiday, Saturday, Sunday, or some other day on which state agencies do not work, the time limit shall be considered to expire on the next working day.

Article 89

(1) An accused person who for justifiable reasons is late in announcing an appeal or in filing an appeal against a judgement, or against a ruling on a security or educational measure or a ruling on the confiscation of proceeds shall be granted by the court reinstatement of the case, and permitted to announce an appeal or to file an appeal, provided that within eight days of the date of cessation of the cause of the delay he or she petitions for reinstatement of the case and at the same time also announces or lodges an appeal.

(2) After a lapse of three months from the day of delay, reinstatement of the case may not be claimed.

Article 90

(1) Reinstatement of the case shall be decided upon by the presiding judge who passed the judgement against which an appeal is announced, or who issued the judgement or the ruling that is being challenged by means of an appeal.

(2) No appeal shall be permitted against a ruling which grants reinstatement of the case.

(3) If the accused appeals against a ruling by which reinstatement of the case is rejected the court shall refer the appeal to be decided by a higher court, and shall send together with it the announcement of an appeal against the judgement, or the appeal against the judgement or against the ruling on a security or educational measure or the appeal against the ruling on the confiscation of proceeds, as well as the reply to the appeal and all other written material in the case file.

Article 91

The petition for reinstatement of the case shall not, as a rule, stay the execution of the judgement, or of the ruling on the protective or educational measure, or of the ruling on the confiscation of proceeds, however, the court with jurisdiction to decide on the petition shall be allowed to stay the execution until the petition has been decided upon.

Chapter Nine

COSTS OF CRIMINAL PROCEEDINGS

Article 92

(1) The costs of criminal proceedings shall be the expenses that arise in or due to the criminal proceedings.

(2) The costs of criminal proceedings shall include:

1) expenses for witnesses and the costs of inspection, and fees and expenses of experts, interpreters and professionals;

2) transportation expenses for the accused;

3) costs incurred in producing the accused or the arrested person;

4) transportation and travel expenses for officials;

5) medical expenses for the accused while in detention and expenses for child delivery;

6) lump sum;

7) fees and necessary expenses for defence counsel, necessary expenses for the private prosecutor and the injured party acting as prosecutor and for their representatives, and fees and necessary expenses of their attorneys;

8) necessary expenses of the injured party and his legal representative, and the fees and expenses of his attorney.

(3) The lump sum shall be in the range of a minimum of one-third of the last officially announced average net monthly salary per employee in the Republic of Slovenia and a maximum of ten times that salary. In determining the lump sum the court shall take into consideration the duration and complexity of the case and the financial position of the person required to pay the sum.

(4) The costs referred to in points 1 through 5 of second paragraph of this Article, and the necessary expenses and fees for the appointed defence counsel and the attorney for the injured party and injured party acting as prosecutor, shall in criminal cases prosecuted *ex officio* be advanced from the funds of the agency which conducts proceedings, eventually to be recovered from those against whom they have been assessed pursuant to the provisions of this Act. The agency in charge of proceedings shall make a list of all advanced expenses and enclose it with the case file.

(5) The costs of translation into the Slovenian, Italian or Hungarian language, arising in connection with the exercising under the Constitution and this Act of the right of members of the Italian and Hungarian minorities to use their own language, shall not be charged against those who under the provisions of this Act are obliged to refund the costs of criminal proceedings.

(6) The costs of translation shall not be charged against an accused person who does not understand or speak the language in which criminal proceedings are conducted.

Article 93

(1) Each judgement and each ruling by which criminal proceedings are discontinued or the charge sheet is rejected shall determine who shall bear the costs of proceedings and the amount of the costs.

(2) If data on the amount of costs are not available the investigating judge, the judge sitting alone or the presiding judge shall issue a special ruling thereon when such information becomes available. A claim containing information about the amount of costs may be filed within three months after the day the final judgement or the ruling was served on the person entitled to file such a claim.

(3) The decision on an appeal against the special ruling on the costs of criminal proceedings shall be passed by a panel of judges (sixth paragraph of Article 25).

Article 94

(1) The accused, the injured party, the injured party acting as prosecutor, the private prosecutor, defence counsel, legal representative, attorney, witness, expert, interpreter and specialist (Article 178) shall, irrespective of the outcome of criminal proceedings, bear the costs arising from their production, postponement of an investigative action or of the main trial, or failure to file an announced appeal, as well as other expenses incurred through their fault and a corresponding portion of the lump sum.

(2) The court shall determine the costs from the preceding paragraph in a special ruling, except where a decision on expenses to be refunded by the private prosecutor and the accused is contained in the judgement on the principal matter.

Article 95

(1) If the court finds the accused guilty, it shall order in the judgement that the accused shall bear the costs of criminal proceedings.

(2) A person charged with several criminal offences shall not be put under obligation to refund those expenses which have arisen in connection with charges of which he has been acquitted, provided that such expenses can be singled out from the total.

(3) If under the same verdict several accused persons are found guilty the court shall determine the portion of the costs to be borne by each one of them; if such an apportioning appears impossible the court shall pronounce them jointly liable for the costs. The court shall determine the payment of the lump sum for each accused person separately.

(4) The court may in a decision on costs exempt the accused from the obligation to reimburse all costs or part of the costs of criminal proceedings referred to in points 1 to 6 of the second paragraph of Article 92 of this Act, if payment of these costs would put in jeopardy the sustenance of the accused or of the persons he is bound to support. If the circumstances warranting exemption are established after the decision on the costs has been passed, the presiding judge may by a special ruling exempt the accused from the repayment of costs of criminal procedure, or may allow him to repay the costs in instalments.

Article 96

(1) If criminal procedure is discontinued, or a judgement of acquittal or of rejection of charges is passed, or a ruling rejecting the charge sheet is rendered, the court shall order in the aforesaid ruling or judgement that the costs of criminal proceedings from points 1 to 5 of the second paragraph of Article 92 of this Act, as well as the necessary expenses of the accused and the necessary expenses and fees of defence counsel shall be charged to the budget, except in instances provided by the following paragraphs.

(2) A person who knowingly gives false crime report shall bear the costs of criminal proceedings.

(3) A private prosecutor and a injured party acting as prosecutor shall repay the costs of criminal proceedings referred to in points 1 to 6 of the second paragraph of Article 92 of this Act, as well as the necessary expenses of the accused and the necessary expenses and fees of his counsel, if the proceedings terminate in a judgement of acquittal or of rejection of charges, or if they terminate in a ruling under which proceedings are discontinued or the charge sheet is rejected, except where the ruling discontinuing proceedings or a judgement rejecting the charges have been passed by reason of the death of the accused or because criminal prosecution has become barred by statute due to procrastination of proceedings through no fault of the private prosecutor or injured party acting as prosecutor, as well as in instances referred to in the second paragraph of Article 63 of this Act. In the latter case the expenses of the private prosecutor, of the injured party acting as prosecutor and of their attorneys shall be charged to the budget. If proceedings are discontinued by reason of withdrawal of charges, the accused and the private prosecutor or the injured party acting as prosecutor may between themselves effectuate a settlement regarding their respective expenses. If there are several private prosecutors or injured parties acting as prosecutors, they shall be held jointly liable for the costs.

(4) If the court has rejected the charge sheet on grounds of non-jurisdiction, the decision on the costs shall be passed by the court with jurisdiction.

Article 97

(1) The fees and necessary expenses of defence counsel and attorneys who have been retained by the private prosecutor or the injured party shall be paid by the person who has retained them regardless of the court decision as to who is liable for the costs, except where under the provisions of this Act the fees and the necessary expenses of defence counsel are to be charged to the budget. If

defence counsel has been appointed and the payment of the fees and necessary expenses of defence counsel would imperil the sustenance of the accused or of persons whom he is bound to support, these expenses shall be reimbursed from budgetary funds. The same shall apply to cases where the attorney has been appointed for an injured party acting as prosecutor.

(2) The attorney of a private prosecutor or of an injured party who is not a lawyer or an articled clerk shall not be entitled to fees but only to the reimbursement of necessary expenses.

(3) If the accused is not ordered to pay the costs of the criminal proceedings, the costs of the attorney appointed to the injured party referred to in the third paragraph of Article 65 of this Act shall be charged to the budget.

Article 98

(1) The decision as to who shall bear the expenses incurred at a higher court shall be passed by that court in accordance with the provisions of Articles 92 to 97 of this Act.

(2) The lump sum shall not be enjoined if the decision of a higher court is entirely or partly in favour of the accused.

Article 98.a

The provisions of Articles 92 to 98 of this Act shall apply *mutatis mutandis* to the payment of the costs which arise in proceedings involving extraordinary legal remedies.

Article 99

The refunding of the costs of criminal proceedings shall be determined in greater detail by the minister responsible for justice.

Chapter Ten

CLAIMS FOR INDEMNIFICATION

Article 100

(1) Claims for indemnification arising out of the commission of a criminal offence shall upon a motion by rightful claimants be dealt with in criminal procedure, provided that the determination of those claims does not significantly protract the procedure.

(2) A claim for indemnification may consist of a demand for compensation for damage, the recovery of property or the cancellation of a legal transaction.

Article 101

The motion for the assertion of an indemnification claim in criminal procedure may be made by the person entitled to assert such claim in a civil action.

Article 102

(1) The motion for indemnification in criminal procedure shall be filed with the agency responsible for receiving crime reports or with the court which conducts criminal proceedings.

(2) The motion shall be made before the end of the main hearing at a court of first instance.

(3) The person entitled to make the motion shall specify his claim and offer evidence for such claim.

(4) If the claimant fails to make the motion for indemnification in criminal procedure before charges are brought, he shall be informed that he may make it before the end of the main hearing.

Article 103

(1) Entitled persons (Article 101) may, before the end of the main hearing, withdraw the motion for assertion of their indemnification claim in criminal procedure and seek satisfaction in civil procedure. If they withdraw the motion, they may not resubmit it, unless otherwise provided by this Act.

(2) If after the motion has been made and before the conclusion of the main hearing the claim for indemnification is transferred to another person according to the rules of property law, the transferee shall be invited to declare if he is persisting in or withdrawing the motion. If upon being duly notified the transferee fails to appear, it shall be deemed that he has withdrawn the motion.

Article 104

(1) The court which conducts the proceedings shall examine the accused about the facts alleged in the motion and shall examine the circumstances of concern for the determination of the indemnification claim.

(2) If the inquiry into the indemnification claim would cause an undue delay in criminal procedure, the court shall confine itself to collecting the data which would be impossible or very difficult to determine at a later stage.

Article 105

(1) Claims for indemnification shall be decided by the court.

(2) The court may in returning a verdict of guilty grant the indemnification claim of the injured party in full, or it may grant the claim in part and direct the injured party to sue for the balance in civil proceedings. If the data collected in criminal procedure do not provide a reliable basis to award either full or partial indemnification, the court shall instruct the injured party that he may seek full satisfaction in civil proceedings.

(3) If the court passes a judgement by which the accused is acquitted of charges or the charges are rejected, or if it renders a ruling by which criminal proceedings are discontinued or the charge sheet is dismissed, the court shall instruct the injured party that he may seek to satisfy his indemnification claim in a civil action. If the court declares itself as not having jurisdiction to conduct criminal proceedings it shall instruct the injured party that he may assert his indemnification claim in criminal proceedings to be opened or resumed by the competent court.

Article 106

When an indemnification claim involves the recovery of property and the court finds that the property belongs to the injured party and is in the possession of the accused or of an accomplice or a person with whom it has been placed for safekeeping, the court shall in its judgement order that the property be delivered to the injured party.

Article 107

When an indemnification claim involves the cancellation of a legal transaction and the court finds that the claim is justified, the court shall order in the judgement that the legal transaction in question be completely or partly annulled with all the consequences deriving thence and without prejudice to the rights of others.

Article 108

(1) A court may only alter the final judgement on an indemnification claim if criminal proceedings have been reopened or a petition for the protection of legality has been filed.

(2) Barring the provision referred to in the preceding paragraph, the final judgement of the criminal court concerning the claim for indemnification may be attacked by the convicted person or his heirs only in civil proceedings and providing that grounds exist for the reopening of proceedings as laid down in the provisions applying to civil procedure.

Article 109

(1) If a claim for indemnification is filed in the pre-trial or criminal procedure, the court may order a provisional securing of this claim on a proposal of the entitled claimant (Article 101).

(2) Concerning the conditions and the procedure of ordering, duration and termination of provisional securing of the claim for indemnification, the provisions of this Act applying to the provisional securing of the claim for the confiscation of proceeds arising from the criminal offence or because of it (Articles 502 to 502.d) shall apply *mutatis mutandis*.

Article 110

(1) If it is beyond doubt that the property claimed belongs to the injured party, and that this property need not be exhibited as evidence in criminal proceedings, it shall be delivered to the injured party before the end of the proceedings.

(2) If several injured parties claim title to the property they shall be instructed to institute a civil action and the criminal court shall only order that the property be put under custody as a provisional securing of the claim.

(3) Property needed as evidence shall be confiscated and returned to the owner after termination of proceedings. If such property is indispensable to the owner it may be returned to him before the conclusion of proceedings, against his undertaking to produce the property when so requested.

Article 111

(1) If the injured party holds claim against a third person who is in possession of property acquired through the commission of a criminal offence or has gained proceeds from the commission of a criminal offence, the court may on the motion of rightful claimants (Article 101), by applying within criminal procedure the provisions applicable to enforcement procedure, order provisional securing of the claim against the third person. The provisions of paragraphs 2 and 3 of Article 109 of this Act shall also apply in this case.

(2) The provisional securing of the claim referred to in the preceding paragraph shall, if not annulled earlier, be made void by the verdict of guilty, or the court shall direct the injured party to institute civil proceedings warning him that the provisional securing of the claim shall be made void if the civil action is not brought within the time limit set by the court.

Chapter Eleven

RENDERING AND ANNOUNCING OF DECISIONS

Article 112

(1) Decisions in criminal proceedings shall be in the form of judgements, rulings and orders.

(2) Judgements may only be passed by courts, while rulings and orders may also be rendered by other agencies participating in criminal procedure.

Article 113

(1) A panel of judges shall pass decisions after oral consultation and voting. A decision shall be considered adopted if carried by the majority of panel members.

(2) The presiding judge shall direct the consultation and shall give his vote last. His duty shall be to see to it that all issues are examined comprehensively and thoroughly.

(3) If the opinions on individual issues voted on are so divided that no view commands a majority, the issues shall be divided and the voting repeated until a majority is achieved. If a majority is not obtained in that manner, the decision shall be reached by adding the votes which are the most prejudicial to the accused to those less prejudicial until the required majority is reached.

(4) Members of the panel may not abstain from voting on issues put to the vote by the presiding judge; however, a panel member who has voted for the acquittal of the accused or the annulment of a

judgement and has been outvoted by other members shall not be required to vote on criminal sanctions. If he does not vote he shall be deemed to support the vote most favourable to the accused.

Article 114

(1) The panel shall first vote on the issue of jurisdiction of the court, on whether proceedings should be supplemented and on other preliminary questions. After deciding on preliminary issues, the panel shall proceed to decide on the principal matter.

(2) In deciding on the principal matter, the panel shall first take a vote on whether the accused has committed a criminal offence and whether he is criminally liable, and then on the punishment, other criminal sanctions, costs of criminal proceedings, indemnification claims and other issues calling for adjudication.

(3) If a person has been accused of several criminal offences the vote shall first be taken on the criminal liability and penalty for each individual offence, and then on the aggregate punishment for all offences together.

Article 115

(1) Consultations and voting shall take place in camera.

(2) Only the members of the panel and the recording clerk shall be allowed into the consultation and voting room.

Article 116

(1) Unless otherwise provided by this Act, the decisions shall be announced to the persons concerned orally if these persons are present, and by means of a certified copy if these persons are not present.

(2) If a decision is announced orally, a note to that effect shall be entered in the record or the case file, and the person concerned shall confirm the announcement with his signature. If the person concerned declares that he will not appeal against the decision, a certified copy of the orally announced decision shall not be served on him, unless provided otherwise by this Act.

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

Chapter Twelve

SERVING OF DOCUMENTS AND INSPECTION OF FILES

Article 117

(1) Documents shall as a rule be delivered by mail or by a legal or natural person carrying out delivery as a registered activity and having a special authorisation of the minister responsible for justice issued in line with the provisions applying to civil procedures. They may also be served by the authorised person of the agency which has ordered the delivery, or directly at the premises of that agency.

(2) The minister responsible for justice shall determine the rules for the activities of legal and natural persons carrying out delivery on the basis of the special authorisation specified in the preceding paragraph, as well as the content of the notice of delivery and acknowledgement of delivery in criminal procedure.

(3) The court may address summons for the main hearing and other summons to the person present orally; in this case the court shall advise the person summoned of the consequences of default. A note on the summons served in this manner shall be entered in the record which the person summoned shall sign, except where a note to that effect has already been entered in the record of the main hearing. A summons delivered in this way shall be considered to have been duly served.

Article 118

Documents which under this Act ought to be delivered by personal service shall be delivered to the addressee directly. If the person to be served by personal delivery is not to be found at the place where serving is to be effected, the server shall inquire when and where that person can be reached and shall leave a written notice with one of the persons mentioned in Article 119 of this Act or in the house letter box, directing the addressee to be at his dwelling or working place on a specified day at a specified hour to accept the document. If after these actions the person to be served cannot be reached, the server shall act as provided by the first paragraph of Article 119 and serving shall be considered to have thereby been done.

Article 119

(1) Documents which under this Act need not be delivered personally shall also be served by personal delivery. If, however, the addressee cannot be reached in his residence or at his work place, the documents may be handed over to an adult member of his family who shall be bound to accept them. If no such family member is to be found in the residence, the documents shall be left with the janitor or a neighbour willing to accept them. If documents are to be delivered at the work place of the addressee and he cannot be reached there, they may be left with the person authorised to receive the mail, and that person shall be bound to accept them, or to an employee working at the same work place if he agrees to accept them.

(2) If a document cannot be delivered to persons referred to in the preceding paragraph, the document shall be handed in at the court which ordered the delivery, and in the case of delivery by post, the post office covering the area in which lies the residence of the addressee. A notification of the delivery shall be left for the addressee, stating at which court or post office and within what period of time it can be collected. Documents not collected at the post office within the specified time period shall be returned.

(3) If it is established that the person to be served with a document is absent and by that reason the persons referred to in the first paragraph of this Article are not in a position to deliver it to him in the proper time, the document shall be returned with a note as to his whereabouts attached to it.

Article 120

(1) A summons to the first interrogation in pre-trial procedure and summons to the main hearing shall be served on the accused personally.

(2) An accused person who has not retained defence counsel shall be served personally with the charge sheet, the judgement, all decisions for which the time limit for appeal starts to run from the day of serving, and any appeal of the adverse party against the rejoinder. At the request of the accused the court shall serve the judgement and other decisions on the person designated by the accused.

(3) If the accused who has not retained defence counsel is to be served with the judgement by which he is sentenced to imprisonment and the judgement cannot be delivered to his address, the court shall appoint defence counsel *ex officio* who shall perform that function until the new address of the accused is obtained. The court shall determine the time limit within which the appointed defence counsel is required to study the file, after which it shall deliver the judgement to him and shall continue proceedings. Where a document to be delivered is a decision for which the time limit for appeal starts to run from the day of serving, or an appeal of the adverse party against the rejoinder, the court shall post the decision or the appeal on the bulletin board and after a lapse of eight days it shall be considered that the serving has been effected.

(4) If the accused has a defence counsel, the court shall deliver documents from the second paragraph of this Article to defence counsel and to the accused according to the provisions of the preceding Article. In that case the time limit for employing a legal remedy or for a rejoinder shall start to run from the last serving. If the decision or the appeal cannot be served on the accused because he failed to report the change of address or residence, the decision or the appeal shall be posted on the bulletin board of the court and after eight days the serving shall be considered to have been effected.

(5) If a document is to be served on defence counsel of the accused who has retained several defence counsels, it shall suffice to serve the document on one of them.

Article 121

(1) A summons to bring private charges or charge sheet and summons to the main hearing shall be served on the private prosecutor, the injured party acting as private prosecutor or on their legal representative personally (Article 118), and they shall be served on their attorneys as provided by Article 119 of this Act. These persons shall in the same manner be served with decisions for which the time limit for appeal starts to run from the day of serving and with the appeal of the adverse party against the rejoinder.

(2) If summons or a decision or a appeal cannot be delivered to the addresses of persons referred to in the preceding paragraph, the court shall post that summons, decision or appeal on the bulletin board and after eight days it shall be considered that the serving has been effected.

(3) Where the injured party, the injured party as prosecutor or the private prosecutor has a legal representative or an attorney, serving shall be effected on the representative or the attorney, and where there are several of them serving shall be effected on one of them only.

Article 122

(1) The recipient and server shall acknowledge serving of a document by signing the acknowledgment of delivery (service form). The recipient shall write the date of receipt in words on the service form.

(2) If the recipient is illiterate or unable to sign, the server shall sign the name of the recipient and write the date of delivery indicating the reason for his signing the name of the recipient.

(3) If the recipient refuses to sign the service form the server shall make a note thereof and indicate the date of delivery, whereby the service shall be considered effected.

Article 123

If the addressee or an adult member of his family refuse to receive the document tendered, the server shall write on the service form the date and hour and the reason of the refusal, and shall leave the document in the dwelling of the addressee or in his place of work; the service shall thereby be considered effected.

Article 124

(1) Military personnel, members of the police, guards in institutions in which persons deprived of freedom are kept in custody, and persons employed in land, maritime and air transport shall be served with summons through the intermediary of their command or immediate superiors; if necessary, they may be served with other documents in the same manner.

(2) Serving of documents on persons deprived of freedom shall be made in the court or via the administration of institutions in which they are kept in custody.

(3) Serving on persons enjoying immunity in the Republic of Slovenia under international law shall be effected via the Ministry of Foreign Affairs, except where otherwise provided by international agreements.

(4) Serving on Slovenian nationals abroad, except in the case of procedure referred to in Articles 515 and 516 of this Act, shall be effected via diplomatic or consular missions of the Republic of Slovenia, provided that a foreign country in question does not oppose such manner of serving and that the recipient agrees to accept it. The authorised person of the diplomatic or consular mission shall sign the service form as the server if the document is delivered in the premises of the mission; if the document is sent by mail he shall confirm it on the service form.

Article 125

(1) Serving on the public prosecutor of decisions and other documents shall be effected by delivery to the actual office of the public prosecutor.

(2) Serving of decisions and other documents for which the time limit begins on the day of delivery shall be considered to be effected on the day of delivery to the office of the public prosecutor.

(3) The court shall, upon request of the public prosecutor, send him the file of a criminal case for inspection. If the time limit for ordinary legal remedy is running, or if other procedural considerations so require, the court may fix the time by which the public prosecutor shall return the file.

Article 126

In cases not covered by the provisions of this Act, serving of documents shall be effected according to the provisions applying to civil procedure.

Article 127

(1) Summons and decisions issued before the end of the main hearing for persons participating in proceedings, except for the accused, may be handed over to a participant in the proceedings who agrees to deliver them to the addressee if the agency is confident that the recipient will thereby receive them without fail.

(2) A summons to the main hearing or some other summons, as well as decisions by which the main hearing or other announced actions are adjourned, may be transmitted to the persons from the preceding paragraph via telecommunications if circumstances warrant that information sent in that way will reach the person it is intended for.

(3) The servicing of a summons or of a decision in the manner described in the preceding paragraphs shall be officially noted in the file.

(4) The person who has been informed or sent a decision in the manner described in the first or second paragraph of this Article shall only suffer the consequences prescribed for the case of default if it is established that he had received the summons or the decision in due course and that he was informed of the consequences of default.

Article 128

(1) Examination and copying of individual criminal case files shall be permitted to anyone having a legitimate interest therein.

(2) While the procedure is pending the examination and copying of files shall be authorised by the agency before which proceedings are conducted; after termination of the procedure the authorisation shall be granted by the president of the court or an official designated by him. If the files are in the custody of the public prosecutor, the examination and copying shall be authorised by him.

(3) Examination and copying of individual criminal case files may be refused if so dictated by reasons of defence or state security, or if the main hearing was not held in open court. An appeal shall be permitted against such a ruling, but shall not stay execution.

(4) Examination and copying of files by the private prosecutor, the injured party as prosecutor, the injured party and defence counsel shall be governed by the provisions of Article 59 and Article 73 of this Act.

(5) The accused shall have the right to examine and copy files and to inspect items of evidence.

(6) The public prosecutor shall enable the accused and defence counsel to inspect the official notes about the information which the public prosecutor has excluded from the files (first paragraph of Article 83).

Chapter Thirteen

EXECUTION OF DECISIONS

Article 129

(1) A judgement shall be considered to be final when it can no longer be challenged by an appeal or if there has been no appeal against it.

(2) A final judgement shall be executed after it has been served and when no legal obstacles to its execution exist. If no appeal has been lodged, or the parties have renounced or withdrawn their appeal, the judgement shall become enforceable after the time limit for appeal has expired or from the day the parties waived or withdrew their appeal.

(3) If the court which passed the judgement in the first instance is not authorised to execute it, the court shall send a certified copy of the judgement with the confirmation of its enforceability to the agency authorised to execute the judgement.

(4) If a military person or a conscript who has not yet finished his military service is sentenced to imprisonment, the court shall send a certified copy of the final judgement to the administrative agency responsible for defence affairs.

Article 130

If a fine prescribed by this Act cannot be enforced, the court shall execute it by imposing one day in prison for each 10,000 tolars started.

Article 131

(1) Concerning the costs of criminal proceedings, the confiscation of proceeds and indemnification claims, the judgement shall be executed by the competent court according to provisions which apply to enforcement procedure.

(2) Forced collection of costs of criminal proceedings adjudged to the credit of the budget shall be executed *ex officio*. The costs of forced collection shall temporarily be paid out of budgetary funds.

(3) If a judgement provides for confiscation of objects, the court which has passed the judgement in first instance shall decide if the objects should be sold according to provisions applying to enforcement procedure, or handed over to the crime museum or some other institution, or destroyed. The money obtained by the sale of objects shall be transferred to the budget.

(4) The preceding paragraph shall apply *mutatis mutandis* to decisions on confiscation of objects under Article 498 of this Act.

(5) Outside the reopening of criminal proceedings and the procedure upon motion for the protection of legality, the final decision on confiscation of objects may also be altered in civil proceedings if a dispute as to the title to the objects confiscated arises.

Article 132

(1) Unless otherwise provided by this Act, rulings shall be executed after they have become final. Orders shall be executed immediately, except where the agency which issued them decides otherwise.

(2) A ruling shall become final when it can no longer be challenged by an appeal or if there has been no appeal against it.

(3) Except where provided otherwise, rulings and orders shall be executed by the agencies which issued them. If the costs of criminal proceedings are determined by a court ruling, the collection of these costs shall be governed by the provisions of the first and second paragraphs of the preceding Article.

Article 133

(1) If doubt arises about the permissibility of execution of a judicial decision, or about the setting of a penalty, or if final judgement fails to include in the calculation the time spent in pre-trial detention or an earlier served sentence, or if these periods are computed erroneously, the matter shall be decided in a special ruling by the presiding judge of the court which adjudicated in first instance. An appeal shall not withhold the execution of the decision, unless the court decides otherwise.

(2) If doubt arises about the interpretation of a judicial decision, the matter shall be decided by the court which issued the final decision.

Article 134

When the decision on an indemnification claim becomes final, the injured party may ask the court that adjudicated in first instance to provide him with a certified copy of the decision, with an indication that the decision is enforceable.

Article 135

(1) Criminal records and records of educational measures ordered shall be kept by the ministry responsible for justice.

(2) The manner of keeping the records from the preceding paragraph shall be prescribed by the ministry responsible for justice.

Chapter Fourteen

MEANING OF THE TERMS USED IN THIS ACT AND OTHER PROVISIONS

Article 136

If law provides that prosecution of individual criminal offences is contingent on the motion of the injured person or on prior authorisation from the competent state agency, the public prosecutor may not request investigation nor file a charge sheet or a summary charge sheet unless he offers proof that such a motion has been made or such authorisation granted.

Article 137

(1) If prosecution of a criminal offence against the safety of public transport is in progress, the investigating judge or the panel of judges may suspend the driving licence of the accused while proceedings are pending. Prior to instituting proceedings for a criminal offence against the safety of public transport, the competent agency which performs inspection may suspend the driving licence of the person reasonably suspected of having committed such criminal offence and keep it for a maximum of three days.

(2) A driving licence may be returned to the accused before the end of criminal proceedings if there are good grounds to believe that the reasons for suspension no longer exist.

(3) An appeal may be lodged against a ruling issued under the preceding paragraphs, although such appeal shall not stay execution.

(4) The time during which the driving licence of the accused who is at liberty was suspended shall be counted in the penalty of prohibition from driving a motor vehicle or the security measure of suspension of driving licence.

Article 138

Except where the law provides otherwise, the court shall, within three days, inform the employer of the accused of his detention and of the final sentencing to imprisonment.

Article 139

If it transpires in the course of criminal procedure that the accused has died, the proceedings shall be discontinued by a ruling.

Article 140

(1) The court may, during the procedure, impose a fine referred to in the first paragraph of Article 78 of this Act on the defence counsel, attorney or legal representative, the injured party, the injured

party as prosecutor or private prosecutor if their behaviour is obviously intended to protract criminal proceedings.

(2) The court shall report the punishing of a lawyer or of an articled clerk to the Bar.

(3) If the public prosecutor does not file motions with the court in the proper time or performs other procedural acts with much delay and thereby causes proceedings to become protracted, the court shall inform the higher public prosecutor thereof.

Article 141

(1) The exemption from criminal prosecution of persons granted immunity in the Republic of Slovenia under international law shall be governed by the provisions of ratified and published international agreements.

(2) If doubt arises about the eligibility of a person to such exemption, the court shall consult the ministry responsible for foreign affairs.

Article 141.a

(1) The accused whose punishment may be mitigated in certain cases (point 3 of Article 42 and third paragraph of Article 297 of the Penal Code) and witnesses referred to in Article 240.a of this Act whose life or body is under serious threat shall be provided with the largest possible personal security in the pre-trial procedure, and during and after the conclusion of criminal procedure.

(2) Pursuant to the provisions of the Act referred to in the third paragraph of this Article, the personal security of their close relatives (points 1 to 3 of the first paragraph of Article 236) and of other persons under threat shall also be ensured on a motion of the accused and/or witnesses referred to in the preceding paragraph.

(3) The Act shall lay down the procedure and conditions for inclusion in a protection programme and for the termination of the protection programme, the authorities competent for proposing and ordering protection, urgent protection measures, protection programme measures, records and data protection as well as financing and control over the implementation of protection programmes.

Article 142

All state agencies shall be bound to extend the necessary assistance to courts and other agencies participating in criminal procedure, especially in matters concerning the detection of crime or the tracing of perpetrators.

Article 143

(1) The personal data controller must submit to the court, at its request and free of charge, the personal data from the filing system also without a personal consent of the individual whom the data refer to if the court states that the data are required for conducting a criminal procedure.

(2) The court shall keep the data referred to in the previous paragraph confidential, if so provided by law.

(3) The court shall process the data referred to in the first paragraph of this Article for the purposes of implementing the provisions of this Act. The data shall be available to the public in compliance with the provisions of this Act.

Article 144

The meaning of individual expressions used in this Act is as follows:

– the suspect, meaning a male or female suspect, is a person against whom the competent government agency undertook, before the introduction of criminal proceedings, a specific act or measure because grounds existed to suspect that he had committed, or participated in the commission of, a criminal offence;

– the accused is the person against whom investigation is conducted or against whom a charge sheet, summary charge sheet or private charges have been filed;

– the defendant is the person against whom the charge sheet has become final;

– the convicted person is the person whose liability for a criminal offence has been determined by a final judgement;

– the term 'the accused', denoting either a male or female, is used in this Act as a generic term covering the accused, the defendant and the convicted person;

– the injured party, denoting either a male or female, is the person whose personal or property rights have been violated or jeopardised;

– the prosecutor, denoting either a male or female, is a public prosecutor, a private prosecutor and an injured party acting as prosecutor;

– the party is both the prosecutor and the accused;

– domestic partnership is the union of a man and woman who have lived together for a longer period without being married;

– depending on the context, the police may mean a police station or any other police unit.

SECTION TWO

COURSE OF PROCEEDINGS

A. PRELIMINARY PROCEDURE

Chapter Fifteen

PRE-TRIAL PROCEDURE

Article 145

(1) All state agencies and organisations having public authority shall be bound to report criminal offences liable to public prosecution of which they have been informed or which were brought to their notice in some other way.

(2) In submitting crime reports the agencies and organisations from the preceding paragraph shall indicate evidence known to them and shall undertake steps to preserve traces of the crime, objects on which or by means of which the crime was committed and other items of evidence.

Article 146

(1) Any person may report a criminal offence which is liable to public prosecution.

(2) Cases where failure to report a crime is itself considered a criminal offence are defined by law.

Article 147

(1) Crime reports shall be submitted to the competent public prosecutor in writing or orally.

(2) If a crime is reported orally, the person reporting it shall be warned of the consequences of false accusation. Oral reports shall be entered in the record and reports received over the telephone shall be officially registered.

(3) Crime reports submitted to the court, the police or unauthorised public prosecutor shall be accepted and forwarded forthwith to the competent public prosecutor.

Article 148

(1) If grounds exist for suspicion that a criminal offence liable to public prosecution has been committed, the police shall be bound to take steps necessary for discovering the perpetrator, ensuring that the perpetrator or his accomplice do not go into hiding or flee, detecting and preserving traces of

crime or objects of value as evidence, and collecting all information that may be useful for the successful conducting of criminal proceedings.

(2) With a view to executing the tasks from the preceding paragraph the police may: seek information from citizens; inspect transportation vehicles, passengers and luggage; restrict movement within a specific area for a specific period of time; perform what is necessary to identify persons and objects; send out a wanted circular for persons and objects; inspect in the presence of the responsible person specific facilities, premises and documentation of enterprises and other legal entities, and undertake other measures necessary. The facts and circumstances established in individual actions which may be of concern for criminal proceedings, as well as the objects found and confiscated, shall be indicated in the record, or an official note shall be made thereon.

(3) The police may summon citizens. In summoning them it shall be bound to indicate the reason for this. It may only forcibly bring a citizen who has failed to appear after being summoned if the citizen has been alerted to that possibility in the summons. In performing actions under the provisions of this Article, the police may not examine citizens as accused persons, witnesses or experts, except for the suspect in the instance referred to in Article 148.a of this Act.

(4) When in the course of information gathering the police establish that there are grounds to suspect that a particular person (the suspect) has perpetrated or participated in the perpetration of a criminal offence, they shall inform that person, before starting to gather information from him, what criminal offence he is suspected of and the grounds for suspicion, and shall instruct him that he is not obliged to give any statement or answer questions and that, if he intends to plead his case, he is not obliged to incriminate himself or his close relatives or to confess guilt, that he is entitled to have a counsel of his choosing present at his interrogation, and that whatever he declares may be used against him in the trial.

(5) If the suspect declares that he wants to retain counsel, the interrogation shall be put off until the arrival of the counsel or until the time determined by the police which, nevertheless, may not be shorter than two hours. Other acts of investigation, except for those which it would be unsafe to delay, shall also be put off until the arrival of the counsel. The interrogation of the suspect shall be conducted according to the provisions of Article 148.a of this Act.

(6) If the suspect states that he does not want to retain counsel or the counsel does not arrive until the time determined by the police, an official note of the statement of the suspect shall be made. The note shall include the legal instruction given, the statement of the suspect and, in the event that the suspect wants to declare himself on the offence, the essence of his statement and comments thereon. The official note shall be read to the suspect and a copy thereof shall be delivered to him; the suspect shall acknowledge the receipt of the copy by his signature. The statement of the suspect may be recorded by a sound and picture recording device after the recording has been announced to the suspect.

(7) A person against whom an action or measure from the second and third paragraphs of this Article has been undertaken shall be entitled to lodge an appeal with the competent public prosecutor within three days.

(8) The police may, upon filing a written motion and subject to permission from the investigating judge or the presiding judge, also collect information from detainees if that is necessary for detecting other criminal offences of the same person, his accomplices or criminal offences committed by other perpetrators. This information shall be collected during the period of time, and in the presence of the person designated by the investigating or presiding judge.

(9) On the basis of information collected the police shall draw up a crime report in which it shall set out evidence discovered in the process of gathering information. The crime report shall not include the contents of the statements given by individual persons in the information gathering process. The police shall enclose with the report the items, sketches, photographs, reports received, records of the measures and actions undertaken, official annotations, statements and other material which may be useful for the successful conducting of proceedings. If after submitting the crime report the police learns of new facts, evidence or traces of the criminal offence, they shall gather the necessary information and send the public prosecutor a report thereon as a supplement to the crime report.

(10) The police shall send the public prosecutor a report even if the information gathered provides no basis for a crime report.

Article 148.a

(1) The interrogation of the suspect may only be conducted in the presence of the defence counsel. The interrogation may be attended by the public prosecutor and he shall be properly informed thereon by the police.

(2) The interrogation of the suspect shall be conducted by the police according to the provisions of this Act applying to the interrogation of the accused (Articles 227 to 233). The record of the interrogation shall be drawn up according to the provisions of Articles 79 to 82 of this Act. This record may be used as evidence in criminal proceedings. The interrogation of the suspect may be recorded by a sound and picture recording device after the recording has been announced to the suspect.

(3) If the suspect has not been informed of his rights under the fourth paragraph of the preceding Article, or the instruction and the statement of the suspect in respect of his right to defence counsel have not been noted down in the record, or the suspect was interrogated without his counsel being present, or the interrogation was conducted contrary to the provisions of the eight paragraph of Article 227 of this Act, the court may not base its decision on the statement of the suspect.

Article 149

(1) Police officers shall be entitled to send the persons found at the scene of the crime or persons having residence abroad to the investigating judge, or to detain them until he arrives, if such persons may supply information important for the criminal procedure and if it appears likely that an examination of these persons at a later date would be impossible or would significantly protract the procedure or cause other difficulties. These persons may not be held at the scene of the crime more than six hours.

(2) The police shall be entitled to take a photograph of the person suspected of a criminal offence as well as his fingerprints and an oral mucous membrane swab. They may also publish his photograph if that is necessary for establishing his identity and important for the successful conducting of criminal proceedings.

(3) Where it is necessary to ascertain the identity of fingerprints or biological traces on individual objects, the police shall be entitled to take fingerprints and oral mucous membrane swabs of persons likely to have come into contact with such objects.

Article 149.a

(1) If there are reasonable grounds for suspecting that a certain person has committed, is committing, is preparing to commit or is organising the commission of any of the criminal offences specified in the fourth paragraph of this Article and if it is reasonable to conclude that police officers would be unable to uncover, prevent or prove this offence using other measures, or if these other measures would give rise to disproportionate difficulties, secret surveillance of this person may be ordered.

(2) Secret surveillance may also exceptionally be ordered against a person who is not a suspect if it is reasonable to conclude that surveillance of this person will lead to the identification of a suspect from the preceding paragraph whose personal data is unknown, to the residence or whereabouts of a suspect from the preceding paragraph, or to the residence or whereabouts of a person who was ordered into custody, ordered to undergo house arrest or had an arrest warrant or an order to appear issued against him but who escaped or is in hiding and police officers are unable to obtain this information by other measures, or if these other measures would give rise to disproportionate difficulties.

(3) Secret surveillance shall be carried out as continual or repeat sessions of surveillance or pursuit using technical devices for establishing position or movement and technical devices for transmitting and recording sound, photography and video recording, and shall focus on monitoring the position, movement and activities of a person referred to in the preceding paragraphs. Secret surveillance may

be carried out in public and publicly accessible open and closed premises, as well places and premises that are visible from publicly accessible places or premises. Under conditions referred to in this Article, secret surveillance may also be carried out in private premises if the owner of these premises so allows.

(4) The criminal offences for which secret surveillance may be ordered are the following:

1) criminal offences for which the law prescribes a prison sentence of five or more years;

2) criminal offences from point 2 of the second paragraph of Article 150 of this Act and the criminal offences of false imprisonment (Article 143 of the Penal Code), threatening the safety of another person (Article 145), fraud (Article 217), concealment (Article 221), disclosure of and unauthorised access to trade secrets (Article 241), abuse of inside information (Article 243), fabrication and use of counterfeit stamps of value or securities (Article 250), forgery (Article 256), special cases of forgery (Article 257), abuse of office or official rights (Article 261), disclosure of an official secret (Article 266), being an accessory after the fact (Article 287), endangering the public (Article 317), pollution and destruction of the environment (Article 333), bringing of hazardous substances into the country (Article 335), pollution of drinking water (Article 337), and tainting of foodstuffs or fodder (Article 338).

(5) Secret surveillance shall be permitted by the public prosecutor through a written order and at the written request of the police, except in cases from the sixth paragraph of this Article, when an order must be obtained from the investigating judge.

(6) Secret surveillance shall be ordered in writing by the investigating judge, at the written request of the public prosecutor, in the following cases:

1) if he envisages the use of technical devices for the transmission and recording of sound in the application of the measure, where this measure may be ordered only for criminal offences referred to in the second paragraph of Article 150 of this Act;

2) if application of the measure requires the installation of technical devices in a vehicle or in other protected or closed premises or objects in order to establish the position and movements of a suspect;

3) for application of a measure in private premises, if the owner of these premises so allows;

4) for the application of a measure against a person who is not a suspect (second paragraph of this Article).

(7) Requests and orders shall be constituent parts of criminal case files and must contain:

1) information that allows the person against whom the measure is being requested or ordered to be identified accurately;

2) reasonable grounds or the establishment of reasonable grounds for suspicion;

3) in the case referred to in the second paragraph of this Article, information that allows a suspect from the first paragraph of this Article to be identified accurately, and the establishment of probability that application of the measure will lead to the identification of the suspect, his whereabouts or his place of residence;

4) the written consent of the owner of the private premises in which the measure will be applied;

5) the method of application, the scope and the duration of the measure, and other important circumstances that dictate use of the measure;

6) the grounds for or establishment of need to use the measure in question as opposed to another method of gathering information.

(8) In exceptional cases, if written orders cannot be obtained in time and if a delay would present a risk, the public prosecutor may, in the case from the fifth paragraph of this Article and at the verbal request of the police, allow the measure to commence on the basis of a verbal order; in the case from the sixth paragraph of this Article, the investigating judge may, at the verbal request of the public prosecutor, allow the measure to commence on the basis of a verbal order. The body that issued the verbal order shall make an official note of the verbal request. A written order, which must contain the reason why the measure has been commenced before time, must be issued within 12 hours of the issuing of the verbal order at the latest. Reasonable grounds must exist for application of the measure before time; if this is not the case, the court shall always act in accordance with the fourth paragraph of Article 154 of this Act regardless of whether the use of measures is otherwise justified.

(9) If a person against whom a measure is being applied comes into contact with an unidentified person in relation to whom there are reasonable grounds for suspecting that he is involved in criminal activity connected with the criminal offences for which the measure is being applied, the police may also place this person under secret surveillance without the need to obtain the order from the fifth or sixth paragraphs of this Article if this is urgently required in order to establish the identity of this person or obtain other information important for criminal proceedings. The police must obtain prior verbal permission from the public prosecutor for such surveillance, unless it is impossible to obtain permission on time and any delay would present a risk. In this case the police shall, as soon as possible and within six hours of commencement of application of the measure at the latest, inform the public prosecutor, who may prohibit further application of the measure if he believes that there are no reasonable grounds for it. This measure may last for a maximum of 12 hours after the contact with the person against whom the measure is being applied. When applying the measure from this paragraph, the police may not use technical equipment and devices referred to in points 1 and 2 of the sixth paragraph of this Article, nor may they apply the measure in private premises. The police shall make an official note immediately after the cessation of such surveillance and send it without delay to the public prosecutor that granted the permission from this paragraph and to the body that issued the original secret surveillance order. The official note shall become part of the criminal case file.

(10) Application of a measure may last a maximum of two months; however, if due cause is adduced, it may be extended every two months by means of a written order. The measure may last a total of:

1) six months in the case referred to in the sixth paragraph of this Article;

2) 24 months in cases referred to in the fifth paragraph of this Article if they relate to criminal offences referred to in the fourth paragraph of this Article, and 36 months if they relate to criminal offences referred to in the second paragraph of Article 151 of this Act.

(11) The police shall cease application of the measure as soon as the reasons for which the measure was ordered are no longer in place. The police shall notify the body that ordered the measure of the cessation without delay and in writing. The police shall send the body that ordered the measure a monthly report on the progress of the measure and the information obtained. The body that ordered the measure may, at any time and on the basis of this report or *ex officio*, order in writing that application of the measure be halted if it assesses that the reasons for the measure are no longer in place or if the measure is being applied in contravention of its order.

(12) If a measure is applied against the same person for more than six months, the panel (sixth paragraph of Article 25) shall review the legality of and grounds for application of the measure upon the first extension over six months and every further six months thereafter. The body that issued the extension order shall send the panel all the relevant material; the panel shall decide within three days. If the panel assesses that there are no grounds for application of the measure or that all the legal conditions have not been fulfilled, it shall issue a decision ordering that the measure come to an end. There shall be no appeal against this decision.

(13) The police must carry out secret surveillance in a way that encroaches on the rights of persons that are not suspects to the smallest possible extent.

Article 149b

(1) If there are reasonable grounds for suspecting that a criminal offence for which a perpetrator is prosecuted *ex officio* has been committed, is being committed or is being prepared or organised, and information on communications using electronic communications networks needs to be obtained in order to uncover this criminal offence or the perpetrator thereof, the investigating judge may, at the request of the public prosecutor adducing reasonable grounds, order the operator of the electronic communications network to furnish him with information on the participants in and the circumstances and facts of electronic communications, such as: number or other form of identification of users of electronic communications services; the type, date, time and duration of the call or other form of electronic communications service; the quantity of data transmitted; and the place where the electronic communications service was performed.

(2) The request and order must be in written form and must contain information that allows the means of electronic communication to be identified, indication of reasonable grounds, the time period for which the information is required and other important circumstances that dictate use of the measure.

(3) If there are reasonable grounds for suspecting that a criminal offence for which a perpetrator is prosecuted *ex officio* has been committed or is being prepared, and information on the owner or user of a certain means of electronic communication whose details are not available in the relevant directory, as well as information on the time the means of communication was or is in use, needs to be obtained in order to uncover this criminal offence or the perpetrator thereof, the police may demand that the operator of the electronic communications network furnish it with this information, at its written request and even without the consent of the individual to whom the information refers.

(4) The operator of electronic communications networks may not disclose to its clients or a third party the fact that it has given certain information to an investigating judge (first paragraph of this Article) or the police (preceding paragraph), or that it intends to do so.

Article 150

(1) If there are reasonable grounds for suspecting that a particular person has committed, is committing or is preparing or organising the commission of any of the criminal offences referred to in the second paragraph of this Article, and if there exists a reasonable suspicion that such person is using for communications in connection with this criminal offence a particular means of communication or computer system or that such means or system will be used, wherein it is possible to reasonably conclude that other measures will not enable the gathering of data or that the gathering of data could endanger the lives or health of people, the following may be ordered against such person:

1) the monitoring of electronic communications using listening and recording devices and the control and protection of evidence on all forms of communication transmitted over the electronic communications network;

2) control of letters and other parcels;

3) control of the computer systems of banks or other legal entities which perform financial or other commercial activities;

4) listening to and recording of conversations with the permission of at least one person participating in the conversation.

(2) The criminal offences in connection with which the measures referred to in the preceding paragraph may be ordered are the following:

1) criminal offences against the security of the Republic of Slovenia and its constitutional order, and crimes against humanity and international law for which the law prescribes a prison sentence of five or more years;

2) criminal offences of abduction (Article 144 of the Penal Code), the showing, possession, manufacture and distribution of pornographic material (Article 187), illicit narcotics production and trafficking (Article 196), facilitating of drug-taking (Article 197), blackmail (Article 218), abuse of inside information (Article 243), unauthorised acceptance of gifts (Article 247), unauthorised giving of gifts (Article 248), money laundering (Article 252), smuggling (Article 255), accepting of a bribe (Article 267), giving of a bribe (Article 268), acceptance of gifts to secure unlawful intervention (Article 269), giving of gifts to secure unlawful intervention (Article 269.a), criminal association (Article 297), unauthorised production of and trade in arms or explosives (Article 310), and causing of danger with nuclear substances (third paragraph of Article 319);

3) other criminal offences for which the law prescribes a prison sentence of eight or more years.

Article 151

(1) If there exist reasonable grounds to suspect that a particular person has committed, is committing, or is preparing or organising the commission of any of the criminal offences referred to in the second paragraph of this Article, wherein it is possible to reasonably conclude that it will be

possible, in a precisely defined place, to obtain evidence which it would not be possible to obtain through more lenient measures, including the measures referred to in Articles 149.a, 149.b and 150 of this Act, or the gathering of which could endanger the lives of people, listening and surveillance in another person's home or in other areas with the use of technical means for documentation and where necessary secret entrance into the aforementioned home or area may exceptionally be ordered against such person.

(2) Measures from the preceding paragraph may be ordered in connection with all criminal offences referred to in the first point of the second paragraph of the preceding Article, criminal offences from the second point of the same paragraph, except for the criminal offence of abduction under Article 144, facilitating of drug-taking under Article 197, blackmail under Article 218, money laundering under the first, second, third and fifth paragraphs of Article 252 and smuggling under article 255 of the Penal Code; this measures may only be ordered in connection with other criminal offences from the third point of the same paragraph for which the law prescribes a prison sentence of eight or more years if there exists a real threat to the lives of people.

Article 152

(1) The measures referred to in Articles 150 and 151 of this Act shall be ordered by means of a written order of the investigating judge at the written request of the public prosecutor. The request and the order shall contain:

1) information that allows the person against whom the measure is being requested or ordered to be identified accurately;

2) reasonable grounds or establishment of the grounds for suspicion of the commission, preparation or organisation of the criminal offences referred to in Articles 150 and 151 of this Act;

3) the measure being requested or ordered, the method of applying the measure, the scope and duration of the measure, precise specification of the area or place in which the measure will be applied, the electronic communication means and other important circumstances which require the use of an individual measure;

4) reasonable grounds for or establishment of an inevitable need to use the measure in question as opposed to another method of gathering evidence and the use of less severe measures;

5) reasonable grounds for the early implementation of the order in instances referred to in the second paragraph of this Article.

(2) By way of exception, if a written order cannot be obtained in due time and when there is a danger of deferment, the investigating judge may, following a verbal request of the public prosecutor, order the application of the measures referred to in Article 150 of this Act by means of a verbal order. The investigating judge makes an official note of the public prosecutor’s verbal request. A written order must be issued no later than twelve hours after the issuing of the verbal order. There must be reasonable grounds for early implementation; otherwise, the court shall, even if the application of the measure is otherwise reasonably grounded, always act according to the fourth paragraph of Article 154 of this Act.

(3) If in the implementation of a measure referred to in point 2 of the first paragraph of Article 150 of this Act the police assesses that the contents of a letter or other parcel are such that they could be used as evidence in criminal proceedings, it shall inform the investigating judge thereof, and the latter shall decide how to deal with the parcel. The investigating judge shall compile a special record on this.

(4) The implementation of the measures referred to in Articles 150 and 151 of this Act may last no longer than one month, but the duration may be extended by one month at a time for reasonable grounds; however, measures referred to in Article 150 of this Act may in total last for a maximum of six months, and measures from Article 151 of this Act may in total last for a maximum of three moths.

(5) The order referred to in the first paragraph of this Article shall be implemented by the police. Operators of electronic communications networks shall enable the police to implement the order.

(6) The police shall cease application of measures referred to in Articles 150 and 151 of this Act as soon as the reasons for which they were ordered are no longer in place. The police shall notify the investigating judge of the cessation without delay and in writing. The investigating judge may at any

time, *ex officio*, order in writing that application of the measure be halted if he assesses that the reasons for the measure are no longer in place or if the measure is being applied in contravention of his order.

(7) The police must apply the measures referred to in Articles 150 and 151 of this Act in a way that encroaches on the rights of persons that are not suspects to the smallest possible extent.

Article 153

(1) After the termination of the application of the measures referred to in Articles 149.a, 150, 151, 155 and 155.a of this Act, the police shall deliver all recordings, messages and items obtained through the use of such measures, together with a report comprising a summary of the evidence gathered, to the public prosecutor.

(2) The public prosecutor shall deliver all the material collected through using the measures ordered by the investigating judge to the investigating judge; the judge shall examine whether the measures were implemented in the manner approved.

(3) The body that ordered the measure may order that the recordings of telephone conversations and other forms of communication be copied in whole or in part. The provisions of the fifth paragraph of Article 84 of this Act shall apply to the copying of these recordings.

(4) If the public prosecutor declares that he will not commence criminal prosecution against a suspect, or if the public prosecutor does not issue such a declaration within two years of the end of application of measures ordered by him, he shall submit all the material gathered on the basis of these measures to the investigating judge. The investigating judge shall then act according to the second paragraph of Article 154 of this Act.

Article 154

(1) Information, messages, recordings or evidence obtained by means of the measures referred to in Article 149.a, the first paragraph of Article 149.b and Articles 150, 151, 155, 155.a and 156 of this Act shall be kept by the court for as long as the criminal case files are kept, or until their destruction according to the second paragraph of this Article.

(2) If the public prosecutor declares that he will not commence criminal prosecution against a suspect, or if he does not issue such a declaration within two years of the end of application of the measures from Article 149.a, the first paragraph of Article 149.b and Articles 150, 151, 155, 155.a and 156 of this Act, the material from the preceding paragraph shall be destroyed under the supervision of the investigating judge. The investigating judge shall make an official note of the destruction. Before destruction the investigating judge shall inform the suspect of the use of these measures or, in cases from the second or ninth paragraphs of Article 149.a of this Act, the person against whom the measure was applied, who shall have the right to be informed of the material obtained and, in cases where this material was of greater scope, of the report from the first paragraph of Article 153 of this Act. In cases where the measures from the second or ninth paragraphs of Article 149.a of this Act were used and the public prosecutor commenced criminal prosecution, the investigating judge shall inform the person against whom the measures were applied, who shall have the right to be informed of the material obtained, of the use of the measures by submission of the charge sheet at the latest or immediately after the person on whose account the measure was applied is arrested. If it is reasonable to conclude that informing the person of the material could threaten human life and health or if due cause of a different nature is adduced, the investigating judge may decide, at the request of the public prosecutor or *ex officio*, not to inform the suspect, or in cases from the second or ninth paragraphs of Article 149.a of this Act the person against whom the measure was applied, of part or all of the material obtained.

(3) Information, messages, recordings or other evidence may not be used as evidence if they were obtained by means of any of the measures from Articles 149.a, 150, 151, 155, 155.a and 156 of this Act and they do not relate to any of the criminal offences for which an individual measure may be ordered.

(4) If measures from Articles 149.a, 149b, 150, 151, 155, 155.a and 156 of this Act were carried out without an order from the public prosecutor (fifth and ninth paragraphs of Article 149.a, first paragraph of Article 155, third paragraph of Article 155.a) or an order from an investigating judge (sixth paragraph of Article 149.a, first paragraph of Article 149.b, Article 153, fourth paragraph of Article 155.a, first and third paragraphs of Article 156), or in contravention of such an order, or if extension of application of the measures was not reviewed by the panel (twelfth paragraph of Article 149.a), the court may not base its decision on information, messages, recordings or evidence obtained in this manner.

(5) The provisions of Article 237 of this Act shall also apply *mutatis mutandis* to information, recordings, messages and evidence obtained through the use of measures referred to in Articles 150, 151 and 155.a of this Act.

(6) If measures from Articles 149.a, 150, 151, 155 and 155.a of this Act were applied in a case that forms the subject of investigation, criminal prosecution or court proceedings in one or more countries, they must be carried out in accordance with existing bilateral or multilateral agreements or treaties and/or the agreement referred to in Article 160.b of this Act; if these do not exist, agreement shall be reached for each individual case, where the sovereignty and domestic legislation of the contracting party on whose territory such investigation will take place must be observed in full.

Article 155

(1) If it is possible to reasonably conclude that a particular person is involved in criminal activities relating to criminal offences referred to in the second paragraph of Article 150 of this Act, the public prosecutor may, at a reasoned request of the police, by written order permit measures of feigned purchase, feigned acceptance or giving of gifts or feigned acceptance or giving of bribes. The request and the order shall become constituent parts of the criminal case file.

(2) The order of the public prosecutor may only refer to one-off measures. Requests for each further measure against the same person must contain the reasons justifying their use.

(3) In the application of the measures referred to the first paragraph of this Article, the police and their staff may not incite criminal activities. In determining whether the criminal activity was incited, primary consideration must be given to whether the measure as implemented led to the commission of a criminal offence by a person who would otherwise not have been prepared to commit this type of criminal offence.

(4) If the criminal activity was incited, this shall be a circumstance which excludes the initiation of criminal proceedings for criminal offences committed in connection with the measures referred to in the first paragraph of this Article.

(5) The provisions of Articles 110, 131, 498 and 498.a of this Act shall apply to items obtained through measures referred to in the first paragraph of this Article.

Article 155.a

(1) If there are reasonable grounds for suspecting that a certain person has committed any of the criminal offences from the fourth paragraph of Article 149.a of this Act, or if it is reasonable to conclude that a certain person is involved in criminal activity connected with the criminal offences from the fourth paragraph of Article 149.a of this Act and that other measures will not yield evidence or will give rise to disproportionate difficulties, undercover operations may be used against this person.

(2) Undercover operations shall be carried out by undercover operatives and involve a continuous gathering of information or repeat sessions of information gathering on a person and his criminal activities. Undercover operations shall be carried out by one or more undercover operatives under the direction and supervision of the police, using false information about an operative, false information in databases and false documents in order to prevent the information gathering process or the status of the operative from being disclosed. An undercover operative may be a police officer, a police employee of a foreign country or exceptionally, if undercover operations cannot be carried out in any other way, by another person. An undercover operative may, under conditions from this Article,

participate in legal transaction using false documents; and when information is being gathered under the conditions from this Article, technical devices for transmitting and recording sound, photography and video recording may also be used.

(3) An undercover operation measure shall be permitted by the public prosecutor on the basis of a written order and at the written request of the police, except in cases from the fourth paragraph of this Article, where the order must be issued by the investigating judge. The order may also encompass permission to manufacture, obtain and use false information and documents.

(4) An undercover operation measure where the undercover police employee will use technical devices for transmitting and recording sound, photography and video recording may only be ordered in connection with criminal offences referred to in the second paragraph of Article 150 of this Act. The measure shall be ordered by the investigating judge in writing, at the written request of the public prosecutor.

(5) Requests and orders shall be constituent parts of criminal case files and must contain:

1) information that allows the person against whom the measure is being requested or ordered to be identified accurately;

2) reasonable grounds or the establishment of reasonable grounds for suspicion;

3) the method of application, the scope and the duration of the measure, and other important circumstances that dictate use of the measure;

4) the type, purpose and scope of use of false information and documents;

5) if the undercover operative will take part in legal transactions, the permitted scope of this participation;

6) if the undercover operative is not a police officer or police employee from another country but another person, the indication of reasonable grounds for deploying this person;

7) in the case from the preceding paragraph, determination of the type and method of use of technical devices for transmitting and recording sound, photography and video recording;

8) reasonable grounds for or establishment of an inevitable need to use the measure in question as opposed to another method of gathering evidence.

(6) Application of the measure may last a maximum of two months; if due cause is adduced, it may be extended every two months by means of a written order, but to a maximum of 24 months in total; in the case of the use of a measure for criminal offences from the second paragraph of Article 151 of this Act, the maximum total duration shall be 36 months.

(7) The provisions of the eleventh and twelfth paragraphs of Article 149.a of this Act shall be applied *mutatis mutandis* to the cessation of application of undercover operations, the compilation of monthly reports by the police and the review of extension by the panel (sixth paragraph of Article 25).

(8) Measures from this Article must be carried out in a way that encroaches on the rights of persons that are not suspects to the smallest possible extent.

(9) When carrying out a measure, an undercover police officer may not encourage criminal activity to take place. The provisions of the third and fourth paragraphs of Article 155 of this Act shall be applied *mutatis mutandis* to encouraging criminal activity to take place.

Article 156

(1) The investigating judge may upon a properly reasoned request of the public prosecutor order a bank, savings bank or savings-credit service to disclose to him information and send documentation on the deposits, statement of account and account transactions or other transactions by the suspect, the accused and other persons who may reasonably be presumed to have been implicated in the financial transactions or deals of the suspect or the accused, if such data might represent evidence in criminal proceedings or are necessary for the confiscation of objects or the securing of a request for the confiscation of proceeds or property in the value of proceeds.

(2) The bank, savings bank or savings-credit service shall immediately send to the investigating judge the information and documentation referred to in the preceding paragraph.

(3) Subject to conditions from the first paragraph of this Article, the investigating judge may upon a properly reasoned request by the public prosecutor order a bank, savings bank or savings-credit

service to keep track of financial transactions of the suspect, the accused and other persons reasonably presumed to have been implicated in financial transactions or deals of the suspect or the accused, and to disclose to him the confidential information about the transactions or deals the aforesaid persons are carrying out or intend to carry out at these institutions or services. In the order, the investigating judge shall set the time period within which the bank, savings bank or savings-credit service shall provide him with the information.

(4) The measure referred to in the preceding paragraph may be applied for three months at most, but the term may for weighty reasons, upon request of the public prosecutor, be extended to six months at most.

(5) The bank, savings bank or savings-credit service may not disclose to their clients or third persons that they have sent, or will send, the information and documents to the investigating judge.

Article 156.a

The body responsible for the issuing of a written order that orders or permits the application of measures referred to in Articles 149.a, 149b, 150, 151, 155, 155.a and 156 of this Act must decide within 48 hours of receipt of the written request and must send its decision to the body that submitted the request without delay.

Article 157

(1) Police officers may deprive a person of freedom provided any of the reasons for detention referred to in the first paragraph of Article 201 or the first paragraph of Article 432 of this Act exists, but shall take him to the investigating judge without any delay. On bringing the person before the investigating judge the police officer shall inform the judge why and where that person was deprived of freedom. The investigating judge shall have delivered to him on that occasion a copy of the crime report together with the record of the interrogation of the suspect and other enclosures, except for the official notes about the information the police has gathered from the suspect before the latter was instructed according to the fourth paragraph of Article 148 of this Act. The police shall send these official notes together with the crime report to the public prosecutor.

(2) Exceptionally, police officers may deprive a person of freedom and detain him if reasonable grounds exist for suspicion that he has committed a criminal offence for which the perpetrator is prosecuted *ex officio*, if detention is necessary for identification, the checking of an alibi, the collecting of information and items of evidence for the criminal offence in question, and if reasons for detention as per points 1 and 3 of the first paragraph of Article 201 of this Act and points 1 and 2 of the first paragraph of Article 432 of this Act exist; as for detention under point 2 of the first paragraph of Article 201 of this Act, it shall only be allowed if there is good reason to fear that the person might destroy traces of the crime.

(3) The person deprived of freedom without a court decision shall in his capacity as suspect be immediately informed as provided by the provisions of the first paragraph of Article 4 and the fourth paragraph of Article 148 of this Act. When the person who has been deprived of freedom is a foreign citizen, the person shall be informed that, on the basis of his request, the body responsible must notify the consulate of the country in question about the person's deprivation of freedom.

(4) If the suspect states that he wants to retain counsel, the police shall adjourn interrogating him as well as other acts of investigation, except those which it would be unsafe to delay, until the arrival of the counsel, but no longer than two hours after the suspect was granted the opportunity to inform the counsel. The police shall at the request of the suspect help him to retain counsel. The interrogation of the suspect shall be conducted in the presence of the defence counsel, in accordance with the provisions of Article 148.a of this Act. If the suspect states that he will not retain counsel or the chosen counsel does not arrive within two hours, the police shall act in accordance with paragraph 6 of Article 148 of this Act.

(5) Detention under the second paragraph of this Article may last forty-eight hours at the longest. After that period has expired police officers shall be bound to release the detainee or to act as provided in the first paragraph of this Article.

(6) If detention under the second paragraph of this Article lasts more than six hours, police officers shall be bound to inform the detainee by a written decision of the grounds on which he has been deprived of freedom.

(7) The person deprived of freedom shall, while detention is pending, have the right to appeal against the decision from the preceding paragraph of this Article. The appeal shall not stay the measure whereby the person is detained. The appeal must be heard within forty-eight hours by a panel of judges at the court holding jurisdiction (sixth paragraph of Article 25).

(8) The police shall immediately inform the public prosecutor of each arrest and he may give them instructions as to further measures (Article 160.a). The police shall abide by those instructions.

Article 158

(1) When there are grounds for suspicion that the criminal offence in the Slovenian Armed Forces or in the ministry responsible for defence was committed by a military or civilian person employed in the Slovenian Armed Forces and/or other worker employed in the field of defence and/or a person seconded to mission abroad, the authority competent by law within the ministry responsible for defence shall be vested with police powers in the pre-trial procedure laid down in this Act.

(2) The body of the ministry responsible for defence the jurisdiction of which is provided by law may deprive of freedom a person caught while committing, in a military facility, a criminal offence for which the perpetrator is prosecuted *ex officio*. A person so deprived of freedom should immediately be brought before the investigating judge or the police; should that be impossible, one of these bodies should immediately be informed thereof.

(3) The body of the ministry responsible for defence the jurisdiction of which is provided by law may deprive of freedom a military person for the purpose of taking him by force or delivering him to the investigating judge or the police if reasons exist to suspect that he has committed a criminal offence referred to in Chapter Twenty-Seven of the Penal Code.

(4) In the instances referred to in the second and third paragraphs of this Article, the police shall act according to the provisions of the preceding Article.

Article 159

The arrest of a suspect and the execution of other measures provided by this Act may be suspended with a view to discovering a major criminal activity but only if, and as long as, the lives and health of third persons are not thereby endangered. Permission to postpone these measures shall, upon a properly reasoned request by the police, be granted by the public prosecutor with appropriate jurisdiction.

Article 160

Any person may apprehend a person found in the act of committing a criminal offence subject to prosecution *ex officio*. He shall be bound to deliver the perpetrator to the investigating judge or the police forthwith or, where that proves impossible, to immediately notify one of them thereof. The police shall act according to the provisions of Article 157 of this Act.

Article 160.a

(1) The public prosecutor may in exercising his authority under this Act set guidelines for police work by giving directions, expert opinions and proposals for the information gathering and execution of other measures coming within the competence of the police, with a view to detecting a criminal offence and its perpetrator or gathering information necessary for his decision.

(2) The procedure, instances, terms and manner of the directing and informing referred to in the preceding paragraph shall be prescribed by the Government of the Republic of Slovenia.

Article 160.b

(1) In the case which is the subject to the pre-trial procedure, investigation or court proceedings in one or more countries, the police may cooperate with the police staff of the other country in the territory or outside the territory of the Republic of Slovenia in carrying out tasks and measures in the pre-trial procedure and investigation procedure for which it is responsible according to the provisions of this Act.

(2) In carrying out the tasks and measures referred to in the preceding paragraph, the police shall be directed by the public prosecutor pursuant to Article 160.a of this Act and may cooperate with the public prosecutors of the other country in the territory and outside the territory of the Republic of Slovenia in carrying out the stated activity and in exercising other powers in compliance with the provisions of this Act (joint investigation team).

(3) The tasks, measures, guidance and other powers referred to in the previous paragraphs of this Article must be carried out in accordance with the agreement on the establishment and operation of joint investigation team in the territory of the Republic of Slovenia or other countries that shall be concluded on a case by case basis by the Public Prosecutor General or under his authorisation by his deputy with the Public Prosecution Office, court, police or other competent authorities of other states as set out in the Council Framework Decision of 13 June 2002 on joint investigation teams (Official Journal of the European Union, No. L 162/1, 20.6.2002) or in the existing international treaty concluded with a country not being a member of the European Union after obtaining the opinion of the Director General of the Police. The agreement shall be concluded on the initiative of the Public Prosecutor General, the Head of the District Public Prosecution Office or the Head of the Group of Public Prosecutors for Special Affairs or on the initiative of the competent authority of another state.

(4) The agreement referred to in the previous paragraph shall lay down which authorities are to conclude the agreement, in which case the joint investigation team will act, the purpose of the operation of the team, the Public prosecutor of the Republic of Slovenia who is its Head in the territory of the Republic of Slovenia, other team members and the duration of its operation. The Public Prosecutor General must notify the ministry responsible for justice in writing of any agreement concluded.

(5) The police staff, public prosecutors or other competent authorities of other states shall only carry out tasks, measures, guidance and/or other powers referred to in the first and second paragraphs of this Article in the territory of the Republic of Slovenia within the framework of the joint investigation team in compliance with the provisions of the agreement on the establishment and operation of the joint investigation team referred to in the third paragraph of this Article.

(6) If so provided for in the agreement on the establishment and operation of the joint investigation team referred to in the third paragraph of this Article, the representatives of competent authorities of the European Union, such as EUROPOL, EUROJUST and OLAF, may participate in the joint investigation team. The representatives of competent authorities of the European Union shall only exercise their powers in the territory of the Republic of Slovenia within the framework of the joint investigation team in compliance with the provisions of the agreement referred to in the third paragraph of this Article.

(7) The police organisation units and Public Prosecution Offices of the Republic of Slovenia are obliged to offer all the necessary assistance to the joint investigation team.

(8) Upon the completion of the work done by the joint investigation team, the head of the joint investigation team shall make a report in writing to all its members and the Public Prosecutor General.

Article 161

(1) The public prosecutor shall dismiss a crime report if it arises from the report itself that the act reported is not a criminal offence subject to prosecution *ex officio*, if prosecution is barred by statute or the offence has been amnestied or pardoned, if other circumstances exist which bar prosecution, and if no reasonable suspicion exists that the suspect has committed the indicated criminal offence. The public prosecutor shall, within eight days, notify the injured party of the dismissal of the report and of the reasons for this (Article 60), and where a crime report was submitted by a state authority he shall notify this authority as well.

(2) If the public prosecutor is unable to infer from the report itself whether the allegations contained in it are probable, or if information in the report does not provide sufficient basis to require investigation, or if the public prosecutor has only heard rumours about a criminal offence and, in particular, if the perpetrator is not known, he may request the police, if he is unable to do so himself or through other bodies, to collect the necessary information and to take other measures within the time limit set by the public prosecutor with a view to discovering the criminal offence and the perpetrator thereof (Articles 148 and 149). The public prosecutor shall be entitled to ask the police at any time to notify him of what it has undertaken and the latter shall reply without delay.

(3) The public prosecutor may demand necessary information from government agencies, enterprises and other legal entities, and may for the same purpose summon the person who has submitted a crime report.

(4) The public prosecutor shall dismiss a crime report if, even after actions from the second and third paragraphs of this Article have been undertaken, some of the circumstances referred to in the first paragraph of this Article remain.

(5) The public prosecutor and other government bodies, enterprises and other legal entities shall in collecting or disclosing information act with consideration, taking care not to harm the dignity and reputation of the person to whom information refers.

Article 161.a

(1) The public prosecutor may transfer the report of or the summary charge sheet for a criminal offence for which a fine or imprisonment of up to three years is prescribed and criminal offences referred to in the second paragraph of this Article into the settlement procedure. In so doing, he shall take account of the type and nature of the offence, the circumstances in which it was committed, the personality of the perpetrator and his prior convictions for the same type or for other criminal offences, as well as his degree of criminal liability.

(2) If special circumstances exist, settlement may also be permitted for the criminal offences of aggravated bodily harm (first paragraph of Article 134 of the Penal Code), grievous bodily harm (fourth paragraph of Article 135), grand larceny (point 1 of the first paragraph of Article 212), disavowal (fourth paragraph of Article 215) and damage to property (second paragraph of Article 224); if the criminal report is submitted against a minor, this may also apply to other criminal offences for which the Penal Code prescribes a prison sentence of up to five years.

(3) Settlement shall be run by the settlement agent, who is obliged to accept the case into procedure. Settlement may be only implemented with the consent of the suspect and the injured party. The settlement agent is independent in his work. The settlement agent shall strive to ensure that the contents of the agreement are proportionate to the seriousness and consequences of the offence.

(4) If the content of the agreement relates to the performance of community service, implementation of the agreement shall be organised and managed by centres for social work in collaboration with the settlement agent and the public prosecutor.

(5) On receiving notification of the fulfilment of the agreement, the public prosecutor shall dismiss the report. The settlement agent shall also inform the public prosecutor of any failure of settlement and the reasons for such failure. The time limit for the fulfilment of the agreement may not be longer than three months.

(6) In the event of the dismissal of the report from the preceding paragraph, the rights referred to in the second and fourth paragraphs of Article 60 of this Act shall not be enjoyed by the injured party, who must be informed thereof by the settlement agent before the agreement is signed.

(7) General instructions issued by the Public Prosecutor General shall define in greater detail the conditions and circumstances referred to in the first paragraph of this Article and the special circumstances referred to in the second paragraph of this Article which influence the transfer of the report to the settlement procedure.

Article 162

(1) The public prosecutor may, upon consent of the injured party, suspend prosecution of a criminal offence punishable by a fine or prison term of up to three years and of criminal offences referred to in the second paragraph of this Article if the suspect binds himself over to act as instructed by the public prosecutor and to perform certain actions to allay or remove the harmful consequences of the criminal offence. These actions may be:

1) elimination of or compensation for damage;

2) payment of a contribution to a public institution or a charity or fund for compensation for damage to victims of criminal offences;

3) performance of community service;

4) fulfilment of a maintenance obligation.

(2) If special circumstances exist, criminal prosecution may also be suspended for the criminal offences of facilitating of drug-taking (first paragraph of Article 197 of the Penal Code), grand larceny (point 1 of the first paragraph of Article 212), disavowal (fourth paragraph of Article 215), blackmail (first and second paragraphs of Article 218), business fraud (first paragraph of Article 234.a), damage to property (second paragraph of Article 244), misappropriation (first paragraph of Article 245) and the presentation of bad cheques and the abuse of bank or credit cards (first and second paragraphs of Article 253); if the criminal report is submitted against a minor, this may also apply to criminal offences for which the Penal Code prescribes a prison sentence of up to five years.

(3) If the public prosecutor imposes the task of rectifying damage from point 1 or the task from point 3 of the first paragraph of this Article, the work shall be organised and managed by centres for social work, in collaboration with the public prosecutor.

(4) If within a time limit of no longer than six months, and in respect of the obligation referred to in point 4 no longer than a year, the suspect fulfils the obligation undertaken the crime report shall be dismissed.

(5) In the event of the dismissal of the report from the preceding paragraph, the injured party shall not have the rights referred to in the second and fourth paragraphs of Article 60 of this Act. The public prosecutor shall inform the injured party of the loss of these rights before the injured party gives consent under the first paragraph of this Article.

(6) The special circumstances that have a bearing on the decision of the public prosecutor relating to the suspension of criminal prosecution shall be laid down in more detail in general instructions issued by the Public Prosecutor General.

Article 163

The public prosecutor shall not be obligated to start criminal prosecution, or shall be entitled to abandon prosecution:

1) where the Penal Code lays down that the court may or must grant remission of penalty to a criminal offender and the public prosecutor assesses that in view of the actual circumstances of the case a sentence alone without a criminal sanction is not necessary;

2) where the Penal Code provides for a specific offence a fine or imprisonment up to one year and the suspect or the accused, having genuinely repented of the offence, has prevented harmful consequences or compensated for damage and the public prosecutor assesses that in view of the actual circumstances of the case a criminal sanction would not be justified.

Article 163.a

(1) In the procedure under Article 162 of this Act, the public prosecutor shall summon the suspect and the injured party to the Public Prosecutor's Office. In the summons he shall cite the reasons for summoning them. If they respond to the summons, the public prosecutor shall acquaint the suspect with the crime report and tell him that he will dismiss the crime report if the suspect behaves according to his instructions and performs certain tasks in due course.

(2) If the public prosecutor needs to obtain certain information directly from the suspect or injured party in order to be able to decide whether to leave the case to be resolved in a settlement (Article 161.a), or desist from starting criminal prosecution (Article 163), or move for the issue of a punitive

order (Article 445.a), he may summon the suspect and the injured party, or only one of them, to the Public Prosecutor's Office. The public prosecutor shall inform the suspect of the crime report and decisions the prosecution might take in acting upon the crime report, and the injured party shall be informed of his rights.

(3) In instances referred to in the preceding paragraphs, the public prosecutor shall draw up an official note in which he shall record the statements of the suspect and injured party. He shall not send the official note to the court if he starts criminal prosecution against the suspect.

(4) The suspect or injured party who without good reason fail to respond to the summons may not be summoned again.

Article 164

(1) The police may, even before investigation has commenced, confiscate objects as per Article 220 of this Act if there is danger in delay and provided circumstances referred to in Article 218 of this Act exist, and may conduct house search and personal search.

(2) If the investigating judge is late in coming to the crime scene, the police may itself conduct the view and order the necessary expert examination, except post mortem examination and exhumation. If the investigating judge arrives at the scene while these acts are in progress, he may take over and execute such acts by himself.

(3) The police or the investigating judge shall notify the public prosecutor of acts from the preceding paragraphs without delay.

Article 165

(1) If the perpetrator of a criminal offence is not known the competent prosecutor may move for the investigating judge to perform individual acts of investigation which, in view of the circumstances of the case, it would be expedient to perform before instituting the investigation. If the investigating judge opposes the motion he shall refer it to a panel to decide thereon (sixth paragraph of Article 25).

(2) Records of the investigative acts performed shall be sent to the public prosecutor.

Article 165.a

(1) Before filing a request for investigation or a charge sheet without the investigation, the public prosecutor may propose to the investigating judge to perform a specific act of investigation if the execution of such an act is necessary for his deciding whether to dismiss the crime report or start criminal prosecution.

(2) The public prosecutor, the injured party, the suspect and the defence counsel may be present at the execution of the act of investigation, of which the investigating judge shall notify them in a proper way. If the proposed act of investigation is the interrogation of the suspect, the provisions of this Act on the summoning and interrogation of the suspect shall be applied.

(3) If the investigating judge disagrees with the proposal of the public prosecutor for the execution of the act of investigation, the investigating judge shall notify the public prosecutor thereof and the latter may propose the execution of such an act in the request for investigation or in the charge sheet.

Article 166

(1) The investigating judge of the court with jurisdiction may, before a ruling on investigation is rendered, conduct individual acts of investigation if there is a danger in delaying them, but shall be bound to notify the competent public prosecutor thereof.

(2) The summoning and interrogation of a suspect shall be governed by the provisions for the summoning and interrogation of the accused.

Chapter Sixteen

INVESTIGATION

Article 167

(1) Investigations shall be instituted against a specific person when a grounded suspicion exists that he has committed a criminal offence.

(2) The aim of an investigation is to gather evidence and data necessary for deciding whether to bring charges or discontinue proceedings, evidence whose reproduction at the main hearing might be impossible or very difficult, and other evidence which might be useful for the proceedings and whose taking appears warranted by the circumstances of the case.

Article 168

(1) Investigations shall be conducted at the request of the public prosecutor.

(2) The public prosecutor shall submit the request for opening an investigation to the investigating judge of the court of jurisdiction.

(3) The request for investigation shall specify: the person against whom an investigation is requested, the description of the act which indicates elements of a criminal offence, the statutory designation of the criminal offence, the circumstances warranting the suspicion of a criminal offence, and evidence already collected. The public prosecutor shall indicate in the request which particular circumstances should be explored in the investigation and which particular acts of investigation should be performed, and may propose that the person against whom investigation is requested be detained.

(4) The public prosecutor shall send the investigating judge the crime report and all documents and records of actions performed. At the same time he shall send the investigating judge objects of value as evidence or shall notify him of their whereabouts.

(5) If the public prosecutor withdraws a request for investigation before the ruling on investigation is rendered, the investigating judge shall rule that the request is dismissed and inform the injured party that he may start prosecution by himself (Articles 60 and 62).

Article 169

(1) The investigating judge shall, upon receiving the request for investigation, examine the documents, and, if he agrees with the request, render a ruling opening the investigation; the ruling shall contain all data from the third paragraph of the preceding Article. The investigating judge shall forward the ruling to the public prosecutor and the accused.

(2) Before rendering the ruling, the investigating judge shall examine the person against whom investigation is requested, except where it would be unsafe to postpone investigation or where, in view of the already executed interrogation according to Article 148.a of this Act and the submitted request for investigation, he assesses that another examination is not necessary.

(3) Before deciding on the request of the public prosecutor, the investigating judge may summon the public prosecutor and the person against whom investigation is requested to appear at court on a specific day if it is necessary that they should declare themselves with regard to the circumstances which might be material to deciding on the request or if he believes that their oral declarations might be valid for some other reason. On this occasion the parties may make oral proposals, the public prosecutor may change or supplement his request for investigation and may also suggest that the investigation be conducted immediately after the charge sheet has been filed (Article 170).

(4) The summoning and examination of the person against whom an investigation has been requested shall be governed by the provisions of this Act applying to the summoning and interrogation of the accused. A duplicate copy of the request for investigation shall be attached to the summons. The investigating judge shall instruct the person summoned under the preceding paragraph of this Article as provided by Article 5 of this Act.

(5) The accused may appeal against the ruling by which the investigating judge ordered investigation. If the ruling was conveyed to him orally he may lodge an oral appeal to be entered in the record.

(6) The investigating judge shall forward the appeal to a panel forthwith (sixth paragraph of Article 25). The appeal shall not stay the execution of the ruling.

(7) If the investigating judge disagrees with the investigation request of the public prosecutor, he shall demand that the panel decide thereon (sixth paragraph of Article 25). An appeal against the ruling of the panel may be lodged by the accused, the public prosecutor and the injured party, but it shall not stay the execution.

(8) If an appeal against the ruling of the panel is only lodged by the injured party and has been granted, it shall be considered that the injured party has thereby himself taken over prosecution.

(9) In cases referred to in the sixth and seventh paragraphs of this Article the panel shall pass a decision within forty-eight hours.

(10) In deciding on the request for investigation the panel shall not be bound by the judicial opinion of the act offered by the public prosecutor.

Article 170

(1) The investigating judge may consent to the motion of the public prosecutor that no investigation be conducted if evidence gathered about the criminal offence and the perpetrator provide sufficient ground to file a charge sheet.

(2) The investigating judge may only grant consent from the preceding paragraph if he has already examined the person against whom a charge sheet is to be filed. The summoning and interrogation of that person shall be governed by the provisions for the summoning and interrogation of the accused. The investigating judge shall send a report on his consent to the motion to the public prosecutor and to the person against whom a charge sheet is to be filed.

(3) The time limit for filing a charge sheet shall be eight days, but may be extended by the panel (sixth paragraph of Article 25) on receiving a motion for extension from the public prosecutor.

(4) The public prosecutor may make the motion referred to in the first paragraph of this Article even after the request for investigation has been filed, provided the ruling to open an investigation has not been rendered.

(5) If the investigating judge finds that the requirements for filing a charge sheet without investigation have not been met, he shall proceed as if an investigation was requested.

(6) In case of a criminal offence punishable under law by imprisonment of up to eight years the public prosecutor may, irrespective of the provisions of the preceding paragraphs, file a charge sheet without investigation if evidence collected about the offence and the perpetrator provide sufficient ground for filing charges.

(7) The provisions of the preceding paragraphs shall also apply in the case of criminal prosecution at the request of the injured party acting as prosecutor or of the private prosecutor; however, in that case the time limit referred to in the third paragraph of this Article may not be extended. The provisions of the preceding paragraph shall also apply to the filing of a private charge concerning a criminal offence against honour and good name committed by way of the press, radio, television or other mass media.

(8) The public prosecutor shall enclose with the motion referred to in the first paragraph of this Article and with the charge sheet filed according to the sixth paragraph of this Article the crime report and all documents and records of actions performed, as well as objects of value as evidence, or shall indicate their whereabouts.

Article 171

(1) Investigation shall be conducted by the investigating judge of the court of jurisdiction.

(2) The investigating judge shall as a rule only perform investigative acts in the territory of the court to which he belongs. If it is in the interest of investigation he may also perform individual acts of investigation outside the territory of his court, but shall be bound to notify thereof the court in whose territory such acts are performed.

Article 172

(1) The investigating judge may, during investigation, leave the performance of individual acts of investigation to the investigating judge of the court in whose territory the acts are to be performed.

(2) The public prosecutor with jurisdiction over proceedings before the court to which an act of investigation has been entrusted may attend the investigative act unless the competent public prosecutor declares that he shall himself be present.

(3) The investigating judge may entrust the execution of a house search or personal search or the confiscation of objects to the police in the manner provided by this Act.

(4) The police shall, on request or consent of the investigating judge, be allowed to photograph the accused or take his fingerprints if that is necessary for the criminal procedure.

Article 173

In performing acts of investigation the police shall proceed according to provisions of this Act concerning investigative acts.

Article 174

(1) The investigating judge or the police to which individual acts of investigation have been entrusted shall, where necessary, also perform other investigative acts connected with or deriving therefrom.

(2) If the investigating judge to whom individual acts of investigation have been entrusted has no competence therein, he shall refer the matter to the competent investigating judge and shall notify accordingly the investigating judge who entrusted the matter to him.

Article 175

(1) Investigation shall only be conducted against the criminal offence and the accused specified in the ruling on the opening of investigation.

(2) If it appears in the course of investigation that the proceedings should be expanded to another criminal offence or against another person, the investigating judge shall notify the public prosecutor thereof. In this case investigative acts that call for urgent attention may be performed and the public prosecutor should be informed of everything that has been done.

(3) As regards the expansion of investigation, the provisions of Articles 168 and 169 of this Act shall apply.

Article 176

After the ruling to open investigation has been rendered, the investigating judge shall perform the investigative acts required by the parties and those which he deems necessary for the successful execution of investigation.

Article 177

(1) The parties and the injured person may, during investigation, suggest to the investigating judge that individual acts of investigation be performed. If the investigating judge does not approve of the motion of the parties in respect of individual investigative acts, he shall refer the matter to be decided by the panel (sixth paragraph of Article 25).

(2) The parties and the injured party may make the motions from the preceding paragraph also to the investigating judge or the police unit entrusted with the performance of individual investigative acts. If the investigating judge or the police disagrees with the motion, they shall make their disagreement known to the party which made the motion and the latter may repeat the motion to the investigating judge of the court of jurisdiction.

Article 178

(1) The public prosecutor and the defence counsel may be present during interrogation of the accused. If the investigating judge assesses that their presence in a particular case is necessary, he may order that the interrogation take place only in their presence. The presence of the public prosecutor and the defence counsel shall always be compulsory at the first interrogation after the accused is produced pursuant to Article 157 of this Act.

(2) The public prosecutor, the injured party, the accused and his counsel may attend the taking of a view and the examination of experts.

(3) The public prosecutor and defence counsel may attend the house search.

(4) The public prosecutor, the accused and his defence counsel may attend the examination of a witness. The investigating judge may order the accused to be removed from interrogation if a witness is unwilling to testify in the presence of the accused or if circumstances indicate that the witness will fail to tell the truth in the presence of the accused or in instances where a recognizance will be required after hearing the witness. The accused may not be present during the examination of witnesses younger than 15 who are victims of any of the criminal offences referred to in the third paragraph of Article 65 of this Act. The injured party may only attend the examination of a witness if the witness is not likely to appear at the main hearing.

(5) The investigating judge shall, in an appropriate manner, advise the public prosecutor and defence counsel when and where the interrogation of the accused will take place. He shall likewise advise in an appropriate manner the public prosecutor, the accused, his counsel and the injured party when and where other investigative acts which they are entitled to attend will take place, except where there is a danger in delay. If the accused has his defence counsel, the investigating judge shall ordinarily only notify the latter. If the accused is in detention and an investigative act is to be performed outside the seat of the court, the investigating judge shall determine if the presence of the accused is necessary.

(6) If a person who has been sent a notice about the intended act of investigation fails to appear, the investigative act may be performed in his absence. If the investigating judge orders compulsory presence but the public prosecutor or defence counsel fail to appear at the interrogation, the interrogation shall as a rule be postponed, unless the time limit referred to in the second paragraph of Article 203 of this Act would thereby expire or if the investigating judge assesses, with regard to changed circumstances, that compulsory presence is no longer required. The investigating judge shall notify the higher public prosecutor or the Bar of the postponement or failure to appear.

(7) The parties and defence counsel present during an investigative act may seek clarification of certain matters by putting questions to the accused, witness or expert. The investigating judge shall not allow a question or an answer if they are not permitted or are irrelevant to the matter considered (Article 228 and the first paragraph of Article 241). The injured party may only ask questions subject to permission from the investigating judge. Persons present at investigative acts shall have the right to demand that their remarks concerning the performance of individual acts be entered in the record, and may propose that individual pieces of evidence be taken.

(8) The investigating judge may invite an appropriate expert to clarify individual technical or other questions arising in connection with the evidence obtained during the interrogation of the accused or in other acts of investigation. If the parties are present on that occasion they may demand to be given detailed explanations of individual questions. If necessary, the investigating judge may also seek explanations from the appropriate scientific institution.

(9) The provisions of the preceding paragraphs shall also apply to acts of investigation performed before the ruling to open investigation has been passed.

Article 179

(1) The investigating judge shall suspend investigation by a ruling if the accused, after committing a criminal offence, has become afflicted with a mental illness or mental disturbance or some other serious disease which prevents him from participating in the procedure for a longer time, or if he is on the run. The investigating judge shall act in the same manner if other circumstances exist which temporarily prevent prosecution of the accused (the absence of the necessary motion or permission for prosecution or of the request of the competent prosecutor).

(2) Before the investigation is suspended, all obtainable evidence regarding the criminal offence and criminal liability of the accused shall be gathered.

(3) After the obstacles which led to the suspension have disappeared, the investigating judge shall resume investigation.

Article 180

(1) If the public prosecutor declares in the course of or upon completion of an investigation that he refrains from prosecution, the investigating judge shall inform the injured party thereof, as well as of his right to continue prosecuting (Articles 60 and 62). If it has been impossible to deliver notification to the injured party because the injured party has failed to report a change in address or residence to the court, the injured party shall be deemed not to intend to continue the prosecution.

(2) If the injured party does not continue prosecution, the investigating judge shall halt it by a ruling. The ruling shall be sent to the accused, the public prosecutor and the injured party.

Article 181

(1) In the following instances the panel of judges shall discontinue investigation by a ruling (sixth paragraph of Article 25) when deciding on any matter in the course of an investigation:

1) if it finds that the offence the accused is charged with is not a criminal offence;

2) if circumstances exist which exclude criminal liability of the accused and there are no grounds for application of security measures;

3) if criminal prosecution is statute-barred, or the offence is covered by amnesty or pardon, or other circumstances exist which bar prosecution;

4) if evidence that the accused has committed a criminal offence does not exist.

(2) If the investigating judge finds that there are reasons to discontinue investigation referred to in the preceding paragraph, he shall notify the public prosecutor thereof. If within eight days the public prosecutor does not inform the investigating judge that he abandons prosecution, the investigating judge shall request the court panel to decide on the discontinuation of investigation.

(3) The ruling by which investigation is discontinued shall be sent to the public prosecutor, the injured party and the accused; if the latter is detained he shall be released forthwith. The public prosecutor and the injured party shall have the right to appeal the ruling.

(4) If an appeal is lodged against the ruling on the discontinuation of investigation only by the injured party and the appeal is granted, the injured party shall be considered to have assumed prosecution by lodging the appeal.

(5) If circumstances which prevent prosecution of the accused are of a temporary nature (first paragraph of Article 179) the panel shall suspend investigation by a ruling.

(6) After the obstacles which led to the suspension have disappeared, the investigating judge shall resume investigation.

Article 182

(1) Before completing investigation the investigating judge shall collect data about the accused referred to in the first paragraph of Article 227 of this Act if such data are missing or should be ascertained, as well as data about his former uncancelled sentences and, if the accused is still serving a sentence or some other sanction subject to arrest, also the data about his behaviour during his serving of the sentence or another sanction. If necessary, the investigating judge shall also collect data on the earlier life of the accused, on the circumstances in which he lives, his personal income over the last three months and other circumstances concerning his person. The investigating judge may order medical or psychological examinations of the accused to supplement information about the person of the accused.

(2) If a joint sentence which would include the earlier penalties of the accused appears relevant the investigating judge shall request to be given the files of the earlier cases.

Article 183

If the parties and defence counsel did not attend certain investigative acts and the investigating judge considers that it would be advantageous for the further course of procedure if they were acquainted with critical evidence, he shall inform them that the evidence will be available within a specific period and that they may make motions for new evidence to be taken.

Article 184

(1) The investigating judge shall terminate investigation after satisfying himself that a case has been sufficiently clarified.

(2) On completing the investigation the investigating judge shall send the file of the case to the public prosecutor who shall, within fifteen days, either propose the supplementing of the investigation or bring a charge or declare that he refrains from prosecution. The panel (sixth paragraph of Article 25) may extend this time limit on the motion of the public prosecutor.

(3) If the investigating judge does not agree with the motion of the public prosecutor for investigation to be supplemented, he shall request the panel (sixth paragraph of Article 25) to decide the matter. If the panel rejects the motion of the public prosecutor, the time period from the preceding paragraph shall start to run from the day the public prosecutor was informed of the decision of the panel.

(4) If the public prosecutor fails to observe the time limit referred to in the second and third paragraphs of this Article he shall be bound to notify the higher public prosecutor thereof.

Article 185

(1) If an investigation is not completed within the period of six months, the investigating judge shall be bound to inform the president of the court of the reasons for this.

(2) The president of the court shall take the necessary steps for the investigation to be brought to a close.

Article 186

(1) The injured party acting as prosecutor and the private prosecutor may request the investigating judge to open investigation or propose the supplementing of the investigation. During the investigation they may also submit other proposals to the investigating judge.

(2) The institution, conduct, suspension and discontinuance of an investigation shall, *mutatis mutandis*, be governed by those provisions of this Act which apply to the institution and conduct of investigation at the request of the public prosecutor. If the injured party as prosecutor and the private prosecutor fail to appear at the interrogation of the accused although being duly summoned, and if their attorney does not appear either, they shall be considered to have withdrawn the request for investigation and to have refrained from criminal prosecution. As regards reinstatement of the case, the provisions of Article 58 of this Act shall apply *mutatis mutandis*.

(3) When the investigating judge concludes that the investigation has been consummated, he shall inform the injured party acting as prosecutor or the private prosecutor thereof; the investigating judge shall also advise him that he must bring a charge or file a private action within fifteen days, otherwise it shall be considered that he has refrained from prosecuting and the procedure shall be discontinued by a ruling. The investigating judge shall give such warning to the injured party acting as prosecutor or the private prosecutor also in the case where the panel (sixth paragraph of Article 25) has refused their motion for supplementing the investigation, being of the opinion that the matter has been sufficiently clarified.

Article 187

If the investigating judge needs assistance (criminological, technical and other) of the police or other state agencies in connection with his investigation, these agencies shall be bound to help him if

requested to. The investigating judge may also demand assistance from enterprises and other legal entities if that is necessary for an act of investigation that permits no delay.

Article 188

If it is in the interest of criminal procedure, the preservation of secrecy, public order or moral considerations and the protection of personal or family life of the accused or of the injured party, the official who conducts an investigative act shall order the persons being examined or those present during an act of investigation or those who examine the files of the investigation to keep secret the specific facts or information they have come to know during the act of investigation, and shall warn them that disclosing of secrets is a criminal offence. Such order shall be entered in the record of the acts of investigation or annotated on the file examined, and the person warned shall sign it.

Article 189

When deciding in the course of an investigation the court panel may ask explanations from the investigating judge and the parties and may invite both parties to expound their arguments orally at a session of the panel.

Article 190

(1) The investigating judge may impose a fine referred to in the first paragraph of Article 78 of this Act on any person who, even after being warned, continues to disturb order during an act of investigation. If the presence of such person is not necessary he may have him removed from the place where the investigation is conducted.

(2) The accused may not be fined.

(3) If the public prosecutor disturbs order the investigating judge shall act in accordance with the fifth paragraph of Article 302 of this Act.

Article 191

(1) The parties and the injured person may always turn to the president of the court before which an investigation is conducted to appeal against procrastination and other irregularities during the investigation.

(2) The president of the court shall examine the allegations in the appeals and inform the person who lodged the appeal of any steps taken thereon.

Chapter Seventeen

MEASURES TO ENSURE THE PRESENCE OF THE ACCUSED, TO PREVENT RE-OFFENDING AND TO ENSURE SUCCESSFUL CONDUCT OF THE CRIMINAL PROCEEDINGS

1. Common provision

Article 192

(1) The measures which may be used to ensure the presence of the accused, to prevent re-offending and to ensure successful conduct of the criminal proceedings are: summons, compulsory appearance, promise by the accused not absent himself from his place of residence, restraining orders prohibiting approach to a specific place or person, reporting to the police station, bail, house arrest and detention.

(2) In deciding on which of the measures from the preceding paragraph to apply, the court shall take account of the conditions stipulated for individual measures. In selecting the measure, it shall also ensure that it does not apply a stricter measure if a less strict measure would suffice for the purpose.

(3) These measures shall also be abolished *ex officio* when reasons which necessitated them disappear, or shall be replaced by more lenient measures if the relevant conditions are satisfied.

2. Summons

Article 193

(1) The presence of the accused at procedural acts shall be ensured by serving a summons. A summons shall be sent to the accused by the court.

(2) A summons shall be sent to the accused in the form of a sealed writing containing: the name and address of the court sending the summons; the name and surname name of the accused; the designation of the criminal offence he is charged with; the place, day and hour at which he is to appear; an indication that he is being summoned as the accused; a warning that he will be produced by force if he fails to appear; the official seal and name and surname of the judge issuing the summons.

(3) When summoned for the first time the accused shall be advised in the summons of his right to retain counsel and of the right of his counsel to attend his interrogation.

(4) The accused shall immediately notify the court of any change of his address and any intention to change the place of residence. The accused should be informed of the aforesaid obligation at his first interrogation or the serving of a charge sheet filed without an investigation (sixth paragraph of Article 170) or of a summary charge sheet or private charges; on that occasion the accused shall be warned of the consequences as provided by this Act.

(5) If, by reason of an illness or some other insurmountable obstacle, the accused is unable to comply with the summons, he shall be interrogated at the place where he finds himself or shall be transported to the court building or another place at which the procedure is taking place.

3. Compulsory appearance

Article 194

(1) An order to produce the accused under compulsion may be issued by the court against a detainee kept in custody under a warrant of arrest, or against the accused who, after being duly summoned, fails to appear and to justify his absence, or if it has not been possible to duly service him with the summons, it being evident from the circumstances that he is trying to evade the servicing.

(2) The order for compulsory appearance shall be executed by the police.

(3) Compulsory appearance shall be ordered in writing. The order shall contain: the name and surname of the accused to be produced under compulsion, the designation of the criminal offence he is charged with and an indication of the pertinent provision of the Penal Code and of the grounds on which the order is issued, as well as the official seal and signature of the judge ordering compulsory appearance.

(4) The person responsible to execute the order shall serve the order to the accused and ask the latter to go with him. If the accused refuses to comply, the person responsible shall bring him by force.

(2) The order on the production of military personnel, police members or guards in an institution in which persons deprived of freedom are kept in custody shall be executed through the intermediary of their command or warden.

4. Promise of the accused not to absent himself from his place of residence

Article 195

(1) If there is ground to suspect that the accused may, during the course of criminal procedure, go into hiding or leave for an unknown destination or abroad, the court may bind him over not to go into hiding or leave his place of residence or abode without the permission from the court. If the accused is subject to the criminal procedure due to a criminal offence committed abroad and there is a danger that he will repeat the criminal offence abroad, a commitment may be required from him that he would not leave for abroad without the court's permission. The promise of the accused shall be entered in the record.

(2) The accused bound by the promise referred to in the preceding paragraph may be temporarily divested of his passport and/or prohibited the use of another document for border crossing. A appeal against the ruling to withdraw his passport and/or to prohibit the use of another document for border crossing shall not stay execution.

(3) The accused bound by the aforesaid promise shall be warned that he may be liable to be detained if he breaks the promise.

4.a Restraint order prohibiting approach to a specific place or person

Article 195.a

(1) If the circumstances from points 2 or 3 of the first paragraph of Article 201 of this Act exist, but the risk that the accused will destroy traces of the criminal offence, influence witnesses, participants or concealers, or repeat the criminal offence, complete an attempted criminal offence or commit a threatened criminal offence can be prevented through a restraint order prohibiting the accused to approach a specific place or person, the court shall use such a measure.

(2) The court shall set an appropriate distance from the specific place or person which the accused must respect and which the accused may not intentionally cross; otherwise, the court may order detention against the accused. The accused must always be informed of such consequences in advance.

(3) If the distance which the accused must respect is intentionally violated by the person protected under the measure, the court may, each time, impose on the latter a fine referred to Article 78 of this Act.

(4) The court shall decide on the measures from this Article by a reasoned ruling; the explanation must contain the reasonable grounds for the suspicion that the accused has committed a criminal offence, the circumstances from the first paragraph of this Article and the use of this measure.

4.b Reporting to the police station

Article 195.b

(1) If there exists a fear that the accused will go into hiding or leave for an unknown destination or abroad, the court may decide that the accused must, daily or occasionally, report at a specified time at the police station in the area of which the accused has permanent or temporary residence or the accused is found at the time of the decision on the use of measures to ensure attendance. The ruling shall be served to the accused and sent to the relevant police station.

(2) If the accused fails to appear at the police station as stipulated in the ruling, the police shall report this without delay to the court; the latter may order detention against the accused in the event of intentional violation of this obligation. The accused must always be informed of these consequences in advance.

(3) The court shall decide on the measure from this Article by a reasoned ruling; the explanation must contain the reasonable grounds for the suspicion that the accused has committed a criminal offence, the circumstances from the first paragraph of this Article and the use of this measure.

(4) Unless otherwise stipulated in this Article, the provisions of this Act concerning detention shall apply *mutatis mutandis* to the ordering, duration, extension and removal of the measures referred to in the preceding Article and this Article.

(5) The extension of the measures referred to in the preceding Article and this Article before the filing of the charge sheet shall always be decided by the investigating judge, either *ex officio* or upon the motion of the public prosecutor.

5. Bail

Article 196

(1) If the sole reason to detain the accused, or to extend detention in case the accused is already under custody, is the fear that he may flee, the accused may be released on bail given by himself or by someone else and against the pledge that he will not go into hiding or leave his place of residence without permission.

(2) If the conditions for the ordering of detention are only fulfilled for reasons of the risk of re-offending (point 3 of the first paragraph of Article 201), the accused, provided that bail has been provided and the accused has promised not to repeat the criminal offence, not to complete an attempted criminal offence or not to commit the criminal offence which he has threatened, may remain free or may be freed if he is in detention, except in instances involving criminal offences from chapters XV, XIX, XX, XXI, XXVII, XXVIII, XXIX, XXX, XXXIII, XXXIV and XXXV of the Penal Code for which a prison sentence of five or more years is prescribed.

Article 197

(1) Bail shall always be defined as an amount of money determined relative to the gravity of the criminal offence, the personal and family conditions of the accused and the material position of the person who gives bail.

(2) Bail may be provided in cash, securities, valuables and other movables of greater value which may readily be converted into cash and deposited for safekeeping, in the form of a mortgage for the amount of bail on a real estate of the person who gives bail, or as a personal liability of one or more persons who undertake to pay the amount of bail in case the accused flees.

(3) If the accused flees, the amount given as bail shall be assigned to the budget through a ruling.

(4) If the accused repeats the criminal offence, completes an attempted criminal offence or commits a criminal offence which he has threatened, he may be detained. If bail is provided, it shall be handled according to the preceding paragraph.

Article 198

(1) Deposited bail notwithstanding, the accused may be detained if after being duly summoned he fails to appear and to justify non-appearance, if he is preparing to flee, or if some other statutory ground for his detention arises while he is at large.

(2) In the instance referred to in the preceding paragraph, the bail shall be cancelled. The amount of money, valuables, securities or other movables deposited shall be returned, and any mortgage shall be cancelled. The same shall apply when the criminal proceedings are concluded with a final ruling on the discontinuation or dismissal of the charge sheet or a final judgement.

(3) Where bail was given pursuant to the second paragraph of Article 196 of this Act, it shall be cancelled once the criminal proceedings are concluded with a final decision. The bail shall be handled according to the preceding paragraph.

(4) If the accused is sentenced to prison, his bail shall only be cancelled after he has started serving his sentence.

Article 199

(1) The ruling on bail shall, during the investigation, be issued by the investigating judge, and after the charge sheet has been filed it shall be issued by the court panel.

(2) The ruling by which bail is granted and the ruling by which it is cancelled shall be rendered after the opinion of the prosecutor has been heard.

5.a House arrest

Article 199.a

(1) If the grounds from points 1 to 3 of the first paragraph of Article 201 of this Act exist, but the ordering of detention is not unavoidably necessary for the safety of people or for the progress of the criminal proceedings, the court may order house arrest against the accused. The ruling on the ordering,

extension or cancellation of house arrest shall in all cases also be sent to the police station in the territory of which the measure is implemented.

(2) Through the ruling on ordering house arrest, the court determines that the accused may not move from the building in which he permanently or temporarily resides or from a public institution for health care or other care. The court may restrict or prohibit contacts between the accused who is subject to house arrest and persons with whom he does not live or who do not tend him.

(3) Exceptionally, the court may allow an accused person subject to house arrest to move, for a specific time, away from the premises where house arrest is being implemented whenever this is unavoidably necessary for him to provide himself with the essential consumer goods or to perform work. The court shall notify thereof the police station in the territory of which the measure is implemented.

(4) In the event that the accused, without the permission of the court, moves from the building in which he permanently or temporarily resides, or from a public institution for health care or other care, or does so outside the permitted time, the court may order detention against him. The accused must always be informed in advance of this consequence.

(5) The court shall supervise the implementation of house arrest either directly itself or through the police. The police may at any time, even without a court request, check the implementation of house arrest, and shall forthwith notify the court of any violation of this measure.

(6) Unless otherwise stipulated in this Article, the provisions of this Act on detention shall apply *mutatis mutandis* to the ordering, duration, extension and cancellation of house arrest, as well as to the inclusion of house arrest in the sentence imposed.

(7) Any extension of house arrest prior to the filing of the charge sheet shall always be decided by the panel (sixth paragraph of Article 25) upon a reasoned motion of the investigating judge or public prosecutor. The accused must be acquainted with the motion, as must his defence counsel, if the accused has one, within the time limit referred to in the second paragraph of Article 205 of this Act.

6. Detention

Article 200

(1) Detention may only be ordered under the conditions provided for by this Act.

(2) Detention shall last the shortest possible time. All bodies participating in criminal proceedings and bodies which provide legal assistance to them shall be bound to proceed with special speed if the accused has been detained.

(3) Detention shall, at any stage of proceedings, be cancelled as soon as the reasons for it being ordered cease to exist.

Article 201

(1) If a reasonable suspicion exists that a person has committed a criminal offence, detention of that person may be ordered:

1) if he is in hiding, if his identity cannot be established or if other circumstances exist which point to the danger of his attempting to flee;

2) if there is reasonable ground for concern that he will destroy the traces of crime or if specific circumstances indicate that he will obstruct the progress of the criminal procedure by influencing witnesses, accomplices or concealers;

3) if the seriousness of the offence, or the manner or circumstances in which the criminal offence was committed and his personal characteristics, history, the environment and conditions in which he lives or some other personal circumstances indicate a risk that he will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he has threatened.

(2) In the instance referred to in point 1 of the preceding paragraph the detention ordered solely because of the impossibility to establish the identity of a person shall last until the identity is established. In the instance referred to in point 2 of the preceding paragraph detention shall be cancelled as soon as the evidence on account of which detention was ordered has been secured.

(3) In particular, violations by the accused of the measures referred to in Articles 195, 195.a, 195.b, 196 and 199 of this Act shall be deemed to be special circumstances referred to in points 1, 2 and 3 of this Article.

Article 202

(1) Detention shall be ordered by the investigating judge of the court of jurisdiction upon the motion of the public prosecutor.

(2) Detention shall be ordered through a written order containing: the name and surname of the apprehended person; the criminal offence of which he is accused; the legal grounds for detention; instructions on the right to appeal; explanation of all decisive facts which dictated detention, wherein the investigating judge shall state the specific grounds for a reasonable suspicion that the person committed a criminal offence, explain the decisive facts from points 1 to 3 of the first paragraph of the preceding Article, and indicate why the ordering of detention in the specific case is unavoidably necessary for the safety of people or for the progress of the procedure.

(3) The detention order shall be served on the person it concerns at the time of apprehension and no later than forty-eight hours after the time of apprehension or after the time the person was brought to the investigating judge (paragraphs one and five of Article 157). The hour of apprehension and the hour of service of the order shall be indicated in the case file.

(4) The detainee may, within twenty-four hours of being served with the detention order, lodge an appeal against the order with the court panel (sixth paragraph of Article 25). If the first interrogation of the detainee takes place after the expiry of that period, the detainee may lodge an appeal during this interrogation. The appeal, a copy of the record of interrogation if an interrogation took place, and the detention order shall be sent to the panel forthwith. The appeal shall not stay the execution of the order.

(5) If the investigating judge disagrees with the motion of the public prosecutor for detention to be ordered, the matter shall be decided by the panel (sixth paragraph of Article 25). The detained person may appeal the order by which the panel has ordered detention, but the appeal shall not stay execution. As regards the serving of the order and the filing of an appeal, the provisions of paragraphs three and four of this Article shall apply.

(6) In the instances referred to in the fourth and fifth paragraphs of this Article, the panel shall decide the appeal within forty-eight hours.

(7) In instances referred to in the fifth paragraph of this Article, in the event of a request that the panel decide on the public prosecutor's motion for the ordering of detention, the investigating judge may in all cases order any of the substitute measures from this Chapter.

Article 203

(1) As soon as a person has been apprehended and brought to the investigating judge, the latter shall instruct the apprehended person according to Article 4 of this Act. In the case of a foreign citizen, the investigating judge must also inform the arrestee that the competent body shall, at the request by the arrestee, be obliged to notify the consulate of the relevant country about the apprehension. The instruction by the investigating judge and the statement of the arrestee thereon shall be entered in the record. The investigating judge shall, if necessary, help the arrestee find a counsel.

(2) The investigating judge shall question arrested persons without delay, and no later than within forty-eight hours of such person being brought to the judge.

(3) If the arrestee fails to retain counsel within twenty-four hours of being instructed of this right or declares that he will not retain counsel, the court shall appoint defence counsel for him *ex officio*.

(4) In instances referred to in the preceding paragraph, the investigating judge shall, by an order, order detention for the time necessary, but for no longer than forty-eight hours after the hour when the arrestee was brought to the judge. The provisions of the seventh paragraph of Article 157 of this Act shall apply *mutatis mutandis* to appeals against such an order.

(5) Detention under the preceding paragraph shall be executed in detention facilities.

Article 204

If the investigating judge fails to instruct an arrested person as provided by Article 4 of this Act or this instruction is not entered in the record, the court shall not be allowed to base its decision on the statement of the arrested person.

Article 204.a

(1) Immediately after questioning, the public prosecutor shall declare whether he will request the initiation of criminal proceedings and propose detention or any of the substitute measures from this Chapter.

(2) If the public prosecutor announces that he will act in the sense of the preceding paragraph, he shall explain the circumstances which could influence the decision on individual measures. The accused and his defence counsel may, in response to the statement of the public prosecutor, give their proposals and viewpoints.

(3) When the parties have made statements on all issues which could influence the application of the measures from this Chapter, the investigating judge shall rule on the proposals of the parties.

(4) If detention has been ordered against the accused and the public prosecutor fails, within forty-eight hours after the hour when he was informed of the detention, to submit a written request for the initiation of criminal proceedings, the investigating judge shall lift detention and release the detained person.

Article 205

(1) The accused who is detained under the order of the investigating judge may be detained for a maximum of one month from the day he was apprehended. After that period he may only be kept in custody on the basis of an order on the extension of detention.

(2) Detention may be extended, through an order of the panel (sixth paragraph of Article 25), by a maximum of two months. The order of the panel may be appealed against, but the appeal shall not stay execution. If proceedings are in progress for a criminal offence punishable under law by more than five years imprisonment, the panel of judges of the Supreme Court may extend detention by another three months at the longest. The order on the extension of detention shall be rendered by the court upon a reasoned motion of the investigating judge or the public prosecutor. The accused and his defence counsel must be informed of the motion no less than three days prior to the expiry of the period referred to in this paragraph, and may make statements on the declarations in the motion, or the investigating judge shall perform a special hearing.

(3) If a charge sheet is not filed before the expiry of the time limits from the preceding paragraph, detention shall be lifted and the accused released.

Article 206

The investigating judge may lift detention while the investigation is in progress, subject to consent of the public prosecutor, if the proceedings are conducted at his request, unless he lifts detention due to the expiry of the time limit or because the public prosecutor has refrained from prosecution. If the investigating judge and the public prosecutor cannot reach agreement, the investigating judge shall ask the panel to decide the matter; and the panel shall pass its decision within forty-eight hours.

Article 207

(1) After the charge sheet has been filed and until the conclusion of the main hearing, the ordering or lifting of detention shall only be possible under an order of the panel which shall first hear the opinion of the public prosecutor if proceedings have been instituted at his request. The detainee may appeal against the detention order within twenty-four hours of it being served on him. The appeal shall be decided by a higher court within forty-eight hours.

(2) Upon the expiry of two months after the last detention order, the panel shall examine, even in the absence of a motion by the parties, whether reasons for detention still exist, and issue an order by which detention is extended or lifted.

(3) An appeal against the order referred to in the preceding paragraphs shall not stay execution.

(4) No appeal shall be permitted against the order by which the panel rejects the motion for the ordering or lifting of detention.

(5) After the charge sheet has been filed, detention may last a maximum of two years. If within this period a verdict of guilty is not given against the accused, detention shall be lifted and the accused released.

Article 208

The police or the court shall, at request of the arrested person, inform his family of his arrest within twenty-four hours. The arrest shall be reported to the competent social welfare agency to attend, if necessary, to children and other family members whom the arrested person supports.

7. Execution of detention

Article 209

(1) While detained, the detainee's person and dignity must not be abused. The detainee must be treated in a humane manner and his physical and mental health must be protected.

(2) Only restrictions necessary to prevent escape or consultation which could harm the successful implementation of the proceedings may be used against a detainee.

Article 210

(1) Detainees shall be accepted in institutes in which detention is served (hereinafter: the institute) on the basis of a written detention order.

(2) The institute may also accept detainees without a written order, but the competent court shall be obliged to send to the institute a written detention order no later than within twenty-four hours of the detainee's arrival at the institute.

(3) In instances from the preceding paragraph, the responsible worker of the institute shall make an official note indicating the competent court which requested the acceptance and the date and time of the acceptance of the detainee in the institute.

(4) If the institute does not receive a written detention order within the period referred to in the preceding paragraph, it shall release the detainee and notify the competent court thereof.

Article 211

(1) For a lawful and proper execution of detention, the institute shall collect, process, store and maintain a database on detainees.

(2) The database referred to in the preceding paragraph shall comprise:

1) data on the identity of the detainee and on his personal status,

2) data on the detention order,

3) data on the work performed while detained,

4) data on acceptance into detention and the duration, extension and lifting of detention,

5) data on the behaviour of the detainee and on any disciplinary measures.

(3) Data from the database shall be stored and used for the duration of detention; after the detention is lifted, the data shall be archived and stored permanently.

(4) The institute shall forward the data referred to in the second paragraph of this Article to the central records on detainees; it shall only give these data to other users if they are authorised to use them by law or on the basis of a written permission or request of the individual to whom the data refers.

(5) The minister responsible for justice shall issue regulations to define in greater detail the data referred to in the second paragraph of this Article.

Article 212

(1) Detainees shall be held on remand in special detention facilities or in a separate, closed part of a penal institution or of a department thereof.

(2) People of the opposite sex may not be held in the same room. As a rule, persons who have participated in the same criminal offence may also not be held in the same room, and persons serving prison sentences may not be held with those on remand. If possible, persons who are accused of repeat criminal offences may not be held in the same room as other detainees who could be subjected to their harmful influences.

(3) The competent court may transfer a detainee from one institute to another for reasons of safety, order and discipline or for the successful and rational implementation of the criminal procedure, at the proposal of the director of the institute in which the detainee is held.

Article 213

While on remand, detainees may have on their person and use items for personal use, for the maintenance of hygiene, equipment for the reception public media, printed matter, specialised and other literature, money and other items which, considering their size and quantity, enable functional dwelling in the living area and which do not disturb other detainees. Other items shall be confiscated during personal examination of the detainee or during detention, and put into storage.

Article 213.a

(1) Detainees shall have the right to eight hours uninterrupted rest in twenty-four hours. In addition, detainees must be ensured no less than two hours of outdoor exercise each day.

(2) Detainees may be used for work necessary to maintain order and cleanliness in their area. In accordance with the possibilities of the institute and on condition that it is not harmful to the criminal procedure, detainees must be allowed to work in activities which suit their mental and physical abilities. The investigating judge or the presiding judge shall decide on this in agreement with the management of the institute.

(3) Detainees shall have the right to payment for work performed. The minister responsible for justice shall prescribe in greater detail the manner and amount of payment.

Article 213.b

(1) With the permission of the investigating judge who is conducting the investigation and under his supervision or the supervision of someone appointed by him, close relatives, and at the detainee's request also a doctor and others, may visit the detainee within the confines of the house order of the institute. Individual visits may be prohibited if this could cause harm to the proceedings.

(2) Diplomatic and consular representatives of foreign countries shall have the right, with the knowledge of the investigating judge performing the investigation, to visit and to talk unsupervised with detainees who are citizens of their country.

(3) The human rights ombudsman or his deputy may visit detainees and may correspond with them without prior notification and without supervision of the investigating judge or someone appointed by him. The letters which detainees send to the Office of the Human Rights Ombudsman may not be examined.

(4) Detainees may correspond or have other contacts with persons outside the institute. If so dictated by the reasons for which detainment was ordered, the investigating judge, upon the motion of the public prosecutor, may, by means of a written decision, order supervision of letters and other packages as well as other contacts a detainee has with persons outside the institute. The investigating judge may prohibit a detainee from sending and receiving letters and other packages or from

establishing contacts which are harmful to the procedure, but may not prohibit detainees from sending requests or complaints. An appeal against this decision shall not stay execution.

(5) After the filing of a charge sheet and until the judgement is final, the presiding judge shall hold the rights referred to in the first to fourth paragraphs of this Article.

Article 213.c

(1) Detainees may be disciplined for disciplinary breaches. The investigating judge or the president of the panel may impose a disciplinary punishment.

(2) Disciplinary breaches are:

– physical attacks on other detainees, employees of the institute or other official persons,

– the production, acceptance or introduction of items for attacks or escape,

– the introduction and production of alcoholic beverages and narcotics and their distribution,

– violations of the regulations on safety at work, fire safety, explosions and other natural disasters,

– repeated violations of the house order of the institute,

– causing serious material damage intentionally or through serious negligence,

– insulting and undignified behaviour.

(3) For disciplinary breaches, a prohibition or restrictions on visits and correspondence may be imposed. Restrictions or prohibition of visits shall not apply to visits by the defence counsel, doctors, the human rights ombudsman and diplomatic and consular representatives of the country of which the detainee is a citizen.

(4) Complaints may be lodged with the panel (sixth paragraph of Article 25) against the decision on punishments imposed under the first paragraph of this Article within twenty-four hours of receipt thereof. The appeal shall not stay the execution of the decision.

Article 213.č

(1) Unless otherwise stipulated by this Act and by regulations issued pursuant thereto, the provisions of the act governing the execution of penal sanctions and of regulations issued pursuant thereto shall apply *mutatis mutandis* to the monitoring, pursuit, surveillance, maintenance of order and discipline, the use of force, personal search and house searches in connection with detainees.

(2) In performing official duties, authorised officials of the institute may only use firearms against a detainee if they are otherwise unable to protect human lives, to rebuff a direct attack on their person which endangers their life, or to rebuff an attack on a person or facility he is protecting.

Article 213.d

(1) Supervision over the treatment of detainees shall be executed by the president of the circuit court.

(2) The president of the court, or a judge appointed by him, shall visit detainees at least once a week and, if he considers it necessary also without the presence of guards, ask them how they are being treated. He shall take the necessary action to remove any irregularities he noticed during his visit to the institute. The appointed judge may not be the investigating judge.

(3) The president of the court and the investigating judge may at any time visit detainees, talk with them and accept complaints.

Chapter Eighteen

ACTS OF INVESTIGATION

1. House search and personal search

Article 214

(1) A search of the dwelling and other premises of the accused or other persons may be conducted if justified grounds exist for the suspicion that a particular person has committed a criminal offence and there is a likelihood of apprehending the accused during the search or of discovering any traces of the crime or objects of importance for criminal procedure.

(2) A search of a person may be performed if justified grounds exist for the suspicion that a particular person has committed a criminal offence and if it seems probable that traces and objects important for criminal procedure will be found during the search.

Article 215

(1) A search shall be ordered by the court in the form of a reasoned warrant.

(2) Before beginning the search, the search warrant shall be handed over to the person whose premises or person are to be searched. The person to be searched shall be informed of his right to send word to his lawyer, the latter being entitled to be present during the search. If the person to whom the search warrant refers demands that his lawyer be present during the search, the start of the search shall be adjourned until the lawyer arrives, but no longer than by two hours.

(3) Before the beginning of the search, the person to whom the search warrant refers shall be asked to surrender voluntarily the person or the objects sought.

(4) A search may be undertaken even without the prior presentation of the warrant or the prior demand for surrender of the person or objects sought if armed resistance is expected, or the search has to be conducted instantly and without warning, or where a search is conducted in public areas.

(5) Searches shall as a rule be conducted between 6 a.m. and 10 p.m. They may also be conducted outside these times if they began within these hours and are not completed by 10 p.m., or if the reasons referred to in Article 218 of this Act exist, or if the investigating judge assesses that a delay could lead to destruction of traces of a criminal offence or of items important for criminal procedure and specifically permits this.

(6) The provisions of this and other articles referring to house and personal searches shall also apply *mutatis mutandis* to searches of concealed spaces in means of transport.

Article 216

(1) The person whose flat or other premises are searched or a representative of that person shall have the right to be present during the search.

(2) Locked premises, furniture or other objects may only be forced if their owner is not present or refuses to open them voluntarily. In opening these objects care should be taken not to do unnecessary damage.

(3) When a house search or personal search is conducted, two adult persons shall be present as witnesses. A female person may only be searched by a female person, and the witnesses of the act may only be females. Before the search begins the witnesses shall be warned to observe closely how the search is conducted, and shall be informed of their right to make objections, if any, to the contents of the record of the search before it is signed.

(4) If a search is conducted on the premises of a state agency, enterprise or other legal person, the head thereof shall be invited to attend the search.

(5) If a search is conducted on a military facility, the appropriate senior officer shall be invited to attend it.

(6) House and personal searches shall be carried out considerately, to avoid disturbing the house peace.

(7) Each house search or personal search shall be entered in a record signed by the person whose premises or person have been searched, his lawyer if present during the search, and persons whose presence is obligatory. When conducting a search, only the objects and documents related to the purpose of that particular search may be confiscated. The objects and documents confiscated shall be entered and accurately described in the record, and the same shall be indicated in the receipt which shall be immediately given to the person whose objects or documents have been confiscated.

Article 217

If during a house search or personal search objects are found which are not related to the criminal offence that occasioned the search but which point to another criminal offence subject to public prosecution, these objects shall also be described in the record and confiscated, and a certificate of confiscation shall immediately be issued. A notification thereof shall immediately be sent to the public prosecutor to start criminal prosecution. The objects confiscated shall be returned immediately if the public prosecutor finds that there are no grounds for criminal prosecution, nor any other statutory grounds for confiscating the objects (Article 498).

Article 218

(1) Police officers may enter and, if necessary, search the dwelling and other premises of a person without a court warrant if the occupant so desires, if someone is calling for help, if a perpetrator caught in the act of committing a criminal offence is to be apprehended, if the safety of people or property so requires, or if a person who must be detained or produced by force under an order of the competent state agency, or a person being prosecuted, is in the dwelling or other premises.

(2) In the instance referred to in the preceding paragraph a record shall not be made but the occupant shall be given a certificate with an indication as to the reason for the entry of the dwelling or other premises. If during the entry referred to in the preceding paragraph a search was also conducted, the provisions of the third and sixth paragraphs of Article 216 shall be applied.

(3) A search may be carried out without witnesses being present if their presence cannot be secured immediately and it would be unsafe to delay the act. The reasons for the search without the attendance of witnesses shall be cited in the record.

(4) Police officers may search a person without a search warrant and witnesses present when executing an order on compulsory appearance of a person or when apprehending a person, provided grounds exist to suspect that the person is carrying weapons for attack or that he will throw away, hide or destroy objects which must be taken away from him as evidence in criminal proceedings.

(5) When police officers have carried out a search without a search warrant, they shall immediately submit a report thereof to the investigating judge, or to the competent public prosecutor where proceedings are not yet pending.

Article 219

If the search was carried out without a written court warrant (first paragraph of Article 215) or without persons whose presence is obligatory in a search (first and third paragraph of Article 216), or if the search was carried out in violation of the provisions of the first, third or fourth paragraph of the preceding Article, the court may not base its decision on evidence obtained in this way.

2. Confiscation of objects

Article 220

(1) Objects which must be confiscated under the Penal Code, or which may prove to be evidence in criminal proceedings shall be confiscated and delivered to the court for safekeeping or secured in some other way.

(2) Custodians of such objects shall hand them over at the request of the court. A custodian who declines to deliver the objects may be fined under paragraph 1 of Article 78 of this Act; if after being fined he still refuses to surrender them, he may be arrested. The detention shall last until the objects have been delivered or until the end of criminal proceedings, but no longer than one month.

(3) An appeal against the decision by which a fine or imprisonment were pronounced shall be determined by the panel (sixth paragraph of Article 25). An appeal against the detention order shall not stay execution.

(4) Police officers may confiscate objects referred to in the first paragraph of this Article when proceeding under Articles 148 and 164 of this Act or when executing orders of the court.

(5) The determination of the identity of objects confiscated shall be secured by indicating, after confiscation, where they were found, by giving a description of the objects or, as the case may require, in some other way. A certificate of confiscation shall be issued for the objects confiscated.

Article 221

(1) State agencies may decline to have their documents and papers inspected or to deliver them if they consider that a disclosure of their contents would harm the general interest. If they do so, the final decision thereon shall be given by the panel (sixth paragraph of Article 25).

(2) Enterprises and other legal entities may request that information concerning their business be not published.

Article 222

(1) If files of evidentiary value are confiscated, an inventory shall be made. If that is not possible, they shall be put in an envelope and sealed. The owner of the file may put his seal on the envelope.

(2) The person whose files have been confiscated shall be invited to attend the opening of the envelope. If he does not appear after being summoned, or if he is absent, the envelope shall be opened and the files examined and inventoried in his absence.

(3) In examining the files care should be taken that unauthorised persons do not become acquainted with their contents.

Article 223

(1) The investigating judge may order that the post, telegraphic and other organisations engaging in the transmission of information should hold, and against his certificate of receipt deliver to him, the letters, telegrams and other shipments addressed to the accused or sent by him if circumstances exist which justify anticipation that these deliveries will prove to be evidence in the proceedings.

(2) The investigating judge shall open the shipments delivered to him in the presence of two witnesses. In opening the shipments care should be taken that the seals be not damaged; the envelopes with the addresses shall be preserved. A record of the opening shall be made.

(3) The content of a shipment may be reported in full or in part to the accused or the person to whom it is addressed, and the shipment itself may be delivered to the aforesaid persons, provided that does not affect the interests of the proceedings. If the accused is absent the contents of a shipment or the shipment itself shall be reported or delivered to one of his relatives, and where none of them is to be found the shipment shall be returned to the sender provided that does not affect the interests of the proceedings.

Article 224

Objects confiscated during the criminal procedure shall be returned to the owner or actual holder if the procedure is discontinued and there are no grounds for them to be confiscated (Article 498).

3. Treatment of objects of doubtful ownership

Article 225

(1) If an object of unknown ownership is found on the accused, the agency conducting the proceedings shall describe it and post the notice with the description of the object on the bulletin board of the court of first instance in the territory in which the accused lives and in the territory in which the criminal offence was committed. The notice shall call on the owner to come forward within a year or the object will be sold. The money obtained by the sale shall be remitted to the budget.

(2) If the objects are of considerable value the notice may also be advertised in the daily press.

(3) If the object is perishable or its keeping involves considerable expense it shall be sold according to the provisions applying to enforcement procedure and the money so obtained shall be entrusted to a monetary institution for safekeeping.

(4) The provisions from the preceding paragraph shall also apply to the treatment of objects belonging to an absconder or unknown criminal offender.

Article 226

(1) If within a year no person claims the object or the proceeds from its sale, a ruling shall be issued that the object become the property of the Republic of Slovenia or that the money be transferred to the budget.

(2) The owner shall have the right to file a civil action for the restitution of the object or of the proceeds from its sale. The statute of limitation for the aforesaid civil action shall apply as from the day of publication of the notice.

4. Interrogation of the accused

Article 227

(1) It his first interrogation the accused should be asked his name, surname and nickname, if any; the name and surname of his parents and the maiden name of his mother; his place of birth; his place of residence; the day, month and year of his birth; his personal identification number; his national origin and citizenship; his occupation; family conditions; whether he is literate; his education; whether, where and when he did military service; whether he is a non-commissioned or commissioned officer or a military employee; whether he has been conscripted and, if so, at which defence body; whether he has been decorated; his personal income and his financial position; whether he has been convicted and the sentence has not yet been deleted; whether he has served a sentence and, if so, when and for what criminal offence; whether a criminal procedure against him for some other criminal offence is in progress; if he is a minor, the identity of his legal representative. He shall be informed of the obligation to appear when summoned and to report any change of his address or an intended change of the place of residence, and shall be warned of consequences of failure to comply therewith.

(2) The accused shall then be informed of the offence he is charged with and of the grounds for the charge. He shall be instructed that he is not obliged to plead and answer questions, that if he pleads he is not obliged to incriminate himself or his close relatives or to confess guilt, that he is entitled to retain a counsel of his choosing or to have a counsel appointed for him *ex officio* under conditions defined by this Act, and that the counsel may be present at the interrogation.

(3) If criminal offences for which the Penal Code lays down that the accused may have his punishment mitigated in certain cases (point 3 of Article 42 and the third paragraph of Article 297 of the Penal Code) are involved, he must also be told of this.

(4) The accused shall be interrogated orally. He may be permitted to make use of his notes during the interrogation.

(5) During the interrogation the accused should be enabled to declare himself in an uninterrupted narrative on all the circumstances adverse to him and to put forward all the facts advantageous to his defence.

(6) After the accused has finished his narrative he shall be asked questions if there are gaps to be filled or contradictions and ambiguities to be cleared up in his account.

(7) The interrogation shall be conducted with full respect for the person of the accused.

(8) Force, threats or any similar means of extorting a statement or confession from the accused must not be used (third paragraph of Article 266).

(9) The accused may be interrogated in the absence of defence counsel if he has explicitly waived that right and defence is not mandatory, or if the counsel is not present although he was notified of the interrogation (Article 178).

(10) If the accused was not instructed about his rights under the second paragraph of this Article, or the instruction and the statement of the accused concerning the right to a defence counsel are not

entered in the record, or the interrogation was conducted in violation of the provisions of the eighth or ninth paragraph of this Article, the court may not base its decision on the statement of the accused.

Article 228

(1) The accused should be asked questions in a clear, distinct and precise manner so that he can fully understand them. Questions must not proceed from the assumption that the accused has admitted something he has not admitted. The accused must not be asked questions which in themselves suggest how they should be answered. The accused must not be misled in order to obtain a statement or confession.

(2) If the subsequent statements of the accused are at variance with his previous statements and, in particular, if he denies his previous confession, he shall be asked to adduce the reasons for this.

(3) If the interrogation was conducted in violation of the provisions of the first paragraph of this Article, the court decision may not be based on the statement of the defendant.

Article 229

(1) The accused may be confronted with a witness or another accused if their statements on important facts diverge.

(2) The persons confronted with one another shall each be interrogated separately about every point on which their statements differ and their answers shall be entered in the record.

Article 230

Objects related to criminal offence or used as evidence shall first be described by the accused and then presented to him for identification. If such objects cannot be brought before the accused he shall be taken to the place where the objects are located.

Article 231

(1) Statements of the accused shall be entered in the record in the form of a narrative; questions and answers shall be entered in the record if so requested by the parties or defence counsel, or if the investigating judge deems it necessary. The record shall be kept so as to make clear whose questions were answered.

(2) The accused shall be allowed to dictate his statements into the record personally.

Article 232

Notwithstanding a confession of the accused the court which conducts proceedings shall be required to continue gathering evidence. If the confession is unambiguous and full and supported by other evidence, further evidence shall only be gathered on the motion of the parties.

Article 233

(1) The accused shall be interrogated through an interpreter in instances provided by this Act.

(2) If the accused is deaf he shall be asked questions in writing, and if he is dumb he shall be requested to answer questions in writing. If the interrogation cannot be carried out in that way, a person who knows how to communicate with the accused shall be invited to act as interpreter.

(3) If the interpreter is not on oath he shall swear to interpret accurately the questions put to the accused and the answers of the accused.

(4) The provisions of this Act applying to experts shall apply to interpreters *mutatis mutandis*.

5. Examination of witnesses

Article 234

(1) Persons likely to give some information about the criminal offence, the perpetrator and other material circumstances shall be summoned as witnesses.

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

(3) Any person summoned as a witness shall abide by the summons and, unless provided otherwise by this Act, testify.

Article 235

The following may not be examined:

1) a person who, by giving testimony, would violate the obligation to keep an official or military secret, until the competent body absolves him of that obligation;

2) defence counsel, on matters confided to him by the accused, unless the accused himself requests so.

Article 236

(1) The following shall be exempt from the duty to testify:

1) the spouse of the accused or the person with whom he lives in domestic partnership;

2) persons related to the accused by blood in direct line, persons related to him collaterally at three removes and persons related to him by marriage at two removes;

3) the adopter or adoptee of the accused;

4) a father confessor, on matters confessed to him by the accused or by another person;

5) lawyer, doctor, social worker, psychologist or another person, on facts he came to know in the exercising of his profession, if bound by the duty to keep secret what he learns of in the exercising of his profession, except in instances referred to in the third paragraph of Article 65 of this Act, or if statutory conditions are fulfilled under which such persons are absolved from the duty to keep secret or are bound to disclose confidential information to competent bodies.

(2) The court conducting proceedings shall be bound to instruct the persons referred to in the preceding paragraph, each time before examining them, that they are not obliged to testify the moment the court learns that there are circumstances that absolve the said persons from the duty to testify. If a witness declares that he waives that right and wants to testify, he shall be warned that the court might base its decision on his testimony even if he waives the testimony in the main hearing. The instruction and the reply thereto shall be entered in the record.

(3) Minors who in view of their age and the stage of their intellectual development cannot understand the meaning of the right to decline testimony may not be examined as witnesses except where the accused himself demands it.

(4) A witness entitled to refuse to testify against one of the accused shall be exempt from the duty to testify against other persons accused if his testimony cannot, in view of the nature of the matter, be confined solely to them.

Article 237

If a person who has been examined as a witness is a person who may not be examined as a witness (Article 235), or a person who is not obliged to testify (Article 236) but has not been instructed of that right or has not explicitly waived that right or the instruction and the waiver were not entered in the record, or if a person examined as a witness is a minor who could not understand the meaning of his right to refuse testimony, or the testimony of a witness was extorted by force, threat or a similar prohibited means (third paragraph of Article 266), the court may not base its decision on such testimony.

Article 238

A witness shall not be obliged to answer those questions by which he would be likely to disgrace, inflict considerable material damage or make liable to criminal prosecution himself or his close relatives (points 1 to 3 of the first paragraph of Article 236).

Article 239

(1) Witnesses shall be summoned by a writ of summons indicating: the name, surname and occupation of the person summoned, when and where he is to appear, the criminal case in connection with which he is summoned, indication that he is summoned as a witness, and the consequences of an unjustified absence (Article 244).

(2) Minors under the age of sixteen shall be summoned as witnesses through their parents or legal representatives, unless that is not possible for reasons of urgency or some other circumstances.

(3) Witnesses who by reason of old age, illness or serious bodily disability are unable to comply with the summons shall be examined in their dwelling.

Article 240

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

(2) A witness shall first be told that it is his duty to speak the truth and that he may not withhold anything, whereupon he shall be warned that a false testimony is a criminal offence. A witness shall also be instructed that he need not answer questions referred to in Article 238 of this Act, and the instruction thereon shall be entered in the record.

(3) After that, the witness shall be asked to tell his name and surname, occupation, place of residence, place of birth, his age and his relation to the accused and the injured party. He shall be warned of the obligation to report to the court any change of address or place of residence. A police officer who appears as a witness shall, as a rule, be asked the address and name of the unit to which he belongs rather than his place of residence. A person who has carried out measures referred to in Articles 149.a, 150, 151, 155 and 155.a of this Act directly shall not, as a rule, be required to give his personal data but it shall suffice that he identifies himself by means of his official working name and an official document that proves his identity.

(4) A person under age, especially if that person has suffered damage from the criminal offence at issue, must be examined considerately to avoid producing harmful effect on his state of mind. If necessary, a pedagogue or some other expert should be called to assist in the examination of a minor.

Article 240.a

(1) If there are reasonable grounds for believing that disclosure of the personal data or whole identity of a certain witness could endanger his life or body, or the life or body of his close relatives (points 1 to 3 of the first paragraph of Article 236), or of persons proposed by the witness in accordance with the provisions of the act referred to in the third paragraph of Article 141.a of this Act, the court may order one or more of the following measures to protect him or his close relative:

1) deletion of all or certain data from the third paragraph of Article 240 of this Act from the criminal case file;

2) the marking of all or some of the data from the preceding point as an official secret;

3) the issuing of an order to the accused, his counsel, the injured party, or their legal representative and attorneys to keep certain facts or data secret;

4) the assignment of a pseudonym to the witness;

5) the taking of testimony using technical devices (protective screen, devices for disguising the voice, transmission of sound from separate premises and other similar technical protective devices).

(2) Protective measures from the preceding paragraph shall be ordered in writing by the investigating judge upon the motion of the public prosecutor, the witness, the injured party, the accused, their legal representatives and attorneys, or *ex officio*. The ruling may not contain data that could lead to the disclosure of data that are the subject of the protective measure.

(3) Prior to the issuing of the ruling on the use of protective measures, the investigating judge shall obtain from the witness the data referred to in the third paragraph of Article 240 of this Act. If protective measures are ordered, the appropriate data from the third paragraph of Article 240 of this Act shall be removed from the case file and kept as an official secret immediately after identification of the witness and before his testimony is taken. They may only be inspected and used in the procedure of decision-making on an appeal against the ruling from the preceding paragraph and in the case of identity control pursuant to the ninth paragraph of this Article.

(4) A ruling on the use of protective measures by means of which the identity of the witness is entirely concealed from the accused and his counsel (anonymous witness) may only be issued by the investigating judge after a special hearing has been held, if he assesses:

1) that there are reasonable grounds for believing that the disclosure could endanger the life or body of the witness, or the life or body of his immediate family member, or of persons proposed by the witness in accordance with the provisions of the act referred to in the third paragraph of Article 141.a of this Act,

2) that the witness's testimony is important to the criminal proceedings;

3) that the witness shows a sufficient level of credibility; and

4) that the interests of justice and the successful conduct of criminal proceedings outweigh the interests of the defence in knowing the identity of the witness.

(5) Only the necessary court staff and staff providing security may be present at the hearing from the preceding paragraph, in addition to the public prosecutor and the witness for whom the protective measure has been requested. At the hearing the investigating judge shall inspect the enclosed documents and take testimony from the witness and from other people able to supply information that could have a bearing on his decision. The statements given by the witness or by other people at this hearing shall be removed from the case file immediately after the hearing, and kept as an official secret. They may only be inspected and used in the procedure of decision-making on an appeal against the ruling from the second paragraph and in the case of identity control pursuant to the ninth paragraph of this Article. If the investigating judge establishes at the hearing that protection measures referred to in the first paragraph of this Article do not prove sufficient to ensure personal security, he may propose to the public prosecutor to take the initiative according to the provisions of the act referred to in the third paragraph of Article 141.a of this Act.

(6) If urgent protection measures or measures under the protection programme under the act referred to in the third paragraph of Article 141.a of this Act are already ordered before the hearing in connection with a certain witness, the investigating judge shall gather data from the witness at the hearing pursuant to the third paragraph of Article 240 of this Act and shall check whether this is indeed the same witness as the one for whom the measures were ordered. The findings shall be entered in the record. The data gathered shall be removed from the file immediately after identification and before the hearing of the witness and shall be kept as an official secret. In the case of such a witness the investigating judge shall decide, by a ruling, on the concealment of identity for the purposes of court procedure after the assessment referred to in point 4 of the fourth paragraph of this Article is made.

(7) While testimony is being taken from a witness in relation to whom the measures from the first paragraph of this Article have been ordered, or in relation to whom the protection programme measures according to the act referred to in the third paragraph of Article 141.a of this Act have been ordered, the investigating judge shall prohibit any questions whose answers could disclose protected information.

(8) After the charge sheet has been submitted to the court and until the end of the main hearing, the powers of the investigating judge from this Article shall be exercised by the presiding judge.

(9) If it is necessary for testimony to be taken from a witness at the main hearing in relation to whom the protective measure from point 4 of the first paragraph of this Article has been ordered, or in relation to whom a measure according to the sixth paragraph of this Article has been ordered, the president of the panel must, before testimony is taken, verify that it is indeed the same witness for whom the protective measure has been ordered. The findings shall be entered in the record.

Article 241

(1) After the witness has been asked about the general data on himself, he shall be called upon to say whatever he knows about the case considered, whereupon he shall be asked questions aimed at checking, supplementing and clarifying his testimony. Misleading and leading questions shall not be permitted during the examination of the witness.

(2) A witness shall always be asked from which source he has obtained the facts about which he is testifying.

(3) Witnesses may be confronted if their testimonies regarding material facts are mutually at variance. Such witnesses shall be examined separately about each circumstance on which their testimonies clash and their answers shall be entered in the record. Only two witnesses may be confronted at a time.

(4) The injured party examined as a witness should be asked if he intends to seek satisfaction of his indemnification claim in the criminal proceedings under way.

Article 242

(1) Where there is need to establish if a witness can recognise a person or an object, he shall first be asked to describe them and indicate their distinctive features; only after that the witness shall be shown the person together with other persons unknown to him, or the object together with other objects of the same kind if possible. Identification by means of other senses (hearing, touch, smell etc.) shall proceed in a corresponding way.

(2) Before identification, the witness shall be warned according to the second paragraph of Article 240 of this Act.

(3) The investigating judge who conducts the identification process shall ensure that before the identification the witness does not see the persons or objects he is about to identify.

(4) A record of the identification shall be made and a group photograph of all the persons viewed shall be enclosed with it.

Article 242.a

If the life or body of the person doing the identification or his close relatives (points 1 to 3 of the first paragraph of Article 236) is under serous risk, or there is a likelihood that the person being identified might influence the course of the identification process, the identification shall be conducted in such a way that the person being identified cannot see the person making the identification.

Article 243

If a witness is examined by the intermediary of interpreter, or if a witness is deaf or dumb, he shall be examined as provided in Article 233 of this Act.

Article 244

(1) If a witness who has been duly summoned fails to appear and does not justify his non-appearance, or if he leaves the place where he should be examined without permission or a valid reason, he may be produced by force and may be imposed the fine provided for in the first paragraph of Article 78 of this Act.

(2) If a witness appears when summoned and, after being warned of the consequences, refuses to give testimony without statutory reasons, he may be imposed the fine provided for in the first paragraph of Article 78 of this Act; if after that he still refuses to testify, he may be detained. This detention shall last for as long as the witness refuses to testify and until his testimony becomes unnecessary, or until criminal proceedings terminate, but not beyond the period of one month.

(3) An appeal against the ruling by which a fine or detention was imposed shall always be decided by the panel (sixth paragraph of Article 25). An appeal against the detention order shall not stay execution.

(4) Military personnel and police members may not be taken into custody, but their refusing to testify shall be reported to their respective commands.

6. Inspection

Article 245

An inspection is carried out when determination or explanation of an important fact for the proceedings calls for immediate observation.

Article 246

(1) With a view to checking the evidence taken or determining facts material to the elucidation of the matter, the body conducting the procedure may order that the event be reconstructed by recreating facts or situations under the circumstances in which, on the basis of the evidence taken, the event had occurred. If acts or situations are presented differently in testimonies of individual witnesses or accused persons, the reconstruction of the event shall as a rule be carried out with each of these persons separately.

(2) In reconstructing the event care must be taken not to violate law and order, offend public morals or endanger lives or health of people.

(3) In carrying out the reconstruction new evidence may be taken if necessary.

Article 247

(1) The body conducting inspection or reconstruction of the event may ask the assistance of criminology, transportation and other specialists who, if necessary, also seek, protect or describe traces, make the necessary measurements and recordings, draw sketches or gather other information.

(2) An expert may also be invited to attend the inspection or reconstruction of the event if his presence is considered of service to determining the event and forming an opinion thereon.

7. Expertise

Article 248

Experts shall be engaged when determination or assessment of a material fact call for the findings and opinion of a specialist possessing the necessary expertise for the task.

Article 249

(1) Expert work shall be ordered by a written order of the body conducting the procedure. The order shall specify the facts to be established or assessed by experts, as well as persons to whom the expert work shall be entrusted. The order shall also be served on the parties.

(2) If a particular kind of expertise falls within the domain of a scientific institution or the expert work can be performed in the framework of a particular state agency, the task, especially if it is a complex one, shall as a rule be entrusted to such an institution or state agency. The institution or the agency shall assign one or several experts to perform the expert work.

(3) Where an expert is appointed by the agency which conducts the procedure, the agency shall as a rule appoint one expert, but if a complex expert work is involved it shall appoint two or more experts.

(4) If a court expert is appointed for some type of expert work, the court may only assign other experts if it would be dangerous to delay, if the court experts are delayed, or if other circumstances so require.

Article 250

(1) A person summoned as an expert shall be bound to comply with the summons and give his findings and his opinion.

(2) If an expert who has been duly summoned fails to appear and does not justify his absence, or if he refuses to perform an expert examination, he may be fined as provided by the first paragraph of Article 78 of this Act; if his failure to appear is unjustifiable, he may be produced by force.

(3) An appeal against the ruling by which a fine has been imposed shall be decided by the panel (sixth paragraph of Article 25).

Article 251

(1) A person who may not be examined as a witness (Article 235), or who is exempted from the duty to testify (Article 236), or against whom a criminal offence was committed, may not be assigned as expert; should such person be assigned as expert the judicial decision may not be based on his finding and opinion.

(2) The reason for the exclusion of an expert (Article 44) shall also exist in respect of persons who are employed at the same employer as the accused or the injured party, and in respect of persons who are employed by the injured party or the accused.

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

(4) Where it is possible to file a special appeal against the ruling by which the challenge of an expert has been rejected (fourth paragraph of Article 42), the appeal shall stay the expert examination, except where it would be unsafe to delay.

Article 252

(1) Before the production of expert evidence commences, the expert shall be instructed to study the object of the examination carefully, indicate precisely whatever he observes and finds, and give an unbiased opinion thereon in accordance with the rules of science and professional expertise. He shall be warned in particular that false testimony is a criminal offence.

(2) The expert may be required to take an oath before commencing expert examination. Prior to the main hearing the expert may only be sworn in before the court where there is a danger that he might be kept from appearing at the main hearing. The reason for his taking an oath shall be entered in the record. A permanent expert who has taken a general oath for the type of examinations concerned shall, before starting examination, only be reminded of the oath taken. The swearing in shall be conducted as provided for by Article 333 of this Act.

(3) The body conducting the procedure shall direct the expert examination, indicate to the expert the objects he is to examine, ask him questions and, if necessary, demand explanations regarding his finding and opinion.

(4) The expert may be given explanations and may be allowed to inspect the case file. He may propose that evidence be taken or that objects and data material to his analysis and opinion be secured. If an expert attends inspection, the reconstruction of the event or some other investigative act he may suggest that specific circumstances be elucidated or that the person being interrogated be asked specific questions.

Article 253

(1) The expert shall examine objects in the presence of the body conducting the procedure and a recording clerk, except where a long examination is necessary, or the examination is conducted in an institution or a state agency, or where moral considerations render it inappropriate.

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

Article 254

The expert findings and opinion shall immediately be entered in the record. The expert may be allowed to submit his findings or opinion in writing subsequently, within the period set by the body before which the procedure is conducted.

Article 255

(1) If expert work is entrusted to a scientific institution or a state agency, the body conducting the procedure shall advise them that they may not engage as participants in the production of the findings and opinion persons referred to in Article 251 of this Act and persons who for some other reason provided for by this Act may not be assigned as experts, and shall warn them of consequences of presenting a false finding or biased opinion.

(2) The scientific institution or the state agency shall be provided with the material necessary for the expert work; if necessary, the provisions of the fourth paragraph of Article 252 of this Act shall be exercised.

(3) The scientific institution or the state agency shall send the court their findings and opinion in writing, signed by the persons who carried out the expert work.

(4) The parties may request from the head of the scientific institution or the state agency the names of the specialists who will perform the expert work.

(5) The provisions of the first, second and third paragraphs of Article 252 of this Act shall not apply when the expert work has been entrusted to a scientific institution or a state agency. The body conducting the procedure may request the scientific institution or the state agency to provide explanations regarding their findings and opinion.

Article 256

The record of the expert examination or the written findings and opinion shall indicate the name of the person who performed the expert work, his occupation, professional education and speciality.

Article 257

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

Article 258

If the opinion of experts contains contradictions or deficiencies, or if a reasonable doubt arises about the correctness of the opinion presented, and these deficiencies or doubt cannot be removed through a new hearing of experts, the opinion of other experts shall be required.

Article 259

(1) The post mortem examination and autopsy shall be performed whenever suspicion exists, or it appears obvious, that death was caused by a criminal offence or in connected with the commission of a criminal offence. If the body has been buried, exhumation shall be ordered to examine the body and perform autopsy.

(2) In carrying out an autopsy all necessary operations should be performed to establish the identity of the body, for which purpose its external and internal physical characteristics should be accurately described.

Article 260

(1) If the expert work is not performed in a scientific institution, the examination and autopsy of the body shall be performed by a physician, or by two or more physicians if necessary, preferably forensic medicine specialists. This expert work shall be directed by the investigating judge who shall enter the expert findings and opinion in the record.

(2) The physician who treated the deceased may not be assigned as an expert. He may be called in as a witness during the autopsy to give explanations about the course and circumstances of the disease.

Article 261

(1) In their opinion experts shall indicate in particular the immediate cause of death, what brought it about, and the time when death occurred.

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

(3) In the instance from the preceding paragraph it should be established in particular if the character itself and general nature of the injury had caused death, or it was due to the physical properties or peculiarities of the organism of the deceased, or to accidental circumstances or the circumstances in which the injury was inflicted.

(4) It should also be established if a timely extended aid might have prevented death from occurring.

Article 262

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

(2) In examining and performing autopsy on a neonate attention should focus in particular on establishing if it was delivered alive or dead, if it was viable, how long it lived, when it died and what was the cause of death.

Article 263

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

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

Article 264

(1) In the case of bodily injuries the expert shall as a rule examine the person injured; if that is not possible or necessary, he shall perform examination on the basis of medical documentation or other information in the files.

(2) After describing the injuries in detail the expert shall in particular give his opinion as to the type and gravity of each individual injury and their combined effect relative to their nature and the specific circumstances of the case, the habitual effect of such injuries and their specific effect in the case on hand, which instrument was used in inflicting the injuries and in which manner they were inflicted.

Article 265

(1) If it is suspected that due to a lasting or temporary mental illness, temporary mental disturbance, mental retardation or some other lasting and severe mental disorder the accused is not accountable or his mental capacity has been diminished, an order shall be issued for him to be subjected to psychiatric examination.

(2) If the experts opine that a longer examination of the accused is indicated, the latter shall be sent to an appropriate medical institution for observation. The ruling thereon shall be issued by the investigating judge. The appeal shall not stay the execution of the ruling. The observation may only be extended beyond two months upon a reasoned motion of the head of the medical institution after the hearing of experts, but may under no circumstances last longer than the period of detention.

(3) If experts find that the accused suffers of mental disorder they shall determine its nature, type, degree and its anticipated duration, and shall give their opinion as to how such mental condition

affected and still affects the perception and behaviour of the accused, as well as whether and in which degree the mental disorder existed at the time of commission of criminal offence.

(4) If the investigating judge transfers the accused who has been detained to a medical institution, he shall inform the institution of the reasons for detention so that it can take measures required thereby.

(5) The accused who has not retained counsel and is transferred for observation under paragraph 2 of this Article shall have counsel appointed for him *ex officio* under the ruling on observation.

(6) The time which the accused spends in the medical institution shall be reckoned in his detention term or penalty, if any.

Article 266

(1) Physical examination of the accused shall be performed even without his consent when it is necessary to establish facts material to criminal procedure. Physical examination of other persons may be performed without their consent only when it is necessary to establish if a particular trace or consequence of criminal offence has been left on their body.

(2) Taking of blood samples and other medical procedures normally, according to the medical science rules, undertaken for the analysis and determination of other facts of importance for criminal procedure may be performed without the consent of the person being examined, save where such procedures would be harmful to his health.

(3) The application on the accused or a witness of such medical interventions or such agents as would influence their will when giving testimony shall be prohibited.

Article 267

(1) When an expert audit of account books is called for, the body in charge of the procedure shall instruct experts as to the aim and scope of the audit and the facts and circumstances which have to be ascertained.

(2) If an expert audit of account books of an enterprise or another legal person requires that their bookkeeping should first be set in order, the costs of that prior operation shall be borne by the enterprise or the other legal person.

(3) The ruling on the putting of bookkeeping in order shall be rendered by the body conducting the procedure upon a written and reasoned report by the experts appointed to examine the account books. The ruling shall also specify the amount to be deposited with the court by the enterprise or another legal person as advance on the costs entailed in setting the bookkeeping in order. There shall be no appeal against this ruling.

(4) After the bookkeeping has been put in order the body conducting the criminal procedure shall, on the basis of the report of experts, issue a ruling by which it shall determine the amount of the costs incurred thereby and order that the costs be borne by the enterprise or the other legal person. The enterprise or the other legal person may challenge the ruling in respect of the grounds to refund the costs and in respect of the amount to be refunded. The appeal shall be decided by the panel of the court of first instance (sixth paragraph of Article 25).

(5) Unless advanced by a deposit with the court, the amount of the costs shall be enforced in favour of the body which advanced the costs and the fees of experts.

Chapter Nineteen

CHARGE SHEET AND OBJECTION TO THE CHARGE SHEET

Article 268

(1) After the investigation has been completed, or in the case when a charge sheet may be filed without investigation (Article 170), proceedings before court may only be conducted on the basis of a charge sheet filed by the public prosecutor or by the injured party acting as prosecutor.

(2) Provisions on the charge sheet and on objection thereto shall apply *mutatis mutandis* to private charges if filed against a criminal offence which falls under the jurisdiction of the circuit court.

Article 269

(1) The charge sheet shall contain:

1) the name and surname of the accused, his personal data (Article 227), indication as to whether and since when he has been detained, whether he is at liberty and, in the event that he was released prior to the filing of the charge sheet, for how long he was detained;

2) description of the act evincing that it falls within the statutory definition of a criminal offence, the time and place of commission of the criminal offence, the object upon which and the instrument by which the criminal offence was committed, and other circumstances necessary to determine the criminal offence as precisely as possible;

3) the statutory name of the criminal offence with an indication of the provisions of the criminal law which, pursuant to the motion of the public prosecutor, are to be applied;

4) indication of the court before which the trial is to be held;

5) proposal as to which evidence is to be taken at the main hearing with an indication of the names of witnesses and experts to be present, documents to be read and objects to be produced for evidence taking;

6) exposition giving, in accordance with the results of the investigation, a description of the facts of the case, the evidence which establishes the key facts, arguments of the accused and the position of the public prosecutor on the arguments of the defence.

(2) If the accused is at liberty the charge sheet may put forward the motion to place him in detention; and if he is under detention it may put forward the motion for his release.

(3) A charge sheet may be filed against several criminal offences or several accused persons, but only where a joinder and issuance of a single judgement is possible in accordance with Article 32 of this Act.

Article 270

(1) The charge sheet shall be submitted to the court of jurisdiction in as many copies as there are accused persons and counsel, plus an extra copy for the court.

(2) As soon as he receives the charge sheet, the presiding judge of the panel before which the main hearing is to be held shall check whether the charge sheet is drawn up according to the relevant provisions (Article 269); if he finds non-compliance, he shall return the charge sheet to the public prosecutor to amend it within three days. Provided there is a valid reason the panel may, on the motion of the public prosecutor, extend this term. If the injured party acting as prosecutor or the private prosecutor fails to observe the aforesaid time limit, it shall be considered that he has refrained from prosecution and the proceedings shall be discontinued.

Article 271

(1) If the injured party acting as prosecutor files a charge sheet without an investigation (sixth paragraph of Article 170), or private charges are filed for a criminal offence for which no investigation was conducted, the presiding judge of the circuit court shall refer the matter to be decided by the panel (sixth paragraph of Article 25) if he considers that there are no grounds for prosecution considering that there exist the circumstances referred to in point 1, 2 or 3 of Article 277 of this Act.

(2) If the injured party acting as prosecutor or the private prosecutor, contrary to points 1 and 2 of Article 170 of this Act, files a charge sheet or private charges without a prior investigation against the criminal offence punishable by more than five years imprisonment, it shall be considered that he has submitted a request for investigation.

(3) The injured party acting as prosecutor and the private prosecutor shall be entitled to appeal against the ruling of the panel.

Article 272

(1) If the charge sheet contains the motion for detention to be ordered against the accused or the motion for his release, it shall be decided by the panel (sixth paragraph of Article 25) immediately and no later than in forty-eight hours.

(2) If the accused has been detained and the charge sheet contains no motion for his release, the panel shall examine, *ex officio*, within three days of receipt of the charge sheet if reasons for his remaining in detention still exist and shall render a decision thereon, extending or lifting the detention. An appeal against this decision shall not stay execution.

Article 273

(1) The accused who is at liberty shall be served the charge sheet without delay, and if he is in detention within twenty-four hours after its reception.

(2) If under a decision of the panel (Article 272) detention is ordered against the accused, the charge sheet shall be served on him at the time of his arrest, together with the detention order.

(3) If the accused who is in detention is not held in the prison of the court before which the main hearing is to be conducted, the presiding judge shall order his immediate transfer to the court prison, where he shall be served with the charge sheet.

Article 274

(1) The accused shall have the right to submit an objection to the charge sheet within eight days of it being served. When serving the charge sheet, the court shall instruct the accused of this right.

(2) Objection to the charge sheet may also be submitted by defence counsel without a special authorisation of the accused, but not against his will.

(3) The accused may renounce the right to object to the charge sheet.

Article 275

(1) Belated objection and objection filed by an unauthorised person shall be dismissed by a ruling of the presiding judge of the panel before which the trial is to be held. An appeal against this ruling shall be determined by the panel (sixth paragraph of Article 25).

(2) If the presiding judge does not dismiss the objection under first paragraph of this Article, he shall submit it, together with the file, to the panel (sixth paragraph of Article 25) which shall decide thereon at its session. Before taking a decision the panel shall send a copy of the objection to the public prosecutor who may file an answer within three days of receipt.

Article 276

(1) If the court panel does not dismiss the objection as belated or submitted by an unauthorised person, it shall set about the examination of the charge sheet.

(2) If in considering the objection the panel discovers errors or deficiencies in the charge sheet (Article 269) or in the procedure itself, or finds that the verification of the charge sheet requires that matters be further elucidated, it shall return the charge sheet to the prosecutor to remove the established deficiencies or to supplement or open investigation. The prosecutor shall, within three days of being advised of the decision of the panel, submit an amended charge sheet or request the opening or supplementing of investigation. Provided there is a valid reason, the panel may, upon motion by the prosecutor, extend the above time limit. If the injured party acting as prosecutor or the private prosecutor fails to respect the aforesaid time limit, it shall be considered that he has refrained from prosecution and the proceedings shall be discontinued. If the public prosecutor fails to comply with the time limit set, he shall inform the higher public prosecutor of the reasons for this.

(3) If the panel finds that the criminal offence against which the charge sheet has been filed falls within the jurisdiction of another court, it shall pronounce the court with which the charge sheet was

filed not competent in this matter, and shall, after this decision has become final, refer the matter to the court of jurisdiction.

(4) If the panel establishes that records or information referred to in Article 83 of this Act have been included in the files, it shall render a ruling on their exclusion from the files. A special appeal against this ruling shall be allowed. After the ruling has become final, the presiding judge referred to in the sixth paragraph of Article 25 of this Act shall, prior to sending the case to the presiding judge who schedules the main hearing, see to it that the excluded records and information be sealed in a separate envelope and delivered to the investigating judge to keep them apart from other files. These records and information may not be examined, nor used in the proceedings.

Article 277

(1) In deciding on an objection to the charge sheet the panel shall rule that the charge is disallowed and the criminal procedure is discontinued if it finds that:

1) the act charged is not a criminal offence;

2) circumstances exist which exclude criminal liability and there are no grounds for application of security measures;

3) the criminal prosecution is statute-barred, or the act is covered by an amnesty or pardon, or other circumstances exist which exclude prosecution;

4) there is not enough evidence to suspect with good reason that the accused has committed the act with which he is charged.

(2) If the panel finds that there is no request of the authorised prosecutor nor the required motion or authorisation for prosecution, or that other circumstances exist which temporarily bar prosecution, it shall dismiss the charge sheet by a ruling.

Article 278

(1) When the panel of judges decides on the objection to the charge sheet filed by the public prosecutor in accordance with paragraph six of Article 170 of this Act or on the request of the presiding judge concerning the said charge sheet (Article 284), or when, in instances referred to in the first paragraph of Article 271 of this Act, it decides on the request of the presiding judge of the panel of the court of first instance who disagrees with the charge sheet filed by the injured party acting as prosecutor or with the private charges, the panel shall issue a ruling dismissing the charge sheet or the charges if it finds that some of the reasons from point 1, 2 or 3 of the first or second paragraph of the preceding Article exist; if investigative acts have been carried out, the panel shall likewise dismiss the charge sheet or the private charge if it finds that the reason cited in point 4 of the first paragraph of the aforesaid Article exists.

(2) If upon objection to the charge sheet filed by the public prosecutor referred to in the preceding paragraph, or upon the request of the presiding judge concerning that charge sheet (Article 284) an investigation was opened (second paragraph of Article 276) and the panel finds thereupon that one of the reasons from the first paragraph of the preceding Article exists, the panel shall rule that the charge is disallowed and the criminal procedure discontinued.

Article 279

In rendering the ruling referred to in the third paragraph of Article 276 and the rulings from Articles 277 and 278 of this Act the panel shall not be bound by the judicial opinion of the prosecutor as set forth in the charge sheet.

Article 280

(1) If the panel does not render any of the rulings referred to in the first to third paragraphs of Article 276 and in Articles 277 and 278 of this Act, it shall reject the objection as unfounded.

(2) By the same ruling the panel shall also decide motions for joinder or severance of cases.

Article 281

Where only some of several accused persons have filed objection to the charge sheet and the reasons on which the court based its decision to disallow the charge or dismiss the charge sheet also extend to some of the accused who have not filed objection, the panel shall act as if they had also submitted such objection.

Article 282

All decisions passed by the panel of judges in connection with objections to the charge sheet shall be well-reasoned but in such a way as not to prejudice the adjudication of issues to be considered in the trial.

Article 283

(1) The decision of the panel referred to in paragraph three of Article 276 of this Act may be appealed against, and the decision from Articles 277 and 278 of this Act may be appealed against by the prosecutor and the injured party. Other decisions passed by the panel in connection with objections to the charge sheet may not be challenged.

(2) If a ruling of the panel is only challenged by the injured party and his appeal is satisfied, the injured party shall be considered to have thereby assumed prosecution.

Article 284

(1) If the charge sheet was not challenged by an objection or the objection was dismissed, the court panel (sixth paragraph of Article 25) may, upon request of the presiding judge of the panel before which the main hearing is to take place, adjudicate any issue on which, pursuant to this Act, decisions relating to objections are taken.

(2) The presiding judge may only submit the request from the preceding paragraph before the main hearing has been fixed and no later than two months after the charge sheet was received by the court.

(3) The provisions of the second paragraph of Article 275, Articles 276 through 279, and Articles 282 and 283 of this Act shall apply *mutatis mutandis* to adjudication of the request referred to in the first paragraph of this Article.

Article 285

The charge sheet shall come into effect on the day when objection is rejected; if no objection was submitted or the objection was dismissed, it shall become effective on the day when the panel dealing with the request of the presiding judge (Article 284) ruled that the charge sheet is allowed; if such request was not made it shall become effective on the day when the presiding judge scheduled the trial or after the time period from the second paragraph of the preceding Article has expired.

B. MAIN HEARING AND JUDGEMENT

Chapter Twenty

PREPARATIONS FOR THE MAIN HEARING

Article 286

(1) The day, time and venue of the main hearing shall be determined by an order issued by the presiding judge.

(2) The presiding judge shall schedule the main hearing for within two months of the charge sheet being received at the court, and where the request referred to in Article 284 of this Act was submitted he shall schedule it as soon as the pertinent decision of the panel permits. Should he fail to schedule

the main hearing within the aforesaid period, he shall notify the president of the court of the reasons for this. The president of the court shall take the necessary steps to fix the main hearing.

(3) If the presiding judge establishes that the case file contains records or information from Article 83 of this Act he shall, before fixing the main hearing, rule that they be excluded from the file, and after the ruling has become final he shall seal them in a separate envelope and hand them over to the investigating judge to keep them apart from other files.

(4) When the panel of judges (sixth paragraph of Article 25) decides on an appeal against the ruling referred to in the preceding paragraph, it may rule that, in view of the substance of the excluded evidence, the main hearing be conducted before another presiding judge.

Article 287

(1) The main hearing shall be held at the seat the court, in the courthouse.

(2) Where the areas in the courthouse are inadequate for a specific trial, the president of the court may rule that the trial be held in another building.

(3) The main hearing may also be held in another place within the territory of the court of jurisdiction if, upon a reasoned motion of the president of the court, approval is granted by the president of a higher court.

Article 288

(1) The persons summoned to appear at the main hearing shall include the defendant, his counsel, the prosecutor, the injured party and their legal representatives and attorneys, and the interpreter. Witnesses and experts proposed by the prosecutor in the charge sheet and by the accused in his objection to the charge sheet, except those whose presence at the main hearing in the opinion of the presiding judge is not necessary, shall also be summoned to the main hearing. At the main hearing, the prosecutor and the defendant may repeat their motions which the presiding judge had not approved.

(2) As regards the contents of the summons served on the defendant and witnesses, the provisions of Articles 193 and 239 of this Act shall apply. The summons served on the defendant shall contain information that the main hearing may take place in his absence if statutory requirements for this are met (third paragraph of Article 307).

(3) The defendant shall be served with the summons so as to have enough time left between the service and the main hearing to prepare his defence, which may not be less than eight days. At the request of the defendant, or at the request of the prosecutor agreed to by the defendant, this time period may be shortened.

(4) The injured party who has not been summoned to appear as a witness shall be informed in the summons that the main hearing may be held in his absence and that his statement on the claim for indemnification shall be read. He shall likewise be instructed that in the event of his failure to appear it will be considered that he does not intend to assume prosecution in case the public prosecutor withdraws the charge.

(5) The injured party acting as prosecutor and the private prosecutor shall be informed in the summons that in the event they fail to appear at the main hearing and also do not send their attorneys it will be considered that they have withdrawn the charge.

(6) The defendant, witness and expert shall be informed in the summons of the consequences of the failure to appear at the main hearing (Articles 307 and 309).

Article 289

(1) The parties and the injured person may, even after the main hearing has been scheduled, request that new witnesses or new experts be summoned, or new evidence produced. The request should be reasoned and should indicate which facts are to be proved and by which piece of the evidence suggested.

(2) If the presiding judge rejects the motion for new evidence to be produced, such motion may be repeated during the main hearing.

(3) The presiding judge may, even without the motion of the parties, order that new evidence be produced for the main hearing.

(4) The parties shall be informed of the order to produce new evidence prior to the opening of the main hearing.

Article 290

If it appears that the main hearing may last for some time, the presiding judge may request the president of the court to assign one or two judges or juror judges to attend the main hearing and replace members of the panel who might be prevented from attending the trial.

Article 291

(1) If it transpires that a witness or an expert who was summoned to the main hearing but has not yet been examined is unable to appear because of a durable illness or some other impediments, such witness or expert may be examined at the place where he resides.

(2) The witness or the expert shall be examined, and the expert shall be sworn in if necessary, by the presiding judge or a judge assigned to the panel; he may also be examined by the investigating judge of the court in whose territory the witness or the expert resides.

(3) The parties and the injured party shall be informed of the time and place of the examination if that is possible considering the urgency of the procedure. If the defendant has been in detention, the presiding judge shall decide whether his presence at the examination is necessary. When the parties and the injured party are present at the examination, they shall have the rights referred to in paragraph seven of Article 178 of this Act.

Article 292

The presiding judge may, for weighty reasons, adjourn the main hearing upon motion of the parties or *ex officio*.

Article 293

(1) If the prosecutor withdraws the charge sheet prior to the opening of the main hearing, the presiding judge shall notify thereof all those who were summoned to the main hearing. The injured person shall in addition be notified of his right to continue prosecution (Articles 60 and 62). If it has been impossible to deliver notification to the injured party because the injured party has failed to report a change in address or residence to the court, the injured party shall be deemed not to intend to continue the prosecution.

(2) If the injured party abandons prosecution, the presiding judge shall discontinue criminal proceedings by a ruling. The ruling shall be sent to the parties and the injured person.

(3) The presiding judge shall also discontinue criminal proceedings by a ruling in instances where, after the charge sheet or a private charge has taken effect, it is established that some other circumstances exist that would require the rendering of a judgement of rejection at the main hearing (points 2, 3 and 4 of Article 357).

Chapter Twenty-One

MAIN HEARING

1. Public nature of main hearing

Article 294

(1) The main hearing shall be held in open court.

(2) The main hearing may be attended by persons who have attained the age of majority.

(3) Persons present at the main hearing may not carry arms or dangerous instruments, save the guard of the defendant who may be armed.

Article 295

At any time from the beginning until the end of the main hearing the panel may, *ex officio* or upon the motion of the parties but always after it has heard the parties, exclude the public from the trial or a part thereof if so required by the interests of protecting secrets, maintaining law and order, by moral considerations, the protection of the personal or family life of the defendant or the injured party, protection of the interests of minors, and if in the opinion of the panel a public trial would be prejudicial to the interests of justice.

Article 296

(1) The exclusion of the public shall not apply to the parties, the injured person, their representatives and counsel.

(2) The panel may grant permission for certain officials, scientific workers, public figures and, on request of the defendant, also the spouse of the defendant or the person with whom he lives in domestic partnership and his close relatives, to be present at a main hearing which is not open to the public.

(3) The presiding judge shall warn those attending the main hearing closed to the public of their obligation to keep secret all information that comes to their knowledge at the trial, and shall inform them that any disclosing the secrets is a criminal offence.

Article 297

(1) The exclusion of the public shall be determined by the panel in a reasoned and publicly announced ruling.

(2) The ruling on the exclusion of the public may only be challenged in an appeal against the judgement.

2. Conducting of the main hearing

Article 298

(1) The presiding judge, members of the panel, the recording clerk and the replacement judges and juror judges (Article 290) shall be continuously present at the main hearing.

(2) It shall be the duty of the presiding judge to determine whether the panel of judges has been constituted pursuant to law and whether reasons exist to exclude a panel member or the recording clerk (points 1 to 5 of Article 39).

Article 299

(1) The presiding judge shall conduct the main hearing, call on the parties, the injured person, legal representatives, attorneys, defence counsel, experts and panel members to make their statements, and shall interrogate the defendant and question witnesses and experts.

(2) It shall be the duty of the presiding judge to see to it that the case is elucidated from all aspects, that the truth is discovered and that whatever might protract proceedings without contributing to elucidation of the case be eliminated.

(3) The presiding judge shall rule on the motions of the parties, unless the ruling thereon falls within the domain of the panel.

(4) Motions on which the parties disagree and concurrent motions of the parties with which the presiding judge disagrees shall be decided by the panel. The panel shall also decide on objections to measures taken by the presiding judge in conducting the main hearing.

(5) The rulings of the panel shall always be announced and entered in the record of the main hearing together with a short explanation.

Article 300

The main hearing shall proceed in the sequence provided by this Act, however, the panel may alter the established sequence by reason of specific circumstances, especially when there are many defendants and many criminal offences charged or when evidence is of a considerable volume.

Article 301

(1) The presiding judge shall be obliged to attend to the maintenance of order in the courtroom and the protection of the dignity of the court. To this end he may, immediately upon the opening of the session, warn those persons present at the main hearing to behave properly and not to obstruct the proceedings. The presiding judge may order a personal search of those present at the main hearing.

(2) The panel may order that the audience present at the main hearing be removed if an undisturbed course of the main hearing cannot be secured by measures provided by this Act for the maintenance of order.

(3) Recordings by camera shall not be permitted in the courtroom. However, the president of the Supreme Court may exceptionally authorise such recordings at a particular main hearing. Where camera recordings at the main hearing have been permitted the panel may, on valid grounds, order that specific parts of the main hearing not be recorded.

Article 302

(1) If the defendant, defence counsel, the injured person, legal representative, attorney, witness, expert, interpreter or some other person attending the main hearing disturbs order or fails to comply with the directions of the presiding judge regarding the maintaining of order, the presiding judge shall warn him. If the warning is of no avail the panel may order that the defendant be taken out of the courtroom; as for other persons, it may not only order them out but also fine them as provided by the first paragraph of Article 78 of this Act.

(2) Under the decision of the panel the defendant may be removed from the courtroom temporarily; but if he was already interrogated in the main hearing he may be removed for the entire process of evidence taking. Before the hearing of evidence is concluded, the presiding judge shall call the defendant in and inform him of the course of the main hearing. If the defendant continues to violate order or if he abuses the dignity of the court, the panel may order him to be removed again. In that case the trial shall be concluded in his absence and the judgement shall be announced to him by the presiding judge or a judge sitting in the panel, in the presence of the recording clerk.

(3) The panel may deny defence counsel or attorney the right to defend or represent at the main hearing if after being punished they continue to disturb order, in which case the party shall be requested to retain another counsel or attorney. If the defendant cannot engage another counsel immediately or the latter cannot be appointed by the court without prejudice to the defence, the main hearing shall be recessed or adjourned. If the private prosecutor or the injured party acting as prosecutor does not retain another attorney immediately, the panel may decide to hold the main hearing in the absence of the attorney if after a careful consideration of all circumstance it finds that the absence of the attorney will not prejudice the interests of the person whom he represents. The ruling thereon, together with an explanation, shall be entered in the record of the main hearing. A special appeal against this ruling shall not be allowed.

(4) If the court removes from the courtroom an injured party acting as prosecutor or private prosecutor who have no attorney, or if it removes their legal representative who has no attorney, the main hearing shall be recessed or postponed until they retain an attorney.

(5) If the public prosecutor violates order the presiding judge shall notify the competent public prosecutor thereof, and may also suspend the main hearing and ask the competent public prosecutor to appoint another prosecutor for the case.

(6) If the court punishes a lawyer or an articled clerk, it shall advise the Bar thereof.

Article 303

(1) An appeal against the ruling imposing punishment may be lodged; however, the panel may revoke the ruling.

(2) No appeal shall be permitted against other decisions bearing upon the maintenance of order and the conduct of the main hearing.

Article 304

(1) If the defendant commits a criminal offence at the main hearing, the provisions of Article 345 of this Act shall apply.

(2) If someone else commits a criminal offence while the court is in session at the main hearing, the panel may, upon an oral accusation by the prosecutor, interrupt the main hearing and try the criminal offence committed right away, or may consider it after concluding the main hearing.

(3) Where grounds exist to suspect a witness or an expert of having given a false testimony at the main hearing, such offence may not be tried forthwith. In that instance the presiding judge may order that a separate record be made of the testimony of the witness or the expert and the record be referred to the public prosecutor. This record shall be signed by the witness or the expert questioned.

(4) If the perpetrator of a criminal offence subject to public prosecution cannot be tried immediately, a notice thereof shall be addressed to the competent public prosecutor for further action.

3. Preconditions for the main hearing

Article 305

The presiding judge shall open the session and announce the case to be tried at the main hearing and the composition of the panel of judges. Thereupon he shall verify whether all those summoned have appeared; if they have not, he shall check if they were served with a summons and if the persons absent have excused their failure to appear in court.

Article 306

(1) If the public prosecutor fails to appear at the main hearing scheduled upon a charge sheet filed by him, the main hearing shall be adjourned and the presiding judge shall notify the higher public prosecutor thereof.

(2) If the injured party acting as prosecutor or the private prosecutor or their attorney fails to appear at the main hearing after being duly summoned, the panel shall discontinue proceedings by a ruling.

Article 307

(1) If a duly summoned defendant fails to appear at the main hearing without excusing his default, the panel shall order that he be brought to court by force. If he cannot be produced immediately, the panel shall adjourn the main hearing and order the defendant be produced by force for the next session. If the defendant provides an excuse for his non-appearance before being brought by force, the presiding judge shall rescind the order on his compulsory appearance.

(2) If a duly summoned defendant is obviously trying to evade appearing at the main hearing and none of the reasons for his detention under Article 201 of this Act exists, the panel may order that he be put in detention in order to ensure his presence at the main hearing. An appeal against this order shall not stay execution. The provisions of Article 200, the second, third, fourth and sixth paragraphs of Article 202, and Articles 208 to 213.d of this Act shall apply *mutatis mutandis* to the detention ordered for this reason. Unless lifted earlier, the detention shall last until the announcement of the judgement, but no longer than one month.

(3) If a duly summoned defendant fails to appear at the main hearing, the panel may order that the trial be held in his absence if his presence is not indispensable, if his defence counsel is present at the trial and if the defendant has already been heard. If the defendant has no counsel, the panel shall act

according to the first paragraph of this Article and may also decide that a defence counsel be appointed for the defendant *ex officio*.

(4) The ruling ordering that the defendant be tried in his absence shall be rendered by the panel after the latter has heard the prosecutor and defence counsel. An appeal shall not stay the execution of the ruling.

Article 308

If duly summoned defence counsel fails to appear at the main hearing without notifying the court of the reasons for his default, or if he leaves the main hearing without permission, the court shall ask the defendant to retain another counsel forthwith. If the defendant does not do so and it is impossible to appoint defence counsel without prejudicing the defence, the trial shall be adjourned.

Article 309

(1) If a duly summoned witness or an expert fails to appear without good reason, the panel may order that he be immediately produced by force.

(2) The main hearing may commence without the summoned witness or expert, in which case the panel shall decide while the trial is in progress whether it can be continued in the absence of the witness or the expert or should be recessed or adjourned.

(3) The panel may impose a fine provided for in the first paragraph of Article 78 of this Act on a duly summoned witness or expert who fails to appear for no valid reason, and may also order them brought to a new main hearing by force. Where a valid reason exists, the panel may revoke its decision on the fine.

4. Adjournment and recess of the main hearing

Article 310

(1) In addition to instances specified in this Act, the main hearing may be adjourned under a ruling of the panel if new evidence has to be produced, or if it is established in the course of the trial that the defendant, after committing the criminal offence, has become afflicted by a temporary mental illness or a temporary mental disorder, or if other impediments exist which prevent successful completion of the main hearing.

(2) If possible, the ruling by which the main hearing is adjourned shall specify the day and time at which the trial will be resumed. The panel may order under the same ruling that evidence which might disappear through the passage of time be meanwhile gathered.

(3) No appeal shall be permitted against a ruling from the preceding paragraph.

Article 311

(1) If the composition of the panel has changed, the adjourned trial shall start afresh. However, after hearing the parties the panel may in this case decide not to examine the witnesses and experts anew, nor to conduct a new inspection, but rather to read the statements they had given at the previous trial or to read the record of the inspection.

(2) If the composition of the panel has not changed, the adjourned main hearing shall be resumed and the presiding judge shall give a short account of the course of the previous trial; however, the panel may in this case decide to start the main hearing afresh.

(3) If the main hearing has been adjourned by more than three months or if it is held before a new presiding judge, the trial shall start afresh and all evidence shall be taken anew.

Article 312

(1) In addition to instances specified in this Act, the presiding judge may recess the main hearing for rest, or because the court day is over, or in order to allow a short period of time for specific evidence to be produced or the prosecution or defence to become prepared.

(2) A recessed main hearing shall always be resumed before the same panel.

(3) If the main hearing cannot be resumed before the same panel or if it was recessed by more than eight days, the provision of the preceding Article shall apply.

Article 313

If in the course of the main hearing held before a panel of one judge and two juror judges it is discovered that the facts on which the charges rest indicate a criminal offence falling within the competence of a panel of two judges and three juror judges, the panel shall be supplemented and the main hearing shall start afresh.

5. Record of the main hearing

Article 314

(1) A record of the main hearing shall be kept, with the essentials of the entire course of action entered therein.

(2) The presiding judge may order that the entire course of the main hearing or parts thereof be taken down in shorthand. The stenographic notes shall be transcribed, checked and enclosed with the record within forty-eight hours.

(3) The presiding judge may order audio or video recording of the main hearing. The provisions of Article 84 of this Act shall apply *mutatis mutandis* to such recording.

(4) The presiding judge may, upon a motion of a party or *ex officio*, order that statements he considers particularly important be entered in the record verbatim.

(5) When necessary, and especially where a statement has been entered in the record verbatim, the presiding judge may order that particular part of the record to be read out immediately. Statements recorded verbatim shall always be read forthwith if so requested by a party, counsel or the person whose statement has been entered in the record.

Article 315

(1) The record shall be completed at the end of the session. It shall be signed by the presiding judge and the recording clerk.

(2) The parties shall be entitled to check the completed record and enclosures, to make comments on the contents and to demand corrections.

(3) Corrections of incorrectly entered names, numbers and other obvious writing errors may be ordered by the presiding judge upon the motion of a party or a person questioned or *ex officio*. Other corrections of and additions to the record may only be ordered by the panel.

(4) Comments and motions of parties regarding the record, as well as corrections of and amendments to the record, shall be entered in the addendum to the completed record. The reasons why certain motions and comments have not been accepted shall also be indicated in the addendum. The presiding judge and the recording clerk shall also sign the addendum to the record.

Article 316

(1) The introductory part of the record shall indicate: the court in which the main hearing is held; the place and time of the session; the names and surnames of the presiding judge, panel members, recording clerk, prosecutor, defendant and his counsel, the injured party and his legal representative or attorney, and of the interpreter; the criminal offence being tried; and indication whether the hearing takes place in open court or is closed to the public.

(2) The record shall contain in particular the following information: which charge sheet was read in the main hearing and whether the prosecutor had changed or expanded the charges; which motions

were made by the parties and what the presiding judge or the panel have ruled thereon; which evidence was taken; whether certain records and other writings were read, or sound or other recordings reproduced, and comments of the parties thereon. If the public was excluded from the main hearing, it shall be indicated that the presiding judge had warned those present of the consequences of unauthorised disclosure of confidential information of which they learned at the main hearing.

(3) Statements by the defendant, witnesses and experts shall be entered in the record by presenting their essential content. They shall only be entered in the record insofar as they contain a change of or an amendment to their previous statements. Upon a request of a party, the presiding judge shall order that the record of a previous statement, or a part thereof, be read out.

(4) Upon request of a party, a question or an answer which the panel did not allow shall also be entered in the record.

Article 317

(1) The record of the main hearing shall have the complete operative part of the judgement (third, fourth and fifth paragraphs of Article 364) entered in it and an indication as to whether the judgement was announced publicly. The operative part of the judgement as written down in the record of the main hearing shall be the original.

(2) A detention order (Article 361), if issued, shall also be entered in the record of the main hearing.

6. Opening of the main hearing and interrogation of the defendant

Article 318

After the presiding judge has established that all those summoned have appeared at the main hearing or the panel has decided to conduct the main hearing without some of the persons summoned or to consider these issues at a later stage, the presiding judge shall call on the defendant and ask him to give his personal data (Article 227) in order to be satisfied as to his identity.

Article 319

(1) Having established the identity of the defendant, the presiding judge shall direct the witnesses and experts to a designated place where they shall wait until called back for questioning. The presiding judge may, if necessary, call on the experts to remain and follow the course of the main hearing.

(2) If the injured party is present and he has not yet filed his indemnification claim the presiding judge shall inform him that he may make a motion for the satisfaction of his claim within criminal proceedings, as well as of his rights under Article 59 of this Act.

(3) If the injured party acting as prosecutor or the private prosecutor has to be examined as a witness, he shall not be removed from the session.

(4) The presiding judge may take the necessary measures to prevent collusion between witnesses, experts and parties.

Article 320

The presiding judge shall invite the defendant to follow closely the course of the main hearing and shall instruct him that he may state his case and propose evidence in his defence, address questions to co-defendants, witnesses and experts, and make comments on and give explanations of their statements.

Article 321

(1) The main hearing shall open with the reading of the charge sheet or private charge.

(2) The charge sheet and the private charge shall be read by the prosecution.

(3) If the injured party is present he may expound his indemnification claim, and if he is not present his motion shall be read by the presiding judge.

(4) The presiding judge shall ask the defendant if he has understood the charge. If the defendant has not understood the charge, the presiding judge shall call on the prosecution to explain the contents of the charge in a way the defendant may understand without difficulty.

(5) The presiding judge shall instruct the defendant according to Article 5 of this Act.

Article 322

(1) The defendant and defence counsel shall have the right to answer the charge and state their position regarding the accusation and the indemnification claim of the injured party.

(2) In answering the charge the defendant may only declare if he admits the act and the indemnification claim and if he has any objection of a legal nature. Counsel for the defence may answer the charge in place of the defendant, except for the part relating to the admission or denial of the act.

Article 323

(1) After the defence has taken a position on the accusation, the presiding judge shall ask the defendant if he intends to plead his case.

(2) If the defendant states that he intends to plead his case, he shall be interrogated.

(3) As regards the interrogation of the defendant at the main hearing, the provisions applying to interrogation of the accused in the process of investigation shall apply *mutatis mutandis*.

(4) Co-defendants who have not yet been questioned may not be present during the interrogation of the defendant.

Article 324

(1) The interrogation of the defendant shall start with his being called upon by the presiding judge to set forth his defence.

(2) After the defendant has finished his statement he may be asked questions. The presiding judge shall first call the prosecutor and then defence counsel to put questions to the defendant. The injured party, legal representative, attorney, co-defendant and expert may only ask the defendant direct questions with the permission of the presiding judge.

(3) The presiding judge shall disallow a question or answer to a question if it is not permitted (Article 288) or bears no relation to the case. If the presiding judge disallows a question or an answer, the parties may request that the panel decide thereon.

(4) After the presiding judge has assured himself that the prosecutor, counsel and other persons from the second paragraph of this Article have no more questions, he may proceed to put questions to the defendant if he finds that his testimony or his answers contain gaps, ambiguities or contradictions. Afterwards, panel members may also put direct questions to the defendant.

(5) After the interrogation has been completed, the presiding judge shall ask the defendant whether he has anything to add in his defence. If the defendant elaborates upon his defence he may again be asked questions.

Article 325

(1) If the defendant declares at the main hearing that he does not intend to plead his case or refuses to answer particular questions, the presiding judge shall read his previous testimony or a part thereof.

(2) If in the interrogation at the main hearing the defendant changes his previous testimony, the prosecutor, counsel or the presiding judge may call his attention to this inconsistency and ask him to explain why he has changed testimony; the presiding judge may, if necessary, read his previous testimony or a part thereof.

Article 326

(1) After the interrogation of the first defendant has finished, co-defendants, if any, may be questioned in turn. After each interrogation the presiding judge shall acquaint the co-defendant with the statements of co-defendants interrogated before him and ask him if he has any comments thereon, and shall ask the co-defendant interrogated before him if he has any comments on the statement of the subsequently interrogated co-defendant. Each defendant shall be entitled to put questions to other interrogated co-defendants.

(2) If statements of individual co-defendants on the same circumstance differ, the presiding judge may confront the co-defendants.

Article 327

Exceptionally, the panel may rule that the defendant be temporarily removed from the courtroom if a co-defendant or a witness refuses to testify in his presence or if circumstances indicate that he will not tell the truth in the presence of the defendant. Upon the return of the defendant to the session the statements of the co-defendant or witness shall be read to him. The defendant shall be entitled to put questions to a co-defendant or a witness, and the presiding judge shall ask him if he has any comment to make on their testimonies. If necessary, confrontation may be arranged.

Article 328

In the course of the main hearing, the defendant may have consultations with his counsel, except on how to answer a question put to him on which he may not consult either his counsel or anyone else.

7. Hearing of evidence

Article 329

(1) After the interrogation of the defendant has been completed, the process shall proceed with the hearing of evidence.

(2) Evidence taking shall encompass all facts which the court considers material to a correct adjudication.

(3) Evidence shall be taken in the sequence determined by the presiding judge. As a rule, evidence proposed by the prosecution shall be heard first, followed by evidence proposed by the defence and finally the evidence whose taking is ordered by the panel *ex officio*. If the injured party present has to be heard as a witness, he shall be questioned immediately after the defendant.

(4) The parties and the injured person may, until the conclusion of the main hearing, move that new facts be looked into and new evidence produced, and shall be entitled to repeat the motions which the presiding judge or the panel had earlier dismissed.

(5) The panel may decide to take evidence for which no motion has been made or for which the motion was withdrawn.

Article 330

Although it may be full, a confession of the defendant at the main hearing shall not release the court from the obligation to take other evidence.

Article 331

(1) As regards the questioning of witnesses and experts at the main hearing, the provisions applying to the examination of these persons in the process of investigation shall apply *mutatis mutandis*, unless otherwise provided by this Chapter.

(2) As a rule, a witness who has not yet been examined may not attend the procedure of evidence taking, and an expert who has not yet submitted his findings or opinion may not attend the main hearing while another expert is giving testimony on the same issue.

(3) If a person under the age of fourteen is examined as a witness, the panel may order that the public be excluded from the examination.

(4) If a minor participates in the main hearing as a witness or the injured party, he shall be removed from the courtroom as soon as his presence is no longer required.

(5) Direct questioning of persons under 15 years of age who are victims of criminal offences referred to in the third paragraph of Article 65 of this Act shall not be permitted in the main hearing. In such instances, the court shall decide that the records of previous questioning of such persons be read.

(6) In instances from the preceding paragraph, parties may pose indirect questions. If the panel recognises that the questions are reasonably grounded and necessary for clarification of the factual situation, it shall proceed according to the provisions of Article 338 of this Act.

Article 332

Before examining a witness the presiding judge shall warn him of his duty to tell the court whatever he knows about the case and shall inform him that false testimony is a criminal offence.

Article 333

(1) Before examining an expert the presiding judge shall warn him of his duty to state his findings and opinion to the best of his knowledge and shall warn him that a false finding or opinion is a criminal offence.

(2) The panel may decide to swear the expert in before examining him.

(3) The expert shall take an oath orally.

(4) The oath shall read: 'I swear on my honour that I shall perform my expert examination conscientiously and to the best of my knowledge and shall state my findings and opinion accurately and completely.'

(5) Permanent court experts who have taken a general oath shall not be sworn in but only reminded of the oath they have already taken.

(6) The expert shall communicate his findings and opinion to the court orally. If he had prepared a report on his findings and opinion before the main hearing, he may be allowed to read it, in which case his paper shall be enclosed with the record.

(7) If the expert investigation was carried out by a scientific institution or a state agency, the court may decide not to call in the experts to whom the institution or the agency had entrusted the task if no elaboration on the explanations of the written findings and opinion is expected considering the nature of the expert work performed. In such instance the panel may decide that the findings and opinion of the scientific institution or the state agency should only be read at the main hearing. However, if the panel establishes that the presence of experts who have carried out the expert investigation is necessary in view of other evidence taken and the observations of the parties (Article 342), it may subsequently decide to question experts directly.

Article 334

(1) After a witness has given his statement or an expert has stated his findings and opinion, they may be asked questions. Questions shall be put first by the party which made a motion for the taking of evidence, then by the opposing party, the persons referred to in the second paragraph of Article 324 of this Act and finally by the presiding judge and panel members. If evidence taking was ordered *ex officio*, questions shall first be put by the presiding judge and panel members, then by the prosecution, the defence, and finally by the persons referred to in the second paragraph of Article 324 of this Act. The injured party, legal representative, attorney and expert may put direct questions to witnesses and experts subject to approval from the presiding judge.

(2) The presiding judge shall disallow a question or an answer if it is not permitted (Article 228) or if it has no relation to the case. If the presiding judge disallows a specific question or answer, the parties may request that the panel decide thereon.

Article 335

If a witness or an expert cannot recall the facts he had stated in the previous examination or if he changes his statement, the presiding judge or the parties shall call his attention to the previous statement and ask him why he has changed it; where necessary, the presiding judge shall read his previous statement or a part thereof.

Article 336

(1) Witnesses and experts who have been examined shall remain in the courtroom unless the presiding judge, upon hearing the parties, permits them to leave or removes them temporarily from the courtroom.

(2) The presiding judge may, on the motion of the parties or *ex officio*, order that the examined witnesses and experts be removed from the courtroom and then called in and examined again in the presence or in the absence of other witnesses and experts.

Article 337

(1) If it transpires in the course of the main hearing that a witness or an expert is unable to appear in court or his appearance involves great difficulties, and the panel maintains that his testimony is important, the panel may order that he be examined outside the main hearing by the presiding judge, or a judge on the panel, or the investigating judge of the court in whose territory the witness or the expert resides.

(2) If an inspection or reconstruction of the event has to be carried out outside the main hearing, it shall be conducted by the presiding judge or a judge sitting in the panel.

(3) The parties and the injured person shall always be advised when and where a witness shall be examined or when and where an inspection or reconstruction of the event shall take place, and shall be instructed that they may attend these acts. If the defendant has been detained, the panel shall determine whether his presence is necessary during these actions. If the parties and the injured person are present at these acts, they shall have the rights referred to in paragraph seven of Article 178 of this Act.

Article 338

In the course of the main hearing the panel may, upon hearing the opinion of the parties, decide to request that the investigating judge perform particular actions necessary for elucidation of certain facts if the performance of such actions at the main hearing would entail a considerable delay of proceedings or other serious difficulties. When the investigating judge acts under such a request of the panel, the provisions relating to investigative acts shall apply.

Article 339

(1) Records of inspection outside the main hearing, records of a house search or personal search, records of the identification of persons, objects and the scene of the crime, records of confiscation and of documents, books, files and other evidentiary writings shall be read at the main hearing to establish their contents; it shall be in the discretion of the panel to allow these records to be summarised orally, as well as the sound or camera recordings of the course of this investigative act to be reproduced. Writings of value as evidence shall, whenever possible, be submitted in the original.

(2) Objects which might help to clarify the case may be shown during the main hearing to the defendant, as well as to witnesses and experts.

Article 340

(1) In addition to instances specified in this Act, the records of the testimonies of witnesses, co-defendants or accomplices in the criminal offence who have already been convicted, as well as the

records of the findings and opinion of experts, may, under a decision of the panel, only be read in the following instances:

1) if the persons interrogated have died, or have become afflicted by a mental illness, or are not to be found, or are unable to appear in court due to old age, illness or some other weighty reason, or their appearance involves great difficulties, or if they live abroad and fail to appear at the main hearing despite being duly summoned;

2) if witnesses or experts refuse to testify at the main hearing without the statutory justification for this.

(2) Subject to consent of the parties the panel may decide that the record of the previous questioning of a witness or an expert, or the written findings and opinion of the expert, be read in court in the absence of the witness or the expert, whether or not the witness or the expert were summoned to appear at the main hearing.

(3) The reasons for the reading of the record shall be indicated in the record of the main hearing, and during the reading it shall be announced whether the expert was sworn in or not.

(4) Before the hearing of evidence is completed, the panel shall issue, *ex officio* or upon a motion of the parties, a ruling by which it shall exclude from the files the records and other evidence on which, under the provisions of this Act, the court decision may not rest. If the panel rejects the motion of a party for the exclusion, it shall issue a separate ruling thereon. The ruling by which the records and other evidence are excluded may only be challenged by an appeal against the judgement. The excluded records and other evidence shall be sealed in an envelope and delivered to the investigating judge for safekeeping apart from other files (third paragraph of Article 83).

(5) When considering the appeal against the judgement by which the ruling from the preceding paragraph is contested as well, the court of second instance may, in view of the contents of the excluded record or other evidence, rule that a new main hearing be held before a completely new panel.

Article 341

In instances referred to in Articles 325, 335 and 340 of this Act, as well as in other instances if necessary, the panel may decide that, in addition to reading the record, a sound or camera recording be also reproduced at the main hearing (Article 84).

Article 342

After the examination of each witness or expert, as well as after the reading of each record or other writing, the presiding judge shall invite the parties and the injured person to make their comments if they so wish.

Article 343

(1) Upon completion of the hearing of evidence the presiding judge shall ask the parties and the injured person if they have any proposals for supplementing the taking of evidence.

(2) If no motions for supplementing the taking of evidence are made or if such motion was made and denied, and the court finds that the case has been clarified, the presiding judge shall announce that the hearing of evidence is concluded.

8. Modification and extension of the charge

Article 344

(1) If in the course of the main hearing the prosecutor finds that the evidence taken indicates that the factual situation as described in the charge sheet has changed, he may modify the charge sheet orally during the trial and may also make a motion for adjournment of the main hearing in order to prepare a new charge sheet.

(2) In such case the court may adjourn the trial to allow for the preparation of defence.

(3) If the panel grants the adjournment of the main hearing in order for a new charge sheet to be prepared, it shall determine the time limit in which the prosecutor shall be bound to file a new charge sheet. A copy of the new charge sheet shall be served on the defendant; objection to this charge sheet shall not be allowed. If the prosecutor fails to file a new charge sheet within the time limit set, the court shall resume the main hearing on the basis of the previous charge sheet.

Article 345

(1) If the defendant commits a criminal offence while the court is in session for the main hearing, or if a previous criminal offence committed by the defendant is discovered in the course of the main hearing, the panel shall, in acting upon accusation by the authorised prosecutor which accusation may also be submitted orally, extend the trial to include this new offence as well. No objection to this accusation shall be permitted.

(2) In such instance the court may suspend the main hearing to give the defence time to prepare, and after hearing the opinion of the parties it may decide that the defendant be tried separately for the offence referred to in the preceding paragraph.

9. Closing statements

Article 346

Upon completion of the hearing of evidence the presiding judge shall call on the parties, the injured person and the defence to sum up their arguments. The prosecutor shall speak first, then the injured party and defence counsel, and finally the defendant.

Article 347

In his closing statement the prosecutor shall present his evaluation of evidence taken at the main hearing, explain his conclusions concerning facts material to the adjudication, and put forward and expound his proposal regarding the criminal liability of the defendant, the provisions of the criminal law to be applied, and the extenuating and aggravating circumstances to be taken into consideration in meting out punishment. The prosecutor may propose the type and extent of a penalty, and security measures, and he may propose that judicial admonition or a suspended sentence be pronounced.

Article 348

In his address the injured party or his attorney may explain his indemnification claim and call attention to evidence pointing to the criminal liability of the defendant.

Article 349

(1) Defence counsel or the defendant himself shall present arguments for the defence; in so doing he may comment on the allegations of the prosecution and the injured party.

(2) After defence counsel has presented arguments for the defence the defendant shall have the right to state his arguments personally, to declare if he agrees with the pleading of his counsel and to supplement the pleading of his counsel.

(3) The prosecutor and the injured party shall have the right of reply, and defence counsel or the defendant shall have the right of rejoinder.

(4) The defendant shall always have the last word.

Article 350

(1) The presentation of arguments by the parties may not be limited to a specific time.

(2) The presiding judge may, upon prior warning, interrupt the speaker who in his argument offends public order and morality, insults another, repeats himself and speaks at great length of matters

obviously irrelevant to the case. The interruption and the reason for this shall be noted down in the record of the main hearing.

(3) When several persons act for the prosecution and several counsel represent the defence they shall not repeat the same arguments. The representatives of the prosecution and the representatives of the defence shall each select in agreement with others the issues on which each of them will speak.

(4) After all closing statements have been presented the presiding judge shall ask if anyone has any further statement to make.

(5) The provision of point 3 of Article 42 or of the third paragraph of Article 297 of the Penal Code on the mitigation of punishment may only be applied in cases where the accused has, by the end of the main hearing, prevented the further commission of criminal offences within a criminal association or a criminal offence by a criminal association, or if he has disclosed by the end of the main hearing information of importance to the investigation of and production of evidence for criminal offences already committed.

Article 351

(1) If after the closing statements of the parties the panel is not aware of the need for any further evidence, the presiding judge announces that the main hearing has been concluded.

(2) The panel shall then withdraw for consultations and voting on its decision.

Article 352

(1) The panel shall reject the charge sheet by a ruling:

1) if the proceedings were conducted without the request of the authorised prosecutor;

2) if the required motion of the injured party or the permission of a state agency is missing, or if the competent state agency has withdrawn permission;

3) if other circumstances exist which temporarily bar prosecution.

(2) The panel may render a ruling by which the charge sheet is dismissed even after the main hearing has been adjourned.

Chapter Twenty-Two

JUDGEMENT

1. Pronouncing of judgement

Article 353

(1) If in its deliberations the court finds that there is no need to re-open the main hearing to supplement the procedure or elucidate particular issues, the court shall pronounce its judgement.

(2) Judgement shall be passed and announced in the name of the people.

Article 354

(1) The judgement may only relate to the person accused and only to the act arraigned in the charge sheet as initially filed or as modified or extended in the main hearing.

(2) The court shall not be bound by the proposals of the prosecutor regarding the juridical classification of the act.

Article 355

(1) The court shall base its judgement solely on the facts and evidence considered at the main hearing.

(2) The court shall be bound to conscientiously assess each item of evidence separately and in relation to other items of evidence and, on the basis of such evaluation, reach a conclusion whether or not a particular fact has been proved.

2. Types of judgements

Article 356

(2) The judgement shall determine rejection of the charge, acquittal of the defendant or pronouncement of his guilt.

(2) Where the charge includes several criminal offences, the judgement shall specify whether the charge is rejected and, if so, for which offence it is rejected; whether the defendant is acquitted and, if so, of which offence he is acquitted; whether the defendant is found guilty and, if so, of which offence he is found guilty.

Article 357

A judgement by which the charge is rejected shall be pronounced:

1) when the prosecutor withdraws the charge within the period from the opening until the conclusion of the main hearing;

2) when the injured party withdraws the motion;

3) if the defendant was previously convicted or acquitted of the same offence under a final judgement or proceedings against him were discontinued under a final judgement;

4) when prosecution against the defendant was discontinued under an amnesty or a pardon, or the criminal prosecution was statute-barred, or where other circumstances exist which bar criminal prosecution.

Article 358

A judgement by which the defendant is acquitted of the charge shall be pronounced:

1) when the act with which the defendant is charged does not constitute a criminal offence;

2) when circumstances exist which exclude criminal liability;

3) when it has not been proven that the defendant has committed the act with which he has been charged.

Article 359

(1) In a judgement by which the defendant is found guilty the court shall state:

1) the act of which he has been found guilty, together with facts and circumstances indicative of the criminal nature of the act committed, and facts and circumstances on which the application of a pertinent provision of criminal law depends;

2) the statutory designation of the offence and the provisions of the criminal law applied in passing the judgement;

3) the type and amount of punishment imposed on the defendant, or that the punishment has been remitted according to the criminal law;

4) the decision on a suspended sentence;

5) the decision on security measures and confiscation of proceeds;

6) the decision on inclusion in the extent of punishment of time spent in detention or in imprisonment under an earlier sentence;

7) the decision on the costs of criminal proceedings and on any indemnification claim and decision whether the final judgement should be announced in the press or radio or television.

(2) If the defendant is sentenced to pay a fine the judgement shall state the time limit within which he must pay the fine and the manner of executing the sentence if forced collection fails.

(3) If the defendant is sentenced to imprisonment of up to three or five years, the court may specify in the judgement in which prison he will serve the sentence (third paragraph of Article 107 of the Penal Code).

(4) In the case the judgement is to be published as set out in point 7 of the first paragraph of this Article, the following personal data from the operative part of the judgement shall only be published: name and surname, date of birth, permanent, temporary or other address and nationality of the defendant.

3. Announcement of the judgement

Article 360

(1) The judgement shall be announced by the presiding judge immediately after the court has passed it. If the court is unable to pass a judgement on the day the main hearing has been completed, it shall postpone the announcement by a maximum of three days and shall determine when and where it will be formally proclaimed.

(2) The presiding judge shall read the operative part of the judgement in open court and in the presence of the parties, their legal representatives, attorneys and counsel, whereupon he shall give a brief account of the grounds of the judgement.

(3) The judgement shall be announced even in the absence of a party, a legal representative, attorney or counsel. If the defendant is not present the panel may decide that the presiding judge announce the judgement to him orally, or that the judgement be only served on him in writing.

(4) If the public was excluded from the trial, the operative part of the judgement shall always be read out in open court. The panel shall decide whether and to what extent the public should be excluded while the announcing of the grounds of the judgement is taking place.

(5) All those present shall stand while the operative part of the judgement is being read.

Article 361

(1) When the panel passes a judgement by which the defendant is sentenced to imprisonment, it shall order detention if any of the reasons from points 1 to 3 of the first paragraph of Article 201 of this Act exist.

(2) The panel shall always lift detention and order release of the defendant if the latter is acquitted or found guilty but his sentence is remitted, if he is only sentenced to a fine or received a judicial admonition or his sentence is suspended, if due to the inclusion of detention in the extent of the punishment he has already served the sentence, if the charge is rejected or the charge sheet dismissed, save where the charge sheet was dismissed on grounds of non-jurisdiction of the court.

(3) As regards the ordering or lifting of detention from after the announcement of the judgement until it becomes final or until the commencement of the term of punishment, the provisions of the first paragraph of this Article shall apply. A decision thereon shall be passed by the panel of the court of first instance (sixth paragraph of Article 25).

(4) Before ordering or lifting detention in the instances referred to in the first and fifth paragraphs of this Article, the panel shall hear the opinion of the public prosecutor if the proceedings were instituted upon his request, as well as the defendant and his counsel.

(5) If the defendant is in detention and the panel finds that grounds on which detention was ordered still exist or that reasons referred to in the first paragraph of this Article exist, the panel shall extend detention under a separate order; the panel shall lift the detention if finds that the grounds for which it was ordered no longer exist. The panel shall also render a separate order when detention is to be ordered or lifted. An appeal against this order shall not stay execution.

(6) Detention ordered or extended under the provisions of the preceding paragraphs may last until the judgement becomes final or until the commencement of the term of punishment, but no longer than until the expiry of the term of punishment pronounced in the judgement of the court of first instance.

(7) A defendant in detention who has been sentenced to imprisonment may, upon his request, be transferred to a penal institution under a ruling of the presiding judge even before the judgement has become final.

Article 362

(1) After announcing the judgement the presiding judge shall instruct the parties entitled to appeal (Article 367) of their right to appeal and the obligation to announce the appeal and shall warn them that they will be considered to have waived the right to appeal if they fail to announce it within eight days of the day of announcement of the judgement. The instruction shall be entered in the record of the main hearing.

(2) Where a suspended sentence has been pronounced on the defendant, the presiding judge shall advise him of the meaning of the sentence and the conditions by which he is bound to abide.

(3) A party who is entitled to appeal and was not present at the announcement of the judgement shall be sent a copy of the operative part of the judgement and the instruction referred to in the first paragraph of this Article, and the term for announcing his appeal shall start to run as of the day the copy of the operative part of the judgement has been served on him.

(4) The presiding judge shall remind the parties of their obligation to report to the court any change of address until the final conclusion of proceedings.

4. Drawing up and serving of judgements

Article 363

(1) Judgements shall be drawn up in writing within fifteen days of their announcement if the defendant is in detention, and within thirty days in other instances. If a judgement is not drawn up within that time, the presiding judge shall inform the president of the court of the reasons for this. The president of the court shall take the necessary steps for the judgement to be drawn up as soon as possible.

(2) Judgements shall be signed by the presiding judge and the recording clerk.

A certified copy of the judgement shall be served on the prosecutor; it shall be served on the defendant and defence counsel according to Article 120 of this Act. If the defendant is in detention, certified copies of the judgement shall be sent within the period referred to in the first paragraph of this Article.

(4) Judgement served on the defendant, the private prosecutor and the injured party acting as prosecutor shall contain the instruction as to the right to appeal.

(5) A certified copy of the judgement with the instruction on the right to appeal shall be served on the injured party if he is entitled to appeal, on the person who under the judgement is dispossessed of an object (second paragraph of Article 69 of the Penal Code) and on a legal person upon which the confiscation of proceeds has been pronounced. The injured party not entitled to appeal shall be served with a certified copy of the judgement in instances referred to in paragraph two of Article 61 of this Act with the instruction that he has the right to request reinstatement of the case. The final judgement shall be served on the injured party if he so requests.

(6) Where under the provisions on an aggregate sentence for concurrent criminal offences the court has passed a judgement taking into account judgements rendered by other courts, certified copies of the final judgement shall be sent to the courts concerned.

Article 364

(1) The judgement drawn up in writing shall be in full accord with the judgement as it was announced. It shall have an introductory part, the operative part and a statement of grounds.

(2) The introductory part of the judgement shall include: an indication that the judgement is rendered in the name of the people; the name of the court; the names and surnames of the presiding judge, panel members and the recording clerk; the name and surname of the defendant; the criminal offence with which the defendant was charged and an indication as to whether he was present at the

main hearing; the day of the main hearing; indication as to whether the proceedings were conducted in open court; the names and surnames of the prosecutor, defence counsel, legal representative and attorney present at the main hearing; the day of announcement of the judgement.

(3) The operative part of the judgement shall include personal data of the defendant (first paragraph of Article 227) and the decision whereby the accused is pronounced guilty as charged or acquitted of the charge, or the charge is rejected.

(4) If the defendant has been found guilty the operative part of the judgement shall contain all data specified in Article 359 of this Act, and if he was acquitted or the charge was rejected the operative part shall contain a description of the offence with which he was charged and the decision concerning the costs of criminal proceedings and the indemnification claim if such a claim was filed.

(5) In the event of concurrent criminal offences the court shall indicate in the operative part of the judgement the punishment imposed for each separate criminal offence, whereupon it shall indicate the aggregate punishment.

(6) In the statement of grounds the court shall indicate the reasons for each individual point of the judgement.

(7) The court shall indicate clearly and exhaustively which facts it considers proved or not proved, as well as the reasons for this. The court shall indicate in particular how it evaluates the credibility of conflicting evidence, its reasons for denying certain motions of the parties, and the key considerations by which the court was guided in settling points of law and, in particular, in establishing whether a criminal offence and criminal liability of the defendant exist, as well as in applying specific provisions of criminal law to the defendant and his act.

(8) If the defendant has received a sentence of criminal sanction, the statement of grounds should show which circumstances the court took into consideration in meting out the punishment. The court shall especially indicate which reasons were decisive in its decision to impose a sentence severer than that prescribed (Article 46 of the Penal Code), or to reduce or remit the sentence, or to impose a suspended sentence or pronounce a security measure or confiscation of proceeds.

(9) If the defendant is acquitted of the charge the court shall indicate in the statement of grounds on which of the reasons specified in Article 358 of this Act it bases its judgement of acquittal.

(10) In the statement of grounds for the rejection of the charge the court shall not enter into the evaluation of the principal matter but shall confine itself to presenting the reasons for the rejection of the charge.

Article 365

(1) Mistakes in rendering names and numbers, other obvious writing and computing errors, deficiencies regarding the form of the written judgement and discrepancies between the original of the judgement and its copy shall be corrected under a separate ruling of the presiding judge, on the motion of the parties or *ex officio*.

(2) If the judgement as drawn up in writing and its original differ regarding the data provided for in points 1 to 5 and point 7 of the first paragraph of Article 359 of this Act, the ruling on corrections shall be served on persons listed in Article 363 of this Act. In this case the period of time for appeal against the judgement shall start to run on the day of service of the ruling, against which no separate appeal may be lodged.

C. JUDICIAL REVIEW PROCEDURE

Chapter Twenty-Three

ORDINARY LEGAL REMEDIES

1. Appeal against a judgement of the court of first instance

a) Right of appeal

Article 366

(1) The entitled persons may lodge an appeal against judgements passed in first instance within fifteen days of the serving of the copy of the judgement.

(2) An appeal filed in the proper time by an entitled person shall stay the execution of the judgement.

Article 367

(1) The right of appeal shall be accorded to the parties, defence counsel, the legal representative of the defendant and the injured party.

(2) An appeal in favour of the defendant may also be brought by his spouse or the person with whom he lives in domestic partnership, his relative by blood in direct line, his adopter, adoptee, brother, sister or foster parent. The period of time for appeal in this instance shall also start to run on the day the copy of the judgement was served on the defendant or on his counsel (fourth paragraph of Article 120).

(3) The public prosecutor may bring an appeal both to the detriment and to the benefit of the defendant.

(4) The injured party may only challenge a judgement with respect to the court decision on the costs of criminal proceedings; however, if the public prosecutor has taken the prosecution over from the injured party acting as prosecutor (second paragraph of Article 63) the injured party may appeal on all grounds on which a judgement may be challenged (Article 370).

(5) An appeal may also be brought by a person who has been dispossessed of an object (second paragraph of Article 69 of the Penal Code) or of proceeds of crime (second paragraph of Article 96 of the Penal Code), and by a legal person against which a decision on confiscation of proceeds has been issued (Article 98 of the Penal Code).

(6) Defence counsel and persons referred to in the second paragraph of this Article may bring an appeal even without a special authorisation of the defendant, but not against his will.

Article 368

(1) Persons entitled to appeal (article 367) shall be obliged to announce an appeal. They may announce an appeal immediately after the judgement is passed or after the instruction on the right to appeal (first paragraph of Article 362), but no later than within eight days of the date the judgement is passed, or of the day of service of the copy of the operative part of the judgement if they were not present at the announcement of the judgement (third paragraph of Article 362).

(2) If a person entitled to appeal fails to announce an appeal within the time limit prescribed, he shall, except in instances referred to in the fourth paragraph of this Article, be deemed to have waived the right to appeal.

(3) If none of the persons entitled to appeal (Article 367) announces an appeal, the judgement drawn up in writing need not contain a statement of grounds. In such instances, transcription of the audio record of the main hearing is also not necessary.

(4) If the accused has been sentenced to imprisonment, announcement of an appeal is not required. In this case, the judgement drawn up in writing must always contain a statement of grounds.

(5) Until the court of second instance issues its decision, the appellants may withdraw the appeals lodged. The withdrawal of an appeal may not be revoked.

b) Contents of appeal

Article 369

(1) The appeal shall contain:

1) indication of the judgement against which the appeal is lodged;

2) reason for challenge (Article 370);

3) statement of the grounds for the appeal;

4) motion to reverse the challenged judgement in whole or in part, or to modify it;

5) signature of the appellant in the end.

(2) If an appeal against the judgement is lodged by the defendant or any person referred to in the second paragraph of Article 367 of this Act, or by the injured party, the injured party acting as prosecutor or the private prosecutor who has no attorney, and the appeal is not drawn up in accordance with the provisions of the preceding paragraph, the court of first instance shall request the appellant to amend it within a specified time by a written submission or orally to be entered in the record at that court. If the appellant does not comply with the request and the appeal does not contain data from points 2, 3 or 5 of the preceding paragraph, the court shall dismiss it. If the appeal does not contain the datum from point 1 of the preceding paragraph, the court shall only dismiss it if it cannot establish to which judgement the appeal relates. If the appeal has been filed in favour of the defendant and it is possible to establish to which judgement it relates, the court shall nevertheless forward it to the court of second instance; if the judgement to which the appeal relates cannot be established the court shall dismiss the appeal.

(3) If an appeal against the judgement is filed by the injured party, the injured party acting as prosecutor, the private prosecutor who has an attorney, or the public prosecutor, and the appeal does not contain data from points 2, 3 or 5 of the first paragraph of this Article and it is impossible to establish to which judgement the appeal relates, the court shall dismiss the appeal.

(4) The appellant may indicate new facts and new evidence in the appeal, but shall be bound to give reasons for failing to present them earlier. In referring to new facts the appellant shall indicate the evidence by which these facts may be proved, and in referring to new evidence he shall indicate the facts which he intends to prove by that evidence.

c) Grounds on which judgement may be challenged

Article 370

A judgement may be challenged:

1) on the ground of substantial violation of provisions of the criminal procedure;

2) on grounds of violation of criminal law;

3) on the ground of erroneous or incomplete determination of the factual situation;

4) on account of the decision on criminal sanctions, confiscation of proceeds, costs of criminal proceedings, indemnification claims and the announcement of the judgement in the press and on radio or television.

Article 371

(1) A substantial violation of provisions of the criminal procedure shall be deemed to exist:

1) where the court was not properly constituted or the participants in the passing of the judgement included a judge or a juror judge who did not attend the main hearing or was excluded from adjudication under a final decision;

2) where a judge or a juror judge who should be excluded from participation in the main hearing participated therein (points 1 to 5 of Article 39);

3) where the main hearing was conducted in the absence of persons whose presence at the main hearing is obligatory under law, or where the defendant, counsel, the injured party acting as prosecutor or the private prosecutor was, notwithstanding his request, denied the right to use his own language in the main hearing and to follow the course of the main hearing in his language (Article 8);

4) where, in violation of law, the public was excluded from the main hearing;

5) where the court violated the regulations of the criminal procedure relating to the issue of whether there exists a charge by an authorised prosecutor, a motion of the injured person or the approval of the competent state agency;

6) where the judgement was rendered by a court which lacked subject-matter jurisdiction to hear the case, or where the court erroneously rejected the charge on the ground of subject-matter non-jurisdiction;

7) where the court in its judgement did not fully adjudicate the charges;

8) where the judgement rests on evidence obtained in violation of constitutionally granted human rights and fundamental freedoms, or on evidence on which, under the provisions of this Act, a judgement may not rest, or on evidence obtained on the basis of such inadmissible evidence;

9) where the limits of the charge were transgressed (first paragraph of Article 354);

10) where the judgement was passed in violation of Article 385 of this Act;

11) where the operative part of the judgement is incomprehensible or contradictory in itself or in contradiction with the reasons of the judgement; where the judgement lacks grounds altogether or reasons relating to crucial facts are not indicated or are completely vague or considerably inconsistent in themselves; or where there is considerable discrepancy between the statement of grounds relating to the content of documents or the records of statements given in the course of proceedings on the one hand and these documents or records themselves on the other.

(2) A substantial violation of the provisions of the criminal procedure shall also be seen to exist if in preparations for the main hearing or in the course of the main hearing or in rendering the judgement the court omitted to apply a provision of this Act or applied it incorrectly, or if the court in the course of the main hearing violated the rights of the defence, which act influenced or might have influenced the legality and regularity of the judgement.

Article 372

A violation of the criminal law shall exist if the criminal law was violated in respect of the issue of:

1) whether the act for which the defendant is prosecuted is a criminal offence;

2) whether circumstances exist which exclude criminal liability;

3) whether circumstances exist which exclude criminal prosecution and, in particular, whether criminal prosecution is statute-barred or excluded due to an amnesty or pardon, or the case has already been adjudicated by a final judgement;

4) whether in connection with the criminal offence tried an inapplicable law was applied;

5) whether in passing a decision on the sentence, suspended sentence or a judicial admonition, or in ordering a security measure or the confiscation of proceeds, the court transgressed its statutory right;

6) whether provisions were violated in respect of the inclusion in the extent of punishment of the period of detention and the period of an earlier served sentence.

Article 373

(1) A judgement may be challenged on grounds of an erroneous or incomplete determination of the factual situation where the court erroneously determined a material fact or omitted to determine it altogether.

(2) The factual situation shall also be considered as determined incompletely where so indicated by new facts or new evidence.

Article 374

(1) A judgement or a ruling ordering judicial admonition may be challenged in respect of a decision on punishment, suspended sentence and judicial admonition whereby the court, while not exceeding its statutory right (point 5 of Article 372) had nevertheless failed to mete out punishment adequately considering the circumstances influencing the determination of the amount of penalty; the aforesaid judgement or ruling may also be challenged in respect of the application by the court of provisions providing for the mitigation or remission of the sentence and for a suspended sentence or judicial admonition, and in respect of the failure of the court to apply these provisions even though statutory grounds existed for this. In the instance referred to in the third paragraph of Article 359 of this Act, a

decision on punishment may also be challenged on the ground that the court did not make the right decision as to which penal institution the defendant should be placed in.

(2) The decision on a security measure or on confiscation of proceeds may be challenged on the grounds that the court, while not violating point 5 of Article 372 of this Act, had nevertheless passed this decision incorrectly, or failed to impose the security measure or the measure of confiscation of proceeds even though statutory grounds existed for this.

(3) The decision on the costs of criminal proceedings may be challenged if the court had determined these costs incorrectly or in violation of the provisions of this Act.

(4) The decision on indemnification claims and the decision on the announcement of judgement in the press, on radio or television may be challenged if the court had decided these issues in violation of the provisions of the law.

d) Appeal procedure

Article 375

(1) The appeal shall be filed with the court which rendered the judgement in first instance in a sufficient number of copies for the court and for the opposing party and defence counsel to reply to it.

(2) Belated (Article 389) and inadmissible (Article 390) appeals shall be dismissed by a ruling of the presiding judge of the court of first instance.

Article 376

The court of first instance shall serve a copy of the appeal on the opposing party (Articles 120 and 121) who may file a reply to the appeal with the court within eight days of the serving of the copy. The court of first instance shall send the appeal, the reply and all the related files to the court of second instance.

Article 377

(1) When the court of second instance receives the files with the appeal, the files shall be assigned to the reporting judge in accordance with the court rules. If a criminal offence subject to public prosecution is involved the reporting judge shall send the files to the competent public prosecutor who shall examine and return them to the court without delay.

(2) The public prosecutor may propose his motion when returning the files, or may declare that he will submit it during the session of the panel.

(3) After the public prosecutor has returned the files, the presiding judge shall schedule the session of the panel.

(4) The reporting judge may, when necessary, secure a report on violations of provisions of criminal procedure from the court of first instance, and he may also verify through that court, or through the investigating judge in whose territory the action is to be carried out, or in some other way, the allegations in the appeal relating to new evidence and new facts, or he may secure the necessary reports or documents from other agencies or legal persons.

(5) If the reporting judge establishes that the files contain records and reports from Article 83 of this Act he shall, prior to the session of the panel in second instance, send the files to the court of first instance for the presiding judge of first instance to render a ruling on the exclusion of records and reports from the files and to deliver them, after the ruling has become final, in a sealed envelope to the investigating judge to keep them separate from other files.

Article 378

(1) Notice about the session of the panel shall be sent to the competent public prosecutor where a criminal offence the perpetrator of which is prosecuted *ex officio* is involved, and to the defendant, defence counsel, the injured party acting as prosecutor or the private prosecutor, but only if any one of them so request in the appeal or response to the appeal.

(2) If a defendant held in detention or serving his sentence wishes to attend the session of the panel, he shall be enabled to do so.

(3) The session of the panel shall open with the report of the reporting judge on the factual situation. The panel may ask the parties present at the session to give the necessary explanations concerning the allegations in the appeal. The parties may move that certain files be read as a complement to the report and may give the necessary explanations of their positions as contained in the appeal or in the reply to the appeal, without repeating the contents of the report.

(4) If parties who were duly notified of the session fail to appear, the panel shall nevertheless hold the session. If the defendant failed to report the change of address or residence, the panel shall hold the session even though the defendant was not advised thereof.

(5) The public may only be excluded from the session of the panel held in the presence of the parties under conditions provided for by this Act (Articles 295 to 297).

(6) The record of the session shall be enclosed with the files of the courts of first and second instances.

(7) The rulings referred to in Articles 389 and 390 of this Act may be rendered without notifying the parties about the session of the panel.

Article 379

(1) The court of second instance shall adjudicate in a session of the panel or on the basis of a hearing.

(2) The decision on whether to conduct a hearing shall be made by the session of the panel of the court of second instance.

Article 380

(1) A hearing before the court of second instance shall only be conducted when, due to an erroneous or incomplete determination of the factual situation, new evidence has to be taken or evidence already taken has to be repeated, and when valid grounds exist for the case not to be returned to the court of first instance for retrial.

(2) A summons to appear at the hearing before the court of second instance shall be served on the defendant and his counsel, the prosecutor, the injured party, legal representatives and attorneys of the injured party, of the injured party acting as prosecutor and of the private prosecutor, and those witnesses and experts whom the court decides to hear upon to the motion of the parties or *ex officio*.

(3) If the defendant is in detention or is serving his sentence, the presiding judge of the court of second instance shall take the necessary steps for the defendant to be produced at the hearing.

(4) The second paragraph of Article 306 of this Act shall not apply to cases where the injured party acting as prosecutor or the private prosecutor fails to appear at the trial before the court of second instance.

Article 381

(1) A hearing before the court of second instance shall start with the report of the reporting judge who shall present the factual situation without giving his opinion on whether the appeal is well-founded.

(2) The judgement or the part of judgement to which the appeal relates, and if necessary also the record of the main hearing, shall be read upon a motion or *ex officio*.

(3) After that the appellant shall be called to set out his appeal and next the appellee to give his reply. The defendant and his counsel shall always have the last word.

(4) The parties may adduce new evidence and new facts during the hearing.

(5) In consideration of the finding of the trial, the prosecutor may withdraw the charge sheet completely or a part thereof, or he may change it in favour of the defendant. If the public prosecutor withdraws all charges, the defendant shall have the rights provided for by Article 61 of this Act.

Article 382

Unless provided otherwise in the preceding Articles, the provisions on the main hearing before the court of first instance shall apply to proceedings before the court of second instance *mutatis mutandis*.

e) Scope of appellate review

Article 383

(1) The court of second instance shall examine that part of the judgement which is challenged by the appeal, however, it shall always examine *ex officio*:

1) whether there exists a violation of the provisions of the criminal procedure referred to in points 1, 2, 6 and 8 to 11 of the first paragraph of Article 371 of this Act, whether the main hearing was, contrary to the provisions of this Act, conducted in the absence of the defendant and whether in the case when defence is mandatory the main hearing was conducted in the absence of defence counsel;

2) whether criminal law was violated to the prejudice of the defendant (Article 372).

(2) If the appeal filed in favour of the defendant does not contain data from point 2 or 3 of the first paragraph of Article 369 of this Act, the court of second instance shall confine itself to inquiring into violations referred to in points 1 and 2 of the preceding paragraph and examining the decision on the sentence, the security measures and the confiscation of proceeds (Article 374).

Article 384

In his appeal the appellant may only refer to the breach of law under point 2 of first paragraph of Article 371 of this Act if he was unable to warn of that violation during the main hearing, or if his warning was disregarded by the court of first instance.

Article 385

Where only an appeal in favour of the defendant has been brought the judgement may not, in terms of the juridical classification of the offence and the criminal sanction imposed, be modified to the prejudice of the defendant.

Article 386

An appeal in favour of the defendant brought on the ground of erroneous and incomplete determination of the factual situation or on the ground of violation of criminal law shall include the appeal against the decision on punishment and confiscation of proceeds (Article 374).

Article 387

If upon an appeal the court of second instance finds that the reasons which governed its deciding in favour of the defendant are also to the advantage of a co-defendant who has not brought an appeal or has not brought it in that particular direction, the court shall proceed *ex officio* as if such appeal was also filed by the co-defendant.

f) Decisions of the court of second instance on appeal

Article 388

(1) The court of second instance may at the session of the panel or on the basis of the trial dismiss an appeal as belated or inadmissible, or reject an appeal as unfounded and affirm the judgement of the court of first instance, or annul the judgement and return the case to the court of first instance for retrial and new decision, or modify the judgement of the court of first instance.

(2) The court of second instance shall determine all appeals against the same judgement by a single decision.

Article 389

An appeal shall be dismissed by a ruling as belated on establishing that it was filed after the expiry of the statutory period.

Article 390

An appeal shall be dismissed by a ruling as inadmissible on establishing that it was filed by a person not entitled to appeal or a person who has waived appeal, or on establishing that an appeal was withdrawn, or withdrawn and filed again, or if the appeal is inadmissible under statute.

Article 391

The court of second instance shall by a judgement reject an appeal as unfounded and affirm the judgement of the court of first instance if it establishes that there are no grounds to challenge the judgement and no violations of the law referred to in the first paragraph of Article 383 of this Act.

Article 392

(1) The court of second instance shall, in accepting an appeal or in acting *ex officio*, annul by a ruling the judgement of the court of first instance and return the case for retrial if it finds that there exists a substantial violation of provisions of the criminal procedure, except for cases referred to in the second paragraph of this Article and first paragraph of Article 394 of this Act, or if it considers that a new main hearing before the court of first instance is necessary because of the erroneous or incomplete determination of the factual situation.

(2) Where there exists a substantial violation of provisions of the criminal procedure from point 8 of first paragraph of Article 371 of this Act, the judgement of the court of first instance may not be annulled if the annulment for that sole reason would be to the detriment of the defendant.

(3) The court of second instance shall, by a ruling, annul the judgement of the court of first instance even though the judgement is not challenged on the ground of erroneous or incomplete determination of the factual situation if in considering the appeal serious doubts arise about the veracity of material facts determined in the judgement wherefrom the court infers that the factual situation was erroneously or incompletely determined to the prejudice of the defendant.

(4) The court of second instance may determine that a new main hearing be held in the court of first instance before a completely new panel of judges.

(5) In instances where the only reason for annulling the judgement of the court of first instance was erroneous determination of the factual situation and where all that is required for correct determination is a different assessment of already determined facts, and not the taking of new evidence or repeat of previously taken evidence, the court of second instance shall not annul the judgement of the court of first instance but shall act according to the first paragraph of Article 394 of this Act.

(6) The court of second instance may annul the judgement of the court of first instance partially if particular parts of the judgement can be singled out without prejudice to correct adjudication.

(7) If the defendant is under detention the court of second instance shall examine if grounds for detention still exist and shall extend or lift the detention by a ruling. There shall be no appeal against this ruling.

Article 393

If the court of second instance establishes in considering an appeal that circumstances referred to in the first paragraph of Article 352 of this Act exist, the court shall, by a ruling, annul the judgement of the court of first instance and dismiss the charge sheet. The court of second instance shall proceed in the same way if it finds that the district court lacked subject-matter jurisdiction to adjudicate the case, except where the appeal was only brought in favour of the defendant.

Article 394

(1) The court of second instance shall, in accepting an appeal or in acting *ex officio*, modify the judgement of the court of first instance if it finds that, although the material facts were properly determined in the judgement of the court of first instance, in view of the factual situation determined and from the standpoint of correct application of the law a different judgement should have been passed, and shall also modify the judgement in case of violations referred to in points 5, 9 and 10 of the first paragraph of Article 371 of this Act.

(2) If the court of second instance finds that statutory grounds exist for judicial admonition, it shall modify the judgement of the court of first instance by a ruling and pronounce judicial admonition.

(3) Where due to the affirmation or modification of the judgement of the court of first instance grounds exist for ordering or lifting detention under first and second paragraphs of Article 361 of this Act, the court of second instance shall render a separate ruling thereon, against which no appeal shall be permitted.

Article 395

(1) In the statement of grounds for its judgement or ruling the court of second instance shall assess the allegations of the appeal and indicate the violations of law which it has recognised *ex officio*.

(2) If the judgement of the court of first instance is annulled on grounds of a substantial violation of provisions of the criminal procedure, the statement of grounds shall contain an indication as to which provisions were violated and in what the violation consists (Article 371).

(3) If the judgement of the court of first instance is annulled on grounds of the erroneous or incomplete determination of the factual situation, the statement of grounds shall indicate wherein the deficiencies of the factual determination consist, or why new evidence and new facts are important for reaching a correct decision and why they influence that decision.

Article 396

(1) The court of second instance shall return all files to the court of first instance together with a sufficient number of certified copies of its decision to be served on the parties and other persons concerned.

(2) If the defendant is in detention the court of second instance shall send its decision and the files to the court of first instance within three months at the latest from the day it had received the files from the court below.

Article 397

(1) The court of first instance to which the case has been referred for adjudication shall proceed on the basis of the prior charge sheet. If the judgement of the court of first instance has been partly annulled, the court shall only take as the basis for consideration the part of the charge sheet that refers to the annulled part of the judgement.

(2) The parties shall be entitled to introduce new facts and present new evidence at the new main hearing.

(3) The court of first instance shall perform all procedural acts and examine all moot points indicated in the decision of the court of second instance.

(4) In passing a new judgement the court of first instance shall be bound by the prohibition provided for by Article 385 of this Act.

(5) If the defendant is in detention the panel of the court of first instance shall proceed as provided in the second paragraph of Article 207 of this Act.

(6) If the defendant had been transferred to a penal institution before the judgement became final (seventh paragraph of Article 361) the presiding judge may rule that he be returned to detention.

2. Appeal against judgement of the court of second instance

Article 398

(1) Appeals against judgements of courts of second instance may be lodged with the supreme court in the following instances:

1) if a court of second instance has passed a sentence of twenty years imprisonment or has affirmed the judgement of the court of first instance by which such sentence was pronounced;

2) if the court of second instance, after conducting a hearing, determined the factual situation differently from the court of first instance and based its judgement on such factual determination;

3) if the court of second instance has modified a judgement of acquittal passed by the court of first instance and rendered instead a judgement of conviction.

(2) The supreme court shall consider appeals against judgements of courts of second instance at a session of the panel of judges according to provisions applying to the appellate procedure in second instance. A trial may not be conducted before this court.

(3) The provisions of Article 387 of this Act shall also apply to a co-defendant who had no right to appeal against a judgement of the court of second instance.

3. Appeal against a ruling

Article 399

(1) Appeals against rulings of the investigating judge and against other rulings rendered in first instance may be lodged by the parties and persons whose rights have been violated, unless appeal is explicitly barred by the provisions of this Act.

(2) No appeal shall be permitted against a ruling rendered by the court panel before or in the course of investigation, unless provided otherwise by this Act.

(3) Rulings issued in connection with preparation of the main hearing and judgement may only be challenged in an appeal against the judgement.

(4) No appeal shall be permitted against a ruling rendered by the supreme court.

Article 400

(1) Appeals shall be lodged with the court which has rendered the ruling.

(2) Unless provided otherwise by this Act, appeals against the ruling shall be filed within three days of the ruling being served.

Article 401

Unless provided otherwise by this Act, the filing of an appeal shall stay the execution of the ruling being challenged.

Article 402

(1) Appeals against a ruling of the court of first instance shall be dealt with by the court of second instance at a session of its panel, unless provided otherwise by this Act.

(2) Appeals against a ruling of the investigating judge shall be dealt with by the panel of the same court (sixth paragraph of Article 25), unless provided otherwise by this Act.

(3) In deciding on an appeal the court may, by a ruling, dismiss the appeal as belated or inadmissible, or reject it as unfounded, or grant it and modify the ruling, or annul the ruling and return it for reconsideration where necessary.

(4) In deciding on an appeal against the ruling by which the charge sheet is dismissed, the court may render a judgement of rejection if it finds that grounds for such judgement exist.

(5) In examining an appeal the court shall, *ex officio*, inquire into whether the court of first instance was vested with the subject-matter jurisdiction to render the ruling and whether the ruling was rendered by the body empowered to issue it.

Article 403

(1) As regards the procedure for appeals against rulings, the provisions of Articles 367 to 375, paragraphs one, four and five of Article 377, Articles 385 and 387, and paragraph two of Article 388 of this Act shall apply *mutatis mutandis*.

(2) Where an appeal is filed against the ruling referred to in Article 492 of this Act, the provisions of Article 378 of this Act shall apply in respect of the notification of the panel session.

Article 404

Unless provided otherwise by this Act, the provisions of Articles 399 to 403 of this Act shall apply *mutatis mutandis* to all other rulings rendered under this Act.

Article 405

The provisions of Article 365 of this Act shall also apply *mutatis mutandis* to the rulings against which a special appeal is permitted.

Chapter Twenty-Four

EXTRAORDINARY LEGAL REMEDIES

1. Reopening of criminal proceedings

Article 406

Criminal proceedings concluded by a final ruling or a final judgement may only be reopened upon request of authorised persons in instances and under conditions provided by this Act.

Article 407

(1) A final judgement may be modified even without reopening criminal proceedings:

1) when in two or more final judgements against the same convicted person several punishments were imposed without applying the provisions on the passing of an aggregate sentence for concurrent offences;

2) when in pronouncing an aggregate sentence under provisions on concurrent offences (Article 48 of the Penal Code) a punishment already included in the aggregate sentence under an earlier judgement of concurrent offences was also taken into consideration;

3) when a final judgement under which an aggregate sentence was imposed for several criminal offences is partly unenforceable due to an amnesty, or pardon or other reasons.

(2) In the instance cited in point 1 of the preceding paragraph the court shall, by a new judgement, modify the earlier judgements in respect of the sentences comprised therein and shall pass an aggregate sentence. The rendering of a new judgement shall fall within the jurisdiction of the court of first instance which adjudicated the matter in which the most severe type of punishment was imposed; where punishments of the same type were pronounced the new judgement shall be passed by the court which imposed the highest amount of punishment; and where the punishments are equal it shall be passed by the court which imposed the punishment last.

(3) In the instance cited in point 2 of the first paragraph of this Article, the court which in pronouncing an aggregate sentence erroneously included a punishment already comprised in an earlier judgement shall modify its judgement.

(4) In the case cited in point 3 of the first paragraph of this Article, the court which adjudicated in first instance shall modify the earlier judgement in respect of the punishment and pronounce a new punishment, or it shall determine what part of the punishment imposed under the earlier judgement should be enforced.

(5) The new judgement shall be passed at the session of the panel upon motion of the public prosecutor if the proceedings were instituted at his request or upon that of the defendant, after hearing the arguments of the opposing party.

(6) If in the instances referred to in points 1 and 2 of the first paragraph of this Article judgements of other courts were taken into consideration in imposing the punishment, a certified copy of the new final judgement shall be sent to those courts.

Article 408

(1) If the request for investigation has been rejected by a final ruling due to the lack of the request by the authorised prosecutor, or of the motion of the injured party, or of the permission of a state agency, or because of other circumstances which temporarily barred prosecution, or if the charge sheet was dismissed on these same grounds, proceedings shall be resumed at the request of the authorised prosecutor as soon as the reasons for the rendering of such ruling cease to exit.

(2) If the charge sheet was dismissed by a final ruling for lack of subject-matter jurisdiction, proceedings shall continue before the court with subject-matter jurisdiction at the request of the authorised prosecutor.

Article 409

If the request for investigation was rejected by a final ruling for want of a well-founded suspicion that the suspect or the accused has committed a criminal offence, criminal proceedings may be reopened upon request of the authorised prosecutor provided new evidence is produced on the basis of which the panel (sixth paragraph of Article 25) can satisfy itself that conditions for starting criminal proceedings exist.

Article 410

(1) Criminal proceedings concluded by a final judgement may only be reopened in favour of the convicted person. Proceedings shall be reopened:

1) if it is proven that the judgement rests on a forged document or a false statement of a witness, expert or interpreter;

2) if the judgement is proven to have ensued from a criminal offence committed by the judge, the juror judge or the person who carried out acts of investigation;

3) if new facts are discovered or new evidence is produced which facts and evidence, in themselves or in connection with previous evidence, appear likely to occasion the acquittal of the convicted person or his convicting under a less severe criminal law;

4) if a person was tried more than once for the same act or if several persons were convicted of the same act which could have only been committed by a single person or only by some of them;

5) if in case of conviction for a continued criminal offence, or some other offence which under the law includes several acts of the same kind, new facts are discovered or new evidence is produced which indicate that the convicted person did not commit the act included in the adjudicated criminal offence, whereas that act would have substantially influenced the meting out of the punishment.

(2) In cases referred to in points 1 and 2 of the preceding paragraph it must be proved by a final judgement that the persons mentioned have been found guilty of the criminal offences in question. If proceedings against these persons cannot be conducted because they are dead or because other circumstances exist which exclude criminal prosecution, the facts from points 1 and 2 of the preceding paragraph may be proved by using other evidence.

Article 411

(1) The reopening of criminal proceedings may be requested by the parties and defence counsel; after the death of the convicted person the reopening may be requested by the public prosecutor if proceedings were instituted upon his request and by persons listed in paragraph two of Article 367 of this Act.

(2) The reopening of criminal proceedings may be requested even after the convicted person has served his sentence and irrespective of the statute of limitations, an amnesty or a pardon.

(3) The court with jurisdiction to decide on the reopening of criminal proceedings (Article 412) shall, upon learning of the existence of grounds for the reopening of criminal proceedings, notify thereof the convicted person or another person entitled to file the request.

Article 412

(1) Requests for reopening criminal proceedings shall decided by the panel (sixth paragraph of Article 25) of the court which adjudicated in first instance in previous proceedings.

(2) The request shall specify the statutory ground on which the reopening is requested and the evidence supporting the facts on which the request rests. If the request does not contain these data the court shall ask the requesting party to supplement the request within a specified time.

(3) The judge who participated in rendering the judgement in previous proceedings may not take part in panel deliberations on the request for reopening.

Article 413

(1) The court shall dismiss the request by a ruling if it finds on the basis of the request itself and the files of previous proceedings that the request has been submitted by an unauthorised person; or that statutory grounds for reopening do not exist; or that the facts and evidence on which the request rests were presented in an earlier request for reopening which was rejected by a final court ruling; or that the facts and evidence obviously do not provide adequate grounds to grant the reopening of proceedings; or that the person who requests the reopening did not abide by the provisions of the second paragraph of the preceding Article.

(2) If the request is not dismissed the court shall serve a copy of the request on the adverse party who shall be entitled to reply within eight days. After the court has received a reply to the request, or after the time limit for the reply has expired, the presiding judge shall order that the facts and evidence indicated in the request and the reply thereto be looked into and produced, respectively. The judge engaged in the inquiries shall act as provided by paragraph five of Article 178 of this Act.

(3) After the inquiries have been completed the presiding judge shall order that the files be sent to the public prosecutor if criminal offences subject to public prosecution are involved; the public prosecutor shall be bound to return the files as soon as possible, together with his opinion.

Article 414

(1) After the public prosecutor has returned the files the court may order that inquiries be supplemented; on the basis of the results of inquiries the court shall either grant the request and allow the reopening of criminal proceedings, or it shall reject the request.

(2) If the court finds that the grounds on which it has allowed the reopening of proceedings also benefit a co-defendant who has not requested the reopening of proceedings, it shall act *ex officio* as if such request has also been submitted by that person.

(3) In the ruling by which the reopening of criminal proceedings is allowed the court shall order that a new main hearing be scheduled immediately or that the case be returned to the stage of investigation or that an investigation be opened if none was conducted before.

(4) If the court considers that, in view of the evidence produced, in the retrial the convicted person will be imposed such a sentence that, allowing for the time served under an earlier sentence, he will have to be released, or that he will be acquitted of the charge, or that the charge against him will be rejected, it shall order that the enforcement of punishment be postponed or stayed.

(5) When the ruling granting the reopening of criminal proceedings becomes final, the enforcement of punishment shall be stayed; however, if grounds provided for in Article 201 of this Act exist the court shall order detention.

Article 415

(1) New proceedings held on the basis of the ruling which grants the reopening of criminal proceedings shall be conducted in accordance with the provisions applying to original proceedings. In new proceedings the court shall not be bound by the rulings rendered in original proceedings.

(2) If new proceedings are discontinued prior to the opening of the main hearing, the earlier judgement shall be annulled by the ruling on discontinuation.

(3) In rendering a new judgement the court shall either annul the earlier judgement or a part thereof, or it shall affirm the earlier judgement. In the punishment imposed by the new judgement the court shall allow for a sentence already served, and if reopening was granted only for some of the offences of which the defendant was convicted it shall pronounce a new aggregate sentence in accordance with the provisions of criminal law.

(4) In new proceedings, the prohibition prescribed under Article 385 of this Act shall be binding on the court.

Article 416

The provisions of this Chapter on the reopening of criminal proceedings (Articles 406 to 415) shall apply *mutatis mutandis* to the request for modification of a final judicial decision pursuant to the decision of the constitutional court by which the latter reversed or abolished the regulation on the basis of which the final verdict of guilty was given, or pursuant to a decision of the European Court of Human Rights relating to grounds for reopening criminal proceedings.

2. Extraordinary mitigation of punishment

Article 417

Mitigation of a sentence shall be permissible where, after the judgement has become final, circumstances occur which either did not exist when the judgement was passed or were unknown to the court at that time, and such circumstances obviously would have led to a less severe punishment.

Article 418

(1) Extraordinary mitigation of punishment may be requested by the public prosecutor if proceedings were instituted at his request, the convicted person and his defence counsel, as well as persons entitled to appeal against a judgement in favour of the convicted person (Article 367).

(2) The request for extraordinary mitigation of punishment shall not stay the execution of punishment.

Article 419

(1) Requests for extraordinary mitigation of punishment shall be decided by the supreme court.

(2) Requests for extraordinary mitigation of punishment shall be submitted to the court which passed the judgement in first instance.

(3) The presiding judge of the court of first instance shall dismiss requests submitted by persons not entitled thereto.

(4) The court of first instance shall examine if grounds for mitigation exist, whereupon it shall refer the files together with a reasoned motion to the supreme court, after hearing the opinion of the public prosecutor if proceedings were conducted at his request.

(5) If the criminal offence involved was prosecuted on request of the public prosecutor, the supreme court shall, before deciding the request for extraordinary mitigation of punishment, send the files to the Public prosecutor of the Republic of Slovenia. The latter may submit a written motion to the court.

(6) The supreme court shall reject the request if it finds that statutory grounds for extraordinary mitigation of punishment do not exist. When satisfying the request the court shall, by a ruling, modify the final judgement in respect of the punishment comprised therein.

3. Request for protection of legality

Article 420

(1) A request for the protection of legality against a final judicial decision and judicial proceedings which preceded that decision may be submitted after the criminal procedure has been concluded by a final decision in the following instances:

1) on grounds of violation of criminal law;

2) on grounds of substantial violation of provisions of criminal procedure referred to in the first paragraph of Article 371 of this Act;

3) on grounds of other violations of provisions on criminal procedure if such violations affected the lawfulness of a judicial decision.

(2) A request for the protection of legality may not be filed on grounds of an erroneous or incomplete determination of factual situation, nor against the decision of the supreme court by which a request for the protection of legality has been adjudicated.

(3) The provision of the first paragraph of this Article notwithstanding, the Public Prosecutor of the Republic of Slovenia may submit a request for the protection of legality in any instance of violation of law.

(4) Notwithstanding the provisions of the first paragraph of this Article, during a criminal procedure which is not yet concluded by a final decision a request for the protection of legality may only be submitted against a final decision ordering detention; a request for the protection of legality may only be submitted against a final decision on the extension of detention when the Supreme Court panel extends detention by a ruling (second paragraph of Article 205) and in case of extension after the filing of the charge sheet (second paragraph of Article 272).

Article 421

(1) Requests for the protection of legality may be filed by the Public Prosecutor of the Republic of Slovenia, the accused and defence counsel. Upon the death of the accused such request may be filed in his favour by persons referred to in the second paragraph of Article 367 of this Act.

(2) The Public Prosecutor of the Republic of Slovenia may submit a request for the protection of legality both to the prejudice and in favour of the accused.

(3) The accused, defence counsel and persons referred to in the second paragraph of Article 367 of this Act may file requests for the protection of legality within three months or eight days in case of the decision from the fourth paragraph of Article 420 of this Act of the accused being served with the final judicial decision. If no appeal has been lodged against the decision of the court of first instance, the time shall be counted from the day when this decision became final.

(4) If under a decision of the European Court of Human Rights it is established that the final judicial decision prejudicial to the accused is in violation of a human right or fundamental freedom, the period of time for filing the request for the protection of legality shall be counted from the day the decision of the European Court was served on the accused.

(5) The provision of the second paragraph of the preceding Article notwithstanding, the request for the protection of legality referred to the preceding paragraph shall also be possible against a decision of the supreme court.

Article 422

(1) Requests for the protection of legality shall be filed with the court which passed the decision in first instance.

(2) The presiding judge of the court of first instance shall dismiss a request for the protection of legality by a ruling if the request was filed against a decision of the supreme court (second paragraph of Article 420), if it was filed by a person not entitled thereto (first paragraph of Article 421), or if it is belated (third paragraph of Article 421). This ruling may be appealed against in a court of second instance.

(3) The court of first instance may, contingent on the contents of a request for the protection of legality, order that the enforcement of the final judicial decision be deferred or stayed.

Article 423

(1) Requests for the protection of legality shall be decided by the supreme court at its session.

(2) The supreme court shall dismiss a request for the protection of legality by a ruling if the request is inadmissible or belated (second paragraph of Article 422), otherwise it shall send a copy of the request to the adverse party who may reply thereto within fifteen days of receipt of the request, or within eight days if the request involved is filed against the decision referred to in the fourth paragraph of Article 420 of this Act. The Public Prosecutor of the Republic of Slovenia shall be sent the request for the protection of legality together with the files.

(3) Before the matter is brought up for consideration, the reporting judge may, if necessary, secure a report on the alleged violations of law.

(4) Dependent on the contents of the request, the supreme court may order that the enforcement of the final judicial decision be deferred or stayed.

Article 424

(1) When deciding on a request for the protection of legality, the court shall confine itself to reviewing those violations of law which the requesting party alleges in his request.

(2) If the court finds that reasons for its deciding in favour of the accused also exist in respect of a co-defendant for whom the request for the protection of legality has not been filed, it shall proceed *ex officio* as if such request has also been filed by that person.

(3) In deciding on a request for the protection of legality submitted in favour of the accused, the court shall be bound by the prohibition prescribed under Article 385 of this Act.

Article 425

The supreme court shall, by a judgement, reject a request for the protection of legality as unfounded if it establishes that the violation of law alleged by the requesting party in his request does not exist or that a request for the protection of legality is filed against an erroneous or incomplete determination of the factual situation.

Article 426

(1) If the supreme court finds that a request for the protection of legality is well-founded, it shall pass a judgement by which, depending on the nature of the violation, it shall: modify a final decision; or annul in whole or in part the decision of both the court of first instance and higher court or the decision of the higher court only, and return the case for a new decision or retrial by the court of first instance or the higher court; or it shall confine itself to establishing the existence of a violation of law.

(2) If the supreme court finds that a request for the protection of legality filed to the disadvantage of the convicted person is well-founded, it shall only determine that the law was violated but shall not interfere in the final decision.

(3) If the court of second instance was not entitled under this Act to remedy a violation of law committed in the decision of the court of first instance or in judicial proceedings which preceded it, and the supreme court finds that the request is well-founded and that the remedy of the committed violation requires that the decision of the court of first instance be annulled or modified, the supreme court shall annul or modify the decision of the court of second instance as well, even though the law has not thereby been violated.

Article 427

If in deciding on a request for the protection of legality a considerable doubt arises as to the accuracy of factual determination in a decision challenged by the request, the supreme court shall in

its judgement on the request for the protection of legality annul that decision and order a new main hearing to be held before the same or another court of first instance vested with subject-matter jurisdiction.

Article 428

(1) If a final judgement is annulled and the case returned for retrial, proceedings shall be based on the earlier charge sheet or the part thereof which relates to the annulled part of the judgement.

(2) The court shall be bound to perform all procedural acts and examine all issues to which it has been alerted by the supreme court.

(3) The parties shall be entitled to present new facts and evidence before the court of first or second instance.

(4) In rendering a new decision the court shall be bound by the prohibition stipulated under Article 385 of this Act.

(5) Where the decision of lower court and higher court are both annulled, the case shall be returned to the lower court through the higher court.

D. SPECIAL PROVISIONS ON SUMMARY PROCEEDINGS, THE PRONOUNCING OF JUDICIAL ADMONITION AND PROCEEDINGS AGAINST MINORS

Chapter Twenty-Five

SUMMARY PROCEEDINGS BEFORE A DISTRICT COURT

Article 429

In proceedings before the district court the provisions of Articles 430 to 444 of this Act shall apply; in respect of issues not dealt with in these provisions, other provisions of this Act shall apply *mutatis mutandis*.

Article 430

(1) Criminal proceedings shall be instituted on the basis of a summary charge sheet of the public prosecutor or the injured party acting as prosecutor, or on the basis of a private charge.

(2) The public prosecutor may file a summary charge sheet on the basis of a crime report alone.

(3) The summary charge sheet and the private charge shall be submitted in as many copies as needed by the court and the accused.

Article 431

(1) Before filing the summary charge sheet the public prosecutor may move for a single judge (hereinafter: the judge) to perform specific acts of investigation. If the judge consents to the proposal, he shall perform the required investigative acts and thereafter send all files to the public prosecutor. The acts of investigation shall be carried out as quickly and efficiently as possible.

(2) If the judge disagrees with the motion for investigative acts, he shall notify the public prosecutor thereof.

(3) Upon receiving the files or information referred to in the preceding paragraphs, the public prosecutor may decide either to file a summary charge sheet or to dismiss the crime report by a ruling.

Article 432

(1) Detention may exceptionally be ordered against a person suspected on reasonable grounds of committing a criminal offence the perpetrator of which is prosecuted *ex officio*:

1) if he is in hiding, if his identity cannot be ascertained or if other circumstances point to an obvious risk of him fleeing if detention is not ordered;

2) if the act involved is an offence against public order or sexual inviolability, or an offence with elements of violence subject to two years imprisonment, or other criminal offence for which an imprisonment of three years may be imposed, whenever the grounds exist for detention referred to in point 2 or 3 of the first paragraph of Article 201 of this Act.

(2) The detention before the filing of a summary charge sheet may last as long as required for the acts of investigation to be carried out, but not beyond the period of fifteen days. Appeals against the detention order shall be decided by the panel of the circuit court (sixth paragraph of Article 25).

(3) As regards the detention from the service of the summary charge sheet until the end of the main hearing, the provisions of Article 207 of this Act shall apply *mutatis mutandis*; the judge shall be bound to consider each month if grounds for detention still exist.

(4) If the accused is under detention, the court shall proceed with special speed.

Article 433

If the crime report is filed by the injured party and if, within a period of one month from the receipt of the request by the public prosecutor, the latter fails to file a summary charge sheet and to notify the injured party that he has dismissed the charge or adjourned criminal proceedings (Article 162), the injured party shall be entitled to assume prosecution as a prosecutor by filing a summary charge sheet with the court.

Article 434

(1) The summary charge sheet or the private charge shall contain: the name and surname of the accused with his personal data if known, the description of the criminal offence, the court before which the main hearing is to be held, the motion as to which evidence should be taken in the main hearing, and the motion that the accused be found guilty and sentenced in accordance with law.

(2) The summary charge sheet may contain a motion to put the accused in detention. If the accused is in detention or was in detention during investigative acts, the summary charge sheet shall contain an indication of how long he was in detention.

Article 435

(1) Upon receiving the summary charge sheet or the private charge the judge shall first examine if the court has jurisdiction in the matter and if grounds exist to dismiss the summary charge sheet or the private charge.

(2) If the judge issues a decision referred to in the third paragraph of Article 286 of this Act, the panel (sixth paragraph of Article 25) shall decide on the appeal against such a decision and may, in consideration of the contents of the excluded evidence, order that the main hearing be held before another judge.

(3) If the judge does not render any none of the rulings from the preceding paragraphs, he shall order that the charge sheet or private charge be served on the accused and shall schedule the main hearing immediately. If he fails to schedule the main hearing within a month, the judge shall notify the president of the court of the reasons for this. The president of the court shall take the necessary steps for scheduling the main hearing as soon as possible.

Article 436

(1) If the judge finds that the case falls within the territorial jurisdiction of another district court, he shall refer the case to the court of jurisdiction after the ruling has become final. If he finds that the case falls within the subject-matter jurisdiction of the circuit court, he shall refer the case to the competent public prosecutor for further proceedings. If the public prosecutor considers that the court of subject-matter jurisdiction is the court which had sent him the request, he shall request that the matter be decided by the panel of the circuit court (sixth paragraph of Article 25).

(2) After the main hearing has been scheduled, the court may not, *ex officio*, declare itself as having no territorial jurisdiction over the case.

Article 437

(1) The judge shall dismiss the summary charge sheet or the private charge is he finds that there exist grounds to discontinue proceedings specified in points 1 to 3 of the first paragraph and in the second paragraph of Article 277 of this Act, or if he finds that, after the investigation has been completed, there are grounds to dismiss the summary charge sheet or the private charge under point 4 of the first paragraph of the aforesaid Article.

(2) The ruling, with a brief statement of grounds, shall be served on the prosecutor and the accused.

Article 438

(deleted)

Article 439

(1) The judge shall summon to the main hearing the accused and his counsel, the prosecutor, the injured party and their legal representatives and attorneys, witnesses, experts and the interpreter; he may, if necessary, secure objects to be used as evidence in the main hearing.

(2) The accused shall be instructed in the summons that he may bring to the main hearing evidence for his defence or inform the court of such evidence in due course so that it can be secured for the main hearing. Together with the summons the accused shall be served with a copy of the summary charge sheet or the private charge if these were not served on him immediately after they were examined (second paragraph of Article 435); he shall also be instructed in the summons that he is entitled to retain counsel and that, unless defence is mandatory, the main hearing shall not be adjourned if defence counsel fails to appear or if the accused decides to retain counsel only at the hearing itself.

(3) The summons shall be served on the accused so as to leave him time between the serving of summons and the main hearing to prepare his defence, which may not be less than three days. This period of time may be shortened subject to consent of the accused.

Article 440

The main hearing shall be held in the place in which the court has its seat. In urgent cases, particularly where inspection is required or the hearing of evidence is thereby facilitated, the main hearing may be conducted, subject to permission of the president of the court, at the place of commission of the criminal offence or the place where inspection is to be made, provided such place is in the jurisdictional territory of the court.

Article 441

The objection of territorial non-jurisdiction may only be submitted prior to the opening of the main hearing.

Article 442

(1) If the defendant fails to appear at the main hearing although he was duly summoned, the judge may decide that the main hearing be conducted in his absence, provided that his presence is not necessary and that he has already been interrogated.

(2) If duly summoned defence counsel fails to appear at the main hearing and does not notify the court of the reasons for his absence as soon as he learns this, or if he leaves the main hearing without a permission, or if by reason of his disturbing order the judge denies him the further conduct of defence in case where defence is not mandatory, the main hearing shall take place without defence counsel, unless the accused retains one immediately.

Article 443

(1) The main hearing shall commence with the reading of the summary charge sheet or the reading of private charge on the part of the prosecutor. Once opened, the main hearing shall proceed without interruption whenever possible.

(2) After the end of the main hearing, the judge shall render and announce the judgement forthwith, setting forth the grounds for it. The judgement shall be drawn up in writing within fifteen days of its announcement.

(3) An appeal against the judgement may be lodged within eight days of receipt of a copy thereof.

(4) The provisions of Article 361 of this Act shall apply *mutatis mutandis* to the lifting of detention after the judgement has been pronounced.

(5) If the punishment of imprisonment has been imposed, the judge may order that the accused be detained or that he remain in detention provided grounds referred to in the first paragraph of Article 432 of this Act exist. In such instance the detention may last until the judgement becomes final, or until the commencement of the term of punishment, but not beyond the expiry of the sentence imposed by the court of first instance.

(6) If in the course of or after the main hearing the judge finds that the case tried falls within the subject-matter jurisdiction of the circuit court, or that grounds referred to in the first paragraph of Article 352 of this Act exist, he shall dismiss the summary charge sheet or the private charge by a ruling.

Article 443.a

(1) The judge may adjourn the main hearing for a maximum of six months if the public prosecutor announces that the matter shall be transferred to a settlement procedure (Article 161.a).

(2) When the public prosecutor receives notification of the fulfilment of an agreement, he shall withdraw the summary charge sheet. If the public prosecutor has not withdrawn the summary charge sheet within the specified time period, the judge shall continue the main hearing on the basis of the previous hearing.

Article 444

(1) Before scheduling the main hearing for a criminal offence falling within the jurisdiction of a single judge and prosecuted pursuant to private charge, the judge may summon the private prosecutor and the injured party to appear in court on a specific day by themselves to clarify the issue in advance if he finds such move conducive to an early termination of proceedings. Together with the summons, the accused shall be served with a copy of the private charge.

(2) If the parties fail to reach settlement and the private charge is not withdrawn, the judge shall take down the statements of the parties, and instruct them to make motions for evidence to be secured.

(3) If the judge does not dismiss the charge for want of grounds for this, he shall determine which evidence should be taken at the main hearing and, as a rule, shall schedule the main hearing forthwith and notify the parties thereof.

(4) If the judge holds that evidence need not be gathered and that no other reasons exist for scheduling the main hearing separately, he may open the main hearing immediately and, after taking evidence present before the court, adjudicate the private charge. This possibility should be particularly indicated in the summons for the private prosecutor and the accused.

(5) Where the private prosecutor fails to appear after being summoned as per first paragraph of this Article, the provisions of Article 58 of this Act shall apply.

Article 445

(1) When the court of second instance hears an appeal against a judgement passed in summary proceedings by the court of first instance, it shall only notify the parties of the session of its panel if the presiding judge or the panel finds that the presence of parties is useful for the clarification of the case.

(2) Where a criminal offence prosecuted on the request of the public prosecutor is involved, the presiding judge shall, prior to the panel session, deliver the files to the public prosecutor who shall be entitled to propose a written motion.

Chapter Twenty-Five.a

PROCEDURE FOR THE ISSUE OF A PUNITIVE ORDER

Article 445.a

(1) Where criminal offences falling within the jurisdiction of a district court are involved, the public prosecutor may, in filing the summary charge sheet, propose to the court to issue, without holding a main hearing, a punitive order by which the proposed penal sanction or measure is imposed on the accused.

(2) The public prosecutor may propose the pronouncing of the following penal sanctions and measures:

1) a fine, prohibition from driving a motor vehicle, suspended sentence with a specific fine or up to six months imprisonment, or judicial admonition;

2) the confiscation of objects and proceeds of crime.

Article 445.b

If the judge considers that the evidence contained in the summary charge sheet does not provide sufficient grounds for issuing a punitive order, or disagrees with the imposition of the sanction proposed by the public prosecutor, he shall schedule the main hearing to which he shall summon the persons referred to in the first paragraph of Article 439 of this Act. In such an instance the accused shall only be served with the copy of the summary charge sheet without the motion for the issue of a punitive order.

Article 445.c

(1) If the judge agrees with the motion, he shall issue a punitive order through a judgement.

(2) In the punitive order the judge shall rule that the motion of the public prosecutor is granted and the accused, whose personal data must be cited therein, is pronounced the proposed penal sanction or measure. The operative part of the judgement on the issue of a punitive order shall contain the necessary data referred to in the first and second paragraphs of Article 359 of this Act. The statement of grounds shall only contain such evidence from the summary charge sheet as warrants the issue of the punitive order.

(3) The punitive order shall also contain instructions to the accused as to his right to file objection referred to in the second paragraph of Article 445.č of this Act, and a warning that unless the objection is filed within a specified period of time the punitive order shall, upon expiry of that period, become final and the penal sanction or measure imposed shall be executed.

Article 445.č

(1) A certified copy of the judgement on the issue of the punitive order shall be served on the accused, his counsel, if any, and the public prosecutor.

(2) The accused or his counsel may, within eight days of the judgement on the punitive order being served, file an objection to the punitive order. The objection may be filed in writing or orally to be entered in the record at the court. The objection shall contain an indication of the judgement under which the punitive order was issued and may also propose evidence to be taken at the main hearing. The accused may waive the right to object and, so long as the main hearing is not scheduled, may withdraw an objection already filed. The waiver and the withdrawal of the objection may not be revoked. Paying fine before the expiry of the term for submitting the objection shall not be considered as the waiver of the right to objection.

(3) An accused who for valid reasons fails to file an objection within the set time limit shall be granted by the court the reinstatement of the case; in so doing the court shall apply the provisions of Articles 89 and 90 of this Act *mutatis mutandis*.

(4) If in applying the provisions of the second paragraph of Article 375 of this Act *mutatis mutandis* the court does not dismiss the objection, it shall, by a decision, annul the judgement on the punitive order and proceed according to the provisions of Articles 439 to 443.a of this Act.

Article 445.d

In rendering the judgement on the objection submitted, the court shall not be bound by the motion of the public prosecutor referred to in the second paragraph of Article 445.a nor by the prohibition referred to in Article 385 of this Act.

Article 445.e

In the proceedings for the issue of a punitive order, the provisions of Article 445.a to 445.d shall apply, while issues not regulated by those provisions shall be covered by other provisions of this Act, applying *mutatis mutandis*.

Chapter Twenty-Six

SPECIAL PROVISIONS ON THE PRONOUNCING OF JUDICIAL ADMONITION

Article 446

(1) Judicial admonition shall be pronounced by a ruling.

(2) Unless provided otherwise in this Chapter, the provisions of this Act relating to the verdict of guilty shall apply *mutatis mutandis* to the ruling on judicial admonition.

Article 447

(1) The ruling on judicial admonition shall be announced immediately upon the conclusion of the main hearing, together with the essential reasons for it. The provisions of Article 368 of this Act shall apply *mutatis mutandis* to the obligation to announce the appeal.

(2) The operative part of the ruling on judicial admonition shall only contain, in addition to the personal data of the accused, an indication that the judicial admonition has been pronounced on him for the act alleged in the charge, and the statutory name of the criminal offence. The operative part of the ruling on judicial admonition shall also contain the necessary data referred to in points 5 and 7 of the first paragraph of Article 359 of this Act.

(3) In the statement of grounds the court shall state the reasons which guided it in pronouncing the judicial admonition.

Article 448

(1) The ruling on judicial admonition may be challenged on grounds specified in points 1, 2 and 3 of Article 370 of this Act and on the ground that circumstances warranting the pronouncing of judicial admonition did not exist.

(2) Where the ruling on judicial admonition contains the decision on security measures, confiscation of proceeds, costs of criminal proceedings or indemnification claims, such ruling may be challenged on the ground that the court has not applied the security measure or the confiscation of proceeds correctly, or that its decision on the costs of criminal proceedings or on the indemnification claim was passed contrary to statutory provisions.

Article 449

In pronouncing judicial admonition, a violation of criminal law shall also exist, in addition to violations referred to in point 1 to 4 of Article 372 of this Act, where the court by its decision on judicial admonition, a security measure or the confiscation of proceeds exceeded the powers vested in it by law.

Article 450

(1) Where a ruling on judicial admonition is challenged by the prosecutor to the disadvantage of the accused, the court of second instance may pass a judgement by which the accused is found guilty and sentenced, or by which a suspended sentence is imposed on him, if it finds that the court of first instance has determined material facts correctly, but that correct application of the law requires that punishment be imposed.

(2) The court of second instance may respond to any appeal against the ruling on judicial admonition by rendering a ruling by which the charge sheet or the summary charge sheet is dismissed, or by passing a judgement by which the charge is rejected or the accused acquitted of the charge, if it finds that the court of first instance has determined material facts correctly, but that correct application of the law warrants the rendering of one of the aforesaid decisions.

(3) When grounds specified in Article 391 of this Act exist, the court of second instance shall render a ruling by which it rejects the appeal as unfounded and affirms the ruling on judicial admonition rendered by the court of first instance.

Chapter Twenty-Seven

PROCEEDINGS AGAINST MINORS

1. General provisions

Article 451

(1) The provisions of this Chapter shall apply to proceedings against persons who have committed a criminal offence as minors and have not attained the age of twenty-one at the time of institution or conducting of proceedings. Other provisions of this Act shall apply insofar as they do not conflict with the provisions of this Chapter.

(2) Articles 453 to 455, 458 to 461, 469, 471, the first and second paragraphs of Article 473, and Article 481 of this Act shall apply in proceedings against a young adult if it is established prior to the commencement of the main hearing that the educational measure under Article 94 of the Penal Code is relevant in his case and that he had not attained the age of twenty-one at that particular time.

Article 452

If while proceedings are pending it is established that at the time of commission of a criminal offence a minor had not yet attained the age of fourteen, criminal proceedings shall be discontinued and the social welfare agency informed thereof.

Article 453

(1) A minor may not be tried in his absence.

(2) In carrying out procedural acts at which the minor is present and, in particular, during his questioning, the bodies participating in proceedings shall act considerately and with due regard to the stage of his mental development, sensitivity and personal characteristics, to avoid the criminal proceedings exert an adverse effect on his development.

(3) The aforesaid bodies shall at the same time take appropriate steps to contain any undisciplined conduct of minors.

Article 454

(1) A minor may have defence counsel from the outset of the preparatory procedure.

(2) A minor shall have defence counsel from the beginning of the preparatory procedure if the criminal offence with which he is charged is punishable by more than three years imprisonment; in case of offences subject to less severe punishment he shall have defence counsel if so determined by the juvenile judge.

(3) If in instances from the preceding paragraphs a minor does not retain defence counsel, or the latter has not been retained by his legal representative or relatives, the juvenile judge shall appoint one *ex officio*.

Article 455

No one shall be exempt from the duty to testify about the circumstances necessary for assessing the mental development of a minor or for obtaining an insight into his personality and conditions in which he lives (Article 469).

Article 456

(1) If a minor has participated in a criminal offence jointly with adult persons, the proceedings against him shall be separated and conducted according to the provisions of this Chapter.

(2) Proceedings against a minor may only be joined with proceedings against adults and conducted according to the general provisions of this Act where joinder is necessary for a comprehensive clarification of the case. A ruling to this effect shall be rendered by the juvenile panel of the court of jurisdiction upon a reasoned motion of the public prosecutor. No appeal shall be permitted against such ruling.

(3) If joint proceedings for minors and adult offenders are conducted, the provisions of Articles 453 to 455, 458 to 461, 469, 471, the first and second paragraphs of Article 473 and Article 480 shall be applied whenever the main hearing deals with issues relating to a minor, as well as the provisions of Articles 481, 487 and 488; other provisions of this Chapter shall apply if their application is not in contradiction with joinder.

Article 457

If a person has committed a criminal offence as a minor and another criminal offence as an adult, he shall be tried in single proceedings pursuant to Article 32 of this Act, before a court which tries adults.

Article 458

(1) In cases involving minors the social welfare agency shall also have, in addition to the rights explicitly stated in this Chapter, the right to be acquainted with the course of proceedings, to make motions during the proceedings and to call attention to facts and evidence of consequence to correct adjudication.

(2) In requesting institution of proceedings against minors the public prosecutor shall always be bound to notify the competent social welfare agency thereof.

Article 459

(1) Minors shall be summoned to the court through their parents or legal representatives, save where that is not possible due to urgency of the case or to other circumstances.

(2) As regards the serving of decisions and other documents, the provisions of Article 120 of this Act shall apply; minors may not be served with documents by posting them on the bulletin board of the court, nor shall the second paragraph of Article 116 of this Act apply in this connection.

Article 460

(1) The course of criminal proceedings against minors and the judgement rendered therein may not be published without the permission of the court.

(2) Only that part of proceedings or of the decision may be published as is provided for by the permission of the court, and even in that case the name of the minor and other information from which his identity could be inferred may not be published.

Article 461

Bodies participating in proceedings against minors and other bodies and institutions whose advice, reports or opinion have been requested shall be bound to proceed efficiently in order that proceedings are brought to completion as soon as possible.

2. Composition of the court

Article 462

(1) Panels for juveniles shall exist at circuit and higher courts and the supreme court. Circuit courts shall have one or more juvenile judges.

(2) The panel for juveniles in the courts of first instance shall be composed of a juvenile judge and two juror judges. The juvenile judge shall preside over the panel.

(3) In the courts of second instance and in the supreme court panels for juveniles composed of three judges shall be determined according to the work schedule of the court.

(4) Juror judges shall be elected from among teachers, educators and other persons who have experience in the education of minors.

(5) Juvenile panels referred to in the third paragraph of this Article shall also decide appeals in other instances provided for by this Act.

(6) The juvenile judge of the court of first instance shall carry out preparatory procedure and discharge other duties in proceedings against minors.

Article 463

The court with jurisdiction to adjudicate in second instance shall decide appeals against judgements passed by the juvenile panel of the court of first instance, as well as appeals against rulings of the public prosecutor and the juvenile judge in cases provided for by this Act and also when this Act provides that decision on these appeals lies with the juvenile panel of the higher court.

Article 464

Territorial jurisdiction in proceedings against minors shall as a rule be vested in the court of the place of residence of a minor; if a minor has no permanent residence or such residence is not known, territorial jurisdiction shall be vested in the court of temporary residence of a minor. Proceedings may be conducted before the court in whose jurisdictional territory a minor who has permanent residence temporarily resides, or before the court in whose jurisdictional territory the criminal offence was committed if it is clearly more expedient to conduct proceedings before that court.

3. Institution of proceedings

Article 465

(1) Criminal proceedings against minors shall, in respect of all criminal offences, only be instituted upon the request of the public prosecutor.

(2) Proceedings for criminal offences prosecuted upon motion or by a private charge may only be instituted if the injured party files with the competent public prosecutor, within the time limit specified in Article 52 of this Act, the motion to institute proceedings.

(3) If the public prosecutor does not request the institution of proceedings against a minor, he shall notify the injured party thereof. The injured party may not assume the prosecution or file a private charge with the court, but it may, within eight days of receipt of the notice of the public prosecutor, request the juvenile panel of the court of jurisdiction to initiate proceedings.

Article 466

(1) In case of a criminal offence punishable by up to three years imprisonment or by a fine, the public prosecutor may decide not to request the institution of criminal proceedings even where evidence exists that a minor has committed a criminal offence if in view of the nature of the offence and circumstances in which it was committed, as well as in view of the past conduct of the minor and his personal traits, he finds that proceedings against him would not be appropriate. To determine these circumstances, the public prosecutor may request information from the parents or a guardian of a minor, or from other persons and institutions; he may also, if necessary, summon these persons and the minor to the Office of the Public Prosecutor to acquaint himself with these circumstances in direct communication. He may likewise require the opinion of the social welfare agency about the appropriateness of proceedings against the minor.

(2) Under conditions from the preceding paragraph and from Articles 161.a and 162 of this Act, the public prosecutor may decide to refer the criminal report to a settlement procedure or suspend criminal prosecution.

(3) When the enforcement of punishment or of an educational measure is in progress, the public prosecutor may decide not to request the institution of criminal proceedings for another criminal offence committed by the minor if, in view of the relative gravity of that offence and of the punishment or educational measure being enforced, proceedings and the imposition of punishment would be pointless.

(4) If the public prosecutor in the instances from the first and third paragraphs of this Article finds that the institution of proceedings against a minor would not serve its purpose, he shall notify thereof the social welfare agency and the injured person and give them reasons for his stand; the injured party may, within eight days, request the juvenile panel to institute proceedings.

Article 467

(1) Cases referred to in the third paragraph of Article 465 and fourth paragraph of the preceding Article shall be decided by a session of the juvenile panel after it has received the files from the public prosecutor.

(2) The juvenile panel may decide that proceedings against a minor be not instituted or be opened before the juvenile judge. No appeal shall be permitted against the ruling of the juvenile panel.

(3) If the panel decides that proceedings against a minor be opened before the juvenile judge, the public prosecutor may take part in the proceedings and shall have all rights he is entitled to in proceedings under this Act.

4. Preparatory procedure

Article 468

(1) The public prosecutor shall file the request to institute preparatory procedure with the juvenile judge of the court of jurisdiction. If the juvenile judge disagrees with the request, he shall refer the matter to the juvenile panel of a higher court.

(2) The juvenile judge may entrust the enforcement of an order on house search or the confiscation of objects to the police to perform it as provided by this Act.

Article 469

(1) Elements which should be attended to in preparatory procedure against a minor shall include, besides facts relating to the criminal offence, the determination of his age and other circumstances

necessary for the assessment of his mental development, and an inquiry into the environment and conditions in which a minor lives, as well as other circumstances concerning his personality.

(2) To determine these circumstances, the parents of the minor, his guardians and other persons who may provide useful information should be questioned. A report on these circumstances shall be sought from the social welfare agency, and where an educational measure against the minor was applied a report thereon shall also be sought.

(3) Information about the personality of the minor shall be gathered by the juvenile judge. He may also entrust this task to a specific expert (social worker, expert in the education of impaired persons and others) available at the court, or to the social welfare agency.

(4) Where an expert examination is necessary to determine the physical condition of a minor, his mental development, distinctive psychological features or disposition, experts like physicians, psychologists and educationalists shall be engaged. Such examination of the minor may be carried out in a medical or some other institution.

Article 470

(1) The juvenile judge shall determine himself how to proceed in regard of particular acts, and in carrying out these acts he shall be bound to observe the provisions of this Act to the extent that the rights of the accused to defence, the rights of the injured party and the gathering of evidence necessary to reach a decision are secured.

(2) The public prosecutor and defence counsel may attend acts of preparatory procedure. Where necessary, the questioning of a minor shall be conducted with the assistance of an educationalist or another specialist. The juvenile judge may grant permission to a welfare agency representative or the parents of the minor to attend acts of preparatory procedure. When present, these persons shall be entitled to make motions and to put questions to the person being questioned.

Article 471

(1) The juvenile judge may order that a minor be committed during preliminary proceedings to a transient home, diagnostic centre, or put under supervision of a social welfare agency, or sent to a foster home if such measures are necessary to remove him from his old surroundings or provide him with help, protection or a lodging.

(2) The expenses for the lodging of a minor shall be advanced from the budget and included in the costs of criminal proceedings.

Article 472

(1) In exceptional cases the juvenile judge may order detention for a minor if grounds exists for this as specified in the first paragraph of Article 201 of this Act.

(2) Detention order rendered by the juvenile judge may last up to one month. The juvenile panel of the same court may, for valid reasons, extend detention by another two months at most.

Article 473

(1) Minors shall be held in remand separately from adults.

(2) Notwithstanding the preceding paragraph, the juvenile judge may exceptionally order that a minor be detained together with adults whenever, with regards to the minor's personality and other circumstances in the specific case, this is in his interest and to his benefit.

(3) Minors who have been apprehended must be ensured care, protection and all necessary individual help which they might need considering to their age, sex and personality.

(4) In relation to minors in remand the juvenile judge shall have the same rights as provided by this Act for the investigating judge in relation to detainees.

Article 474

(1) After examining all circumstances relating to the criminal offence and the personality of the minor, the juvenile judge shall forward the files to the competent public prosecutor; the latter may, within eight days, move that preparatory procedure be supplemented, or may submit to the juvenile panel a reasoned motion for punishment or educational measure to be pronounced on the minor.

(2) The motion of the public prosecutor shall contain: the name and surname of the minor, his age, description of the act, evidence wherefrom it ensues that the minor has committed a criminal offence, statement of grounds with an assessment of the mental development of the minor, and the motion that the minor be punished or an educational measure ordered against him.

Article 475

(1) If the public prosecutor finds during the preparatory procedure that there are no grounds for action against the minor or that some of the reasons under paragraph one or three of Article 466 of this Act exist, he shall propose the juvenile judge discontinue proceedings. He shall inform the social welfare agency thereof.

(2) If the juvenile judge disagrees with the motion, he shall refer the issue to the juvenile panel of the higher court for decision.

(3) The third paragraph of Article 467 of this Act shall also apply in instances where the juvenile panel does not comply with the motion of the public prosecutor for discontinuation of proceedings.

Article 476

When in instances specified under Articles 467 and 475 of this Act the public prosecutor has not participated in proceedings against a minor, the juvenile judge shall, upon completion of the preparatory procedure, refer the case to the juvenile panel for adjudication.

Article 477

The juvenile judge shall be bound to report each month to the president of the court which juvenile cases are still pending and reasons for this. The president of the court shall take the necessary steps to speed up proceedings.

5. Proceedings before the juvenile panel

Article 478

(1) After receiving the motion of the public prosecutor, or at a certain point during proceedings if the latter are conducted without the motion of the public prosecutor, the juvenile judge shall schedule a panel session or the main hearing.

(2) If proceedings against a minor are conducted without the motion of the public prosecutor, the juvenile judge shall, at the beginning of the session or of the main trial, state the criminal offence with which the minor is charged.

(3) Punishments and institutional measures may only be imposed on a minor upon the main hearing. Other educational measures may also be pronounced at a panel session.

(4) The decision to hold a main hearing may be taken at a panel session.

(5) The public prosecutor, defence counsel and the representative of the social welfare agency shall be notified of the panel session which they shall be entitled to attend; the minor and his parents or guardian may, if necessary, also be informed of the session.

(6) The juvenile judge shall inform the minor of the educational measure ordered against him at the panel session.

Article 479

(1) When adjudicating on the basis of the main hearing, the juvenile panel shall proceed according to the provisions of this Act relating to the preparations, directing, adjournment, recess, record and

course of the main hearing; however, the court shall not be bound by these rules if it finds that their application in a particular instance might not be expedient.

(2) In addition to persons listed in Article 288 of this Act, the parents of the minor or his guardian and the social welfare agency shall be summoned to the main hearing. If the parents, the guardian or the welfare agency representative fail to appear, the main hearing shall proceed in their absence.

(3) In addition to the minor, the public prosecutor who has submitted the motion under Article 474 of this Act shall be bound to attend the main hearing, and in the event of mandatory defence the presence of defence counsel shall be obligatory as well.

(4) The provisions of this Act on amendments to and extension of the charges shall also apply to proceedings against minors; however, the juvenile panel shall, even in the absence of the motion of the public prosecutor, be empowered to pass its decision on the basis of a changed factual situation if such situation occurred during the main hearing.

Article 480

(1) The public shall always be excluded from trials of minors.

(2) Persons engaging in the protection and guidance of minors and suppression of juvenile delinquency, as well as scientific experts, shall be allowed to attend the main hearing, subject to the permission of the panel.

(3) During the main hearing the panel may order all or particular persons present to leave the courtroom, except the public prosecutor, defence counsel and welfare agency representative.

(4) The panel may order that the minor be removed from the session while specific evidence is taken or during the statements of the parties.

Article 481

During court proceedings the juvenile judge or the juvenile panel may order a temporary committal of the minor (Article 471) or annul an earlier decision to that effect.

Article 482

(1) The juvenile judge shall be bound to schedule the main hearing or panel session within eight days of receipt of the motion of the public prosecutor, or the conclusion of the preparatory procedure (Article 476) or decision of the panel session that the main hearing be held. Any extension of this period of time shall be subject to approval of the president of the court given to the juvenile judge.

(2) The main hearing shall only be adjourned or recessed in exceptional instances. The juvenile judge shall notify the president of the court of each adjournment or recess, giving the reasons for this.

(3) The juvenile judge shall make out a written judgement or ruling within three days of its announcement.

Article 483

(1) In deciding whether to impose punishment on a minor or apply an educational measure, the juvenile panel shall not be bound by the motion of the public prosecutor. However, if proceedings against a minor are conducted without the motion of the public prosecutor, or if the public prosecutor has withdrawn the motion, the panel may not impose punishment but may only apply an educational measure.

(2) The panel shall discontinue proceedings by a ruling in instances in which the court, pursuant to point 2, 3 or 4 of Article 357 of this Act, delivers a judgement by which it rejects the charge or acquits the defendant (Article 358), and also when it finds that it would not be expedient to pronounce either punishment or an educational measure on a minor.

(3) The panel shall also render a ruling when it pronounces an educational measure on a minor. In the operative part of the ruling, he panel shall only indicate the type of the measure applied without finding the minor guilty of the criminal offence with which he has been charged. In the statement of

grounds the panel shall describe the offence and circumstances which justify the application of such educational measure as was pronounced.

(4) The judgement imposing punishment on a minor shall be rendered in the form prescribed in Article 359 of this Act.

Article 484

(1) If punishment has been imposed on a minor, the court may pronounce him obligated to pay the costs of criminal proceedings and settle indemnification claims. If an educational measure has been ordered against a minor, the costs of proceedings shall be charged to the budget and the injured party shall be directed to seek satisfaction of his indemnification claim in a civil action.

(2) If a minor has an income or assets of his own, he may be ordered to pay the costs of criminal proceedings and to satisfy an indemnification claim even where only an educational measure has been pronounced on him.

6. Legal remedies

Article 485

(1) The judgement by which punishment has been imposed on a minor, the ruling by which an educational measure has been ordered and the ruling by which proceedings have been discontinued (second paragraph of Article 483) may be appealed against by all those entitled to appeal against judgement (Article 367), within eight days of the judgement or ruling being served.

(2) Defence counsel, the public prosecutor, the spouse, a relative by blood in direct line, the adopter, the guardian, brother, sister and foster parent may appeal in favour of a minor even against his will.

(3) An appeal against the ruling on an educational measure involving the committal of a minor to an institution shall stay the enforcement of the ruling unless the court, in agreement with the parents and upon hearing the minor, decides otherwise.

(4) The court shall only summon a minor to the session of the panel of the court of second instance (Article 378) if the presiding judge or the panel finds that his presence there would be useful.

Article 486

(1) The panel of the court of second instance may only modify the decision of the court of first instance and pronounce a harsher measure if so moved in the appeal.

(2) If the decision of the court of first instance has not imposed on a minor the punishment of confinement in juvenile prison, a fine, or an institutional measure, the panel of the court of second instance may only pronounce such type of punishment or educational measure after conducting a trial. The panel of the court of second instance may also extend a juvenile prison term and impose a higher fine or a more severe institutional measure in session.

Article 487

A request for the protection of legality may be filed against a judicial decision by which law has been violated, as well as against an incorrect pronouncement of punishment or an educational measure on a minor.

Article 488

The provisions on the reopening of criminal proceedings concluded by a final judgement shall apply *mutatis mutandis* to the reopening of proceedings concluded by a final ruling on the application of an educational measure.

7. Judicial supervision over the implementation of measures

Article 489

(1) The administration of the institution executing the educational measure against a minor shall report every six months on the conduct of the minor to the court which pronounced the educational measure. The juvenile judge may pay personal visits to minors committed to the institution.

(2) The juvenile judge may inform himself about the enforcement of other educational measures through the intermediary of a social welfare agency, and may entrust this task to a particular specialist (social worker, expert in the education of impaired persons and others) if there is one on the court staff. The social welfare agency shall, every six months at least, report to the court which pronounced an educational measure on the implementation thereof.

8. Discontinuance of the execution and modification of decisions on educational measures

Article 490

(1) The decision to modify the ruling on an educational measure shall be passed by the court which rendered such ruling in first instance after statutory conditions for this have been fulfilled and after the court has found that modification is necessary or a motion to that effect has been made by the public prosecutor, the warden of the institution or the social welfare agency to which the supervision of the minor has been entrusted.

(2) Before rendering the decision the court shall hear the opinion of the public prosecutor, the minor, his parents or his guardian or other persons, and it shall request the necessary reports from the institution to which the minor has been committed, from the welfare agency or from other bodies and institutions.

(3) The court shall also proceed as provided by the preceding paragraphs when it considers discontinuance of the execution of an educational measure.

(4) Discontinuance or modification of an educational measure shall be decided by the juvenile panel. In deciding, consideration must be given to the success or failure of the implementation of the educational measure and the minor's participation therein.

SECTION THREE

SPECIAL PROCEEDINGS

Chapter Twenty-Eight

PROCEEDINGS FOR THE APPLICATION OF SECURITY MEASURES, CONFISCATION OF PROCEEDS, BRIBES AND MONEY OR PROPERTY OF UNLAWFUL ORIGIN AND REVOKING OF SUSPENDED SENTENCE

Article 491

(1) If a accused has committed a criminal offence in a state of mental incapacity, the public prosecutor shall make a motion to the court to order compulsory psychiatric treatment and custody of such perpetrator in a medical institution, or compulsory psychiatric treatment of the perpetrator at liberty, if grounds for such measure exist as provided by Articles 64 and 65 of the Penal Code.

(2) If the accused is in detention, he shall be committed to the appropriate medical institution until proceedings for the application of a security measure have been completed.

(3) Where the motion from the first paragraph of this Article has been made, the accused shall be bound to have defence counsel.

Article 492

(1) The decision on the measure of compulsory psychiatric treatment and custody in a medical institution or on compulsory psychiatric treatment at liberty shall be made, following a trial, by the court of jurisdiction in first instance.

(2) In addition to persons who must be summoned to the main hearing, psychiatrists from the institution to which the examination of mental capacity of the accused was entrusted shall also be summoned as experts. The accused shall be summoned if his condition permits his attendance at the main hearing. The spouse, the parents or the guardian of the accused shall be notified of the main hearing and, considering the specific circumstances, other close relatives as well.

(3) If the court finds on the basis of evidence taken that the accused has committed a specific criminal offence and that at the time of commission of the criminal offence he was mentally incapable, it shall decide, after examinations of the persons summoned, on the basis of findings and opinion of experts, whether or not to pronounce the security measure of compulsory psychiatric treatment and custody in a medical institution or compulsory psychiatric treatment at liberty. In deciding which of these security measures to pronounce, the court shall not be bound by the motion of the public prosecutor.

(4) The court shall discontinue proceedings for application of a security measure if it finds that grounds do not exist for this, or if the public prosecutor has withdrawn the motion for such measure at the main hearing.

(5) The ruling may be challenged within eight days of the serving by all those entitled to appeal against the judgement (Article 367), save the injured party.

(6) If the public prosecutor in the instance referred to in the fourth paragraph of this Article, with the accused present at the main hearing, waives the right to appeal, he shall be entitled to file a charge sheet or a summary charge sheet immediately, or within eight days at the latest from the day he waived the right to appeal.

Article 493

Security measures referred to in the first paragraph of Article 491 of this Act may also be pronounced when, at the main hearing, the public prosecutor modifies the filed charge sheet or summary charge sheet in such a way as to move for the aforesaid measures to be pronounced.

Article 494

When imposing punishment on a person who committed criminal offence in a state of substantially diminished mental capacity the court shall, by the same judgement, pronounce the security measure of compulsory psychiatric treatment and custody in a medical institution if it finds that statutory conditions exist for this (Article 64 of the Penal Code).

Article 495

The final decision imposing the security measure of compulsory psychiatric treatment and custody in a medical institution or compulsory psychiatric treatment at liberty (Articles 492 and 494) shall be sent to the court vested with jurisdiction to decide on the deprivation of contractual capacity. The decision shall also be reported to the social welfare agency.

Article 496

(1) The court of first instance which pronounced the security measure of compulsory psychiatric treatment and custody of the perpetrator in a medical institution or compulsory psychiatric treatment of the perpetrator at liberty shall, *ex officio* or on the motion of the medical institution and on the basis of the opinion of specialists, adopt all further decisions in respect of the duration and modification of the measure referred to in Articles 64 and 65 of the Penal Code.

(2) The decisions from the preceding paragraph shall be adopted at a panel session (sixth paragraph of Article 25). Notification of the session shall be sent to the public prosecutor and defence counsel.

Before taking the decision the court shall hear the perpetrator if necessary and if his condition permits of it.

(3) In proceedings to reconsider the duration or modification of security measure referred to in the first paragraph of this Article, the perpetrator must have defence counsel.

(4) If the court orders the release of a person with diminished mental capacity because of the expiry of the term specified in paragraph three of Article 64 of the Penal Code, it shall notify thereof the court having jurisdiction to decide on the retaining of persons in psychiatric institutions.

Article 497

(1) The court shall decide whether or not to apply the security measure of compulsory treatment of alcoholics and drug addicts after securing the findings and opinions of experts. Experts shall be bound to give their opinion on the possibility of treatment of the accused.

(2) Where the court, in imposing a suspended sentence, ordered medical treatment for the accused at liberty and the latter did not commence to receive the treatment or abandoned it, the court may, on its own authority or upon the motion of the institution in which the accused was treated or ought to have been treated, and after hearing the views of the accused and the public prosecutor, if proceedings were instituted on his request, revoke the suspended sentence.

(3) The court shall discontinue the execution of the security measure referred to in the first paragraph of this Article if treatment is no longer necessary or the period of time specified in paragraph four of Article 66 of the Penal Code has expired.

Article 498

(1) Objects which pursuant to criminal law may or must seized shall be seized even when criminal proceedings do not end in a verdict of guilty if there is a danger that they might be used for a criminal offence or where so required by the interests of public safety or by moral considerations.

(2) A special ruling thereon shall be issued by the authority before which proceedings were conducted at the time when proceedings ended or were discontinued.

(3) The court shall render the ruling on the confiscation of objects from the first paragraph of this Article even where a provision to that effect is not contained in the judgement by which the defendant was found guilty.

(4) A certified copy of the decision on the confiscation of objects shall be served on the owner if his identity is known.

(5) The owner of the objects shall be entitled to appeal against the decision referred to in the second and third paragraphs of this Article if he considers that statutory grounds for confiscation do not exist. If the ruling from the second paragraph of this Article was not rendered by the court, the appeal shall be decided by the panel (sixth paragraph of Article 25) of the court which would have had the jurisdiction to adjudicate in first instance.

Article 498.a

(1) Except in instances where criminal proceedings are concluded with a judgement by which the accused is found guilty, money or property of unlawful origin referred to in Article 252 of the Penal Code and illegally given or accepted bribes referred to in Articles 162, 168, 247, 248, 267, 268, 269 and 269.a of the Penal Code shall also be confiscated:

1) if those elements of criminal offences referred to in Article 252 of the Penal Code which indicate that money or property from the aforementioned Article originate from criminal offences are proven, or

2) if those elements of criminal offences from Articles 162, 168, 247, 248, 267, 268, 269 and 269.a of the Penal Code which indicate that a reward, gift, bribe or any other form of a material benefit was given or accepted are proven.

(2) The panel shall issue a special ruling on this (sixth paragraph of Article 25) at the reasoned motion of the public prosecutor; prior to this, the investigating judge shall, at the request of the panel,

collect data and investigate all the circumstances of importance for the determination of unlawful origin of money or property or illegally given or received bribes.

(3) A certified copy of the ruling from the preceding paragraph shall be served on the owner of the confiscated money or property or bribe, if he is known. If the owner is unknown, the ruling shall be posted on the bulletin board of the court and, after eight days, the unknown owner shall be deemed to have been served.

(4) Owners of confiscated money or property or bribes shall have the right to appeal against the ruling referred to in the second paragraph of this Article if they believe that there were no legal grounds for the confiscation.

Article 499

(1) Proceeds gained through the commission of a criminal offence or by reason of the commission thereof shall be determined in criminal proceedings *ex officio*.

(2) The court and other agencies conducting the proceedings shall be bound to gather evidence and inquire into circumstances material to the determination of proceeds.

(3) If the injured party has filed an indemnification claim to recover the objects acquired by the commission of a criminal offence or to receive the monetary equivalent thereof, the proceeds shall only be determined for that part which exceeds the indemnification claim.

Article 500

(1) Where the confiscation of proceeds from another recipient of the proceeds is indicated (Articles 96 ad 98 of the Penal Code) the latter shall be summoned for questioning in preliminary procedure and at the main hearing. If a legal entity is involved, summons shall be served on its representative. In the summons, the latter shall be informed that proceedings may be conducted in his absence.

(2) The representative of a legal person shall be examined at the main hearing, after the accused. The same shall apply in respect of another recipient of proceeds if he was not summoned as a witness.

(3) The recipient of proceeds and the representative of a legal person shall, in connection with determination of proceeds, be entitled to move for evidence to be taken and, with the permission of the presiding judge, to put questions to the accused, witnesses and experts.

(4) The exclusion of the public from the main hearing shall not apply in respect of the recipient of proceeds and the representative of a legal person.

(5) If the court only finds at the main hearing that the issue of confiscation of proceeds demands to be considered, it shall interrupt the main hearing and summon the recipient of the proceeds or the representative of the legal person.

Article 501

The court shall fix the amount of proceeds using its discretion if an accurate determination would entail undue difficulties or the proceedings would thereby be unduly protracted.

Article 502

(1) When the confiscation of proceeds is taken into consideration in the criminal procedure and there is a danger that the accused alone or through other persons should use these proceeds for a further criminal activity or to conceal, alienate, destroy or otherwise dispose of it in order to prevent or render substantially difficult their confiscation after the completed criminal procedure, the court shall order, on a motion of the public prosecutor, a provisional securing of the request for the confiscation of proceeds.

(2) The court may also order such provisional securing in the pre-trial procedure if there are reasonable grounds for suspicion that a criminal offence has been committed by means of which or for which the proceeds were acquired or such proceeds were acquired for another person or transferred to another person.

(3) The securing referred to in the preceding paragraphs may be ordered against the accused or suspect, against the recipient of the proceeds or against another person to whom they were transferred provided they can be confiscated as laid down in the provisions of the Penal Code.

Article 502.a

(1) The provisional securing of the request for the confiscation of proceeds shall be ordered by a ruling issued by the investigating judge in the pre-trial procedure and during the investigation. After charge sheet is filed, the ruling out of the main hearing shall be issued by the presiding judge, while at the main hearing it shall be issued by the panel.

(2) The ruling referred to in the preceding paragraph shall be served on the public prosecutor, suspect or accused, and the person against whom the provisional securing was ordered (participants). The ruling shall be submitted to the competent authority or person to execute it. The ruling shall be served on the suspect or accused and person against whom the provisional securing is ordered simultaneously with its enforcement or after it, however, without undue delay.

(3) The authority rendering the ruling shall enable the suspect or accused and the person against whom the provisional securing was ordered to get acquainted with all the files of the case.

(4) If the provisional securing is not ordered, the ruling shall only be served on the public prosecutor who may lodge an appeal against the ruling.

(5) The suspect or accused or the person against whom the provisional securing is ordered may raise an objection against the ruling referred to in the first paragraph of this Article within eight days from the date of service of the ruling, and shall propose that the court should hold a hearing. The court shall serve the objection on other participants and shall fix a time limit for reply. The objection shall not stay the execution of the ruling.

(6) The court shall decide on the hearing with regard to the circumstances of the case, taking into account the indications in the objection. If the court does not schedule a hearing, it shall decide the objection on the basis of the documents and other material submitted and shall state the grounds for its decision in the ruling on the objection (eighth paragraph of this Article).

(7) In the objection and at the hearing, the objector and other participants must be enabled to make a statement about the proposed and ordered measures, to present their positions, statements and motions concerning all the issues of provisional securing.

(8) When the participants of the hearing make a statement about all the issues and produce evidence if necessary to decide on the objection, the court shall decide on the objection. By the ruling on the objection, the court shall dismiss the objection by applying Article 375 *mutatis mutandis*, declare the objection admissible and repeal or amend the ruling ordering the provisional securing, or reject the objection.

(9) The participants shall have a right to make an appeal against the ruling referred to in preceding paragraph. An appeal shall not stay the execution of the ruling.

Article 502.b

(1) In the ruling ordering provisional securing, the court shall specify the property which is the subject to the provisional securing, the manner of securing (first paragraph of Article 272 and first paragraph of Article 273 of the Execution of Judgements in Civil Matters and Insurances of Claims Act) and the duration of the measure. The ruling shall include an explanation.

(2) In determining the term of duration of a measure, the court must consider the stage of criminal proceedings, type, nature and seriousness of the criminal offence, complexity of the case, and the volume and significance of the property being subject to the provisional securing.

(3) In the pre-trial procedure and after the issue of the ruling on the introduction of investigation, the provisional securing may take three months. After the charge sheet has been filed, the duration of the provisional securing shall not be longer than six months.

(4) The period referred to in the preceding paragraph may be extended by the same periods. The total duration of the provisional securing prior to the introduction of the investigation or, if an investigation was not introduced, prior to the filing of the charge sheet, shall not be longer than one

year. In the investigation, the total duration of provisional securing shall not be longer than two years. After the filing of the charge sheet until the pronunciation of the judgment by the court of first instance, the total duration of provisional securing shall not exceed three years.

(5) Until the execution of the final court decision on the confiscation of proceeds, the total provisional securing may not last longer than ten years.

Article 502.c

(1) The court may, by a ruling, extend the provisional securing ordered by a ruling from the first paragraph of Article 502.a of this Act upon a reasoned motion of the public prosecutor, taking into consideration the criteria referred to in the first paragraph of Article 502 of this Act and the time limits referred to in the fourth and fifth paragraph of Article 502.b of this Act. Prior to its decision on the motion, the court shall submit the motion to other participants to make a statement about it and set a reasonable time limit for reply.

(2) On a reasoned motion of the public prosecutor, the suspect or accused or the person against whom a provisional securing was ordered and taking into consideration the criteria referred to in the first paragraph of Article 502 of this Act, the court may order a new manner of securing and repeal the former ruling on provisional securing. Prior to its decision on the motion, the court shall submit the motion to other participants to make a statement about it and set a reasonable time limit for reply. The decision repealing the measure shall be executed after the execution of the decision by which the new manner of provisional securing is ordered.

(3) The court shall abolish provisional securing on a motion of participants. The court may also abolish the provisional securing *ex officio* due to the expiry of the time limit or if the public prosecutor dismisses crime report or states that he will not institute the criminal prosecution or that he abandons it. The public prosecutor shall notify the court of his decision.

(4) If the court considers that the provisional securing is no longer necessary, it shall invite the public prosecutor to make a statement about it within a specified time limit. If the public prosecutor does not make a statement within the time limit or if he does not oppose the abolition of provisional securing, the court shall abolish the provisional securing.

Article 502.č

The court must take a decision on the motion for ordering, extension, amendment or abolition of provisional securing particularly speedily. If provisional securing was ordered, the authorities in the pre-trial procedure must proceed in with particular speed, and the criminal procedure shall be considered preferential.

Article 502.d

In the procedure for provisional securing of the confiscation of proceeds, the provisions of the Execution of Judgements in Civil Matters and Insurance of Claims Act concerning the method of securing (first paragraph of Article 272 and first paragraph of Article 273), exemptions and limitations of securing, proving of risk (second, third and fourth paragraphs of Article 270 and second and third paragraphs of Article 272), effects of the decision (article 268) and compensation for damage (Article 279) shall be applied *mutatis mutandis*.

Article 503

(1) The court may impose confiscation of proceeds in the judgement by which it finds the defendant guilty, in the ruling on judicial admonition or the ruling on educational measure, as well as in the ruling on security measure referred to in Articles 64 and 65 of the Penal Code.

(2) In the operative part of the judgement or ruling, the court shall specify the object and the sum confiscated. Where good grounds exist the court shall permit the payment of proceeds in instalments, fixing the time limit and the amounts thereof.

(3) Where the court has imposed the confiscation of proceeds on the recipient or a legal person, a certified copy of the judgement or ruling shall be served on the recipient of proceeds or the representative of a legal person, respectively.

Article 504

The legal person and the recipient of proceeds referred to in Article 500 of this Act may request the reopening of criminal proceedings in regard of the decision on confiscation of proceeds.

Article 505

The second and third paragraphs of Article 368, and Articles 376 and 380 of this Act shall apply *mutatis mutandis* to the appeal against the decision on confiscation of proceeds.

Article 506

(1) Where a suspended sentence provides that punishment shall be imposed in case of failure to return proceeds, to recover damage or to meet some other obligation and the convicted person fails to comply with that provision within a specified period of time, the court which adjudicated in first instance shall, on the motion of the authorised prosecutor or the injured party, or *ex officio*, institute proceedings to revoke suspended sentence.

(2) The judge assigned for this shall question the convicted person if he can be reached and shall conduct the necessary inquiries to determine facts and collect evidence material to adjudication, whereupon he shall send the files to the panel (sixth paragraph of Article 25).

(3) Thereupon the presiding judge shall schedule the session of the panel, of which he shall notify the prosecutor, the convicted person and the injured party. The panel shall hold a session whether the duly summoned parties and the injured person appear or fail to comply with the summons.

(4) If the court establishes that the convicted person has failed to comply with the obligation imposed on him by the judgement, it shall render a judgement whereby suspended sentence shall be revoked and punishment imposed, or it shall fix a new time limit for the fulfilment of the obligation, or annul that stipulation altogether. If the court finds that there are no grounds for any of these decisions, it shall, by a ruling, discontinue the proceedings for the revocation of the suspended sentence.

Article 506.a

(1) The court which ordered the storage of confiscated objects or the provisional securing of a request for the confiscation of proceeds or property in the value of the proceeds, shall proceed with particular speed in such instances. It shall act as a good manager with respect to the confiscated objects and property serving as provisional security, as well as to objects and property given as bail (Articles 196 to 199).

(2) If the storage of the confiscated objects or the provisional securing of a request from the preceding paragraph involves disproportionate costs or if the value of the property or the objects is decreasing, the court may order that such property or objects be sold, destroyed or donated for the public benefit. Prior to taking a decision on this, the court must obtain the opinion of the owner of the property or objects. If the owner is not known or it is not possible to service the owner with the summons to give an opinion, the court shall post the summons on the bulletin board of the court and after eight days it shall be deemed that the service has taken place. If the owner does not give an opinion within eight days after the service of the summons, it shall be deemed that he has consented to the property or objects being sold, destroyed or donated.

(3) Relevant state bodies, organisations with public authorisation, executors and financial organisations shall take care of the storage of the confiscated objects and bail and of the provisional securing of requests referred to in the first paragraph of this Article.

(4) The procedure for managing confiscated objects and property and bails referred to in the first paragraph of this Article shall be prescribed by the Government of the Republic of Slovenia.

Article 507

(1) Unless stipulated otherwise in this Chapter, other provisions of this Act shall apply *mutatis mutandis* to the procedure for the application of security measures, confiscation of proceeds, bribes and money or property of unlawful origin, and revocation of suspended sentence.

(2) The provisions of Articles 498.a to 506.a of this Act which refer to the confiscation of money or property of unlawful origin, bribes and other proceeds shall apply *mutatis mutandis* to the confiscation of property in a value matching the proceeds (Articles 96 and 98 of the Penal Code).

(3) The provisions of Article 499 of this Act shall apply *mutatis mutandis* to the pre-trial and investigative procedure; in addition to the bodies before which the criminal procedure is taking place, other bodies stipulated by this Act shall also participate in the collecting of data and the investigation of the circumstances material for the determination of proceeds.

Chapter Twenty-Nine

PROCEEDINGS REGARDING THE DECISION ON CANCELLATION OF SENTENCE AND CESSATION OF SECURITY MEASURES AND LEGAL CONSEQUENCES OF THE SENTENCE

Article 508

(1) Where the law provides for a sentence to be cancelled after the expiry of a specific period of time provided that the offender does not commit a new criminal offence within that time (Article 103 of the Penal Code), the ministry responsible for justice shall, *ex officio*, pass a decision cancelling the sentence.

(2) Prior to passing of the decision on the cancelling of the sentence, the necessary inquiries shall be made and, in particular, information shall be gathered as to the possibility of criminal proceedings being in progress against the convicted person for a criminal offence committed before the expiry of the period of time prescribed for the cancellation of the sentence.

Article 509

(1) If the ministry responsible for justice fails to pass a decision on the cancellation of the sentence, the convicted person may file a request for the determination that the sentence is cancelled by law.

(2) If the ministry responsible for justice fails to pass the decision within thirty days of the receipt, the convicted person may request that a ruling cancelling the sentence be rendered by the court which passed the judgement in first instance.

(3) Such request shall be decided by the court after hearing the opinion of the public prosecutor if proceedings were instituted upon his request.

Article 510

If the suspended sentence is not revoked a year after the expiry of the probationary period, the court which adjudicated in first instance shall render a ruling by which it shall cancel the sentence. The ruling shall be served on the convicted person, the public prosecutor if proceedings were conducted on his request and on the ministry responsible for justice.

Article 511

(1) Proceedings for the cancellation of sentence on the basis of a judicial decision (Article 104 of the Penal Code) shall be instituted upon petition of the convicted person.

(2) The petition shall be filed with the court which adjudicated in first instance.

(3) The judge assigned for this shall first examine whether the statutory period of time has expired, whereupon he shall make the necessary inquiries to determine the facts alleged in the petition and gather evidence on all circumstances relevant to the decision.

(4) The court may request a report on the conduct of the petitioner from the police unit in whose territory he has resided after serving his sentence, and may request a similar report from the administration of the institution in which he served the sentence.

(5) After completing the inquiries and upon hearing the opinion of the public prosecutor if proceedings were conducted on his request, the judge shall send the files together with a reasoned motion to the panel (sixth paragraph of Article 25).

(6) The decision of the court regarding the cancellation of the sentence may be appealed against by the petitioner and the public prosecutor.

(7) If the court rejects the petition on the ground that the conduct of the petitioner does not warrant the cancellation of the sentence, the petitioner may repeat the petition after a lapse of two years from the day the ruling rejecting the petition became final.

Article 512

A revoked sentence may not be mentioned in certificates issued on the basis of criminal records for the exercising of rights of individuals.

Article 513

(1) Proceedings on the cessation of security measures of prohibition from practising a profession and the withdrawal of driving licence (fourth paragraph of Article 67 and fifth paragraph of Article 68 of the Penal Code) and proceedings on the cessation of legal consequences of the sentence (third paragraph of Article 101 of the Penal Code) shall be instituted upon petition of the convicted person, filed with the court which adjudicated in first instance.

(2) The judge assigned for this shall first examine whether the statutory period of time has expired, whereupon he shall make the necessary inquiries to determine the facts alleged in the petition and gather evidence on all circumstances relevant to the decision.

(3) The judge may request a report on the conduct of the convicted person from the police unit in whose territory the convicted person has resided after he has served his sentence, or received remission, or the main sentence has become statute-barred; the judge may also request a similar report from the institution in which the convicted person served the sentence.

(4) On completing the inquiries and after hearing the opinion of the public prosecutor if proceedings were instituted on his request, the judge shall send the files together with a reasoned motion to the panel (sixth paragraph of Article 25).

(5) An appeal may be lodged against the ruling of the panel by the public prosecutor and the convicted person.

(6) If the petition of the convicted person is rejected, a new petition may not be filed before the expiry of one year from the day the ruling rejecting the previous petition became final.

Chapter Thirty

PROCEDURES FOR INTERNATIONAL LEGAL AID AND THE IMPLEMENTATION OF INTERNATIONAL AGREEMENTS ON MATTERS OF CRIMINAL LAW

Article 514

International aid in criminal matters shall be administered pursuant to the provisions of this Act, unless provided otherwise by international agreements.

Article 515

(1) Petitions of domestic courts for legal aid in criminal matters shall be transmitted to foreign bodies through diplomatic channels. Foreign petitions for legal aid from domestic courts shall be transmitted in the same manner.

(2) In emergency cases and on condition of reciprocity, requests for legal assistance may be sent through the ministry responsible for internal affairs, or in instances of criminal offences of money laundering or criminal offences connected to the criminal offence of money laundering, also to the body responsible for the prevention of money laundering.

(3) If reciprocity applies or if so determined by an international treaty, international legal aid in criminal matters may be exchanged directly between the domestic and foreign bodies participating in the pre-trial procedure and criminal proceedings. In this, modern technical facilities, in particular computer networks and devices for the transmission of picture, voice and electronic impulses, may be used.

Article 516

(1) The ministry responsible for foreign affairs shall send petitions for legal aid received from foreign bodies to the ministry responsible for justice, which shall forward them for consideration to the circuit court in whose territory resides the person who should be served with a document, or interrogated, or confronted, or in whose territory another investigative act should be conducted.

(2) In instances referred to in the second paragraph of Article 515 of this Act, petitions shall be transmitted to the court by the ministry responsible for internal affairs.

(3) The permissibility and the manner of performance of an act requested by a foreign body shall be decided by the court pursuant to domestic regulations.

(4) If a petition relates to a criminal offence for which no extradition is provided by domestic regulations, the court shall consult the ministry responsible for justice as to whether to grant the request or not.

Article 517

(1) Domestic courts may grant the request of a foreign body for execution of a judgement of conviction passed by a foreign court if so provided by the international agreement or if reciprocity exists.

(2) In the instance referred to in the preceding paragraph the domestic court shall execute punishment imposed by a final judgement of a foreign court by imposing sanction in accordance with the criminal law of the Republic of Slovenia.

(3) The court of jurisdiction shall pass judgement in the panel of judges referred to in the sixth paragraph of Article 25 of this Act. The public prosecutor and defence counsel shall be notified of the session of the panel.

(4) Territorial jurisdiction of the court shall be determined according to the last permanent residence of the convicted person in the Republic of Slovenia; if a convicted person had no permanent residence in the Republic of Slovenia territorial jurisdiction shall be determined according to his place of birth. If the convicted person neither had permanent residence nor was born in the Republic of Slovenia, the supreme court shall assign the conduct of proceedings to one of the courts of subject-matter jurisdiction.

(5) In the operative part of the judgement referred to in the third paragraph of this Article, the court shall enter in full the operative part of the judgement of the foreign court and the name of the foreign court and shall pronounce sanction. In the statement of grounds the court shall state the grounds for the sanction which it has passed.

(6) An appeal may be lodged against the judgement by the public prosecutor, the convicted person and his defence counsel.

(7) If an alien sentenced by a domestic court, or a person authorised under a contract, files with the court of first instance petition for the convicted person to serve the sentence in his country, the court shall be entitled to grant petition if so provided by the international agreement or if reciprocity exists.

Article 518

In the case of criminal offences of counterfeiting money and putting it into circulation, illicit production, processing and sale of narcotics and poisons, white slavery, production and dissemination of pornographic material or some other criminal offence for which centralisation of data has been provided under international agreements, the body which conducts criminal proceedings shall immediately send to the ministry responsible for internal affairs data about the criminal offence and its perpetrator, and the court of first instance shall in addition send the final judgement. Whenever the criminal offence of money laundering, or criminal offences connected to money laundering is involved, the data shall be sent without delay to the body responsible for the prevention of money laundering.

Article 519

(1) If an alien who permanently resides in a foreign country commits a criminal offence in the territory of the Republic of Slovenia, all files for criminal prosecution and adjudication may, beside conditions specified in Article 522 of this Act, be surrendered to the foreign country if it does not oppose this.

(2) Before the ruling on investigation has been rendered, the decision on the surrender of files shall lie with the competent public prosecutor. During the investigation the surrender shall be decided by the investigating judge upon motion of the public prosecutor, and until the opening of the main hearing it shall be decided by the panel (sixth paragraph of Article 25) who shall also handle matters from the jurisdiction of the district court.

(3) The bodies from the preceding paragraph shall, in considering the surrendering of criminal files, also take into account the hitherto and future costs of criminal proceedings from inception to end.

(4) The surrender of criminal files may be allowed where criminal offences punishable by up to ten years imprisonment are involved, as well as in case of criminal offence against safety of public transport.

(5) The surrender of criminal files shall not be allowed if the injured party is a citizen of the Republic of Slovenia who opposes it, except where his indemnification claim has been secured.

(6) The surrendering of criminal files shall not be permitted in instances where confiscation, or a provisional securing of the request for confiscation of money or property of unlawful origin referred to in Article 252 of the Penal Code, or an illegally given or accepted bribe referred to in Articles 162, 168, 247, 248, 267, 268 and 269 of the Penal Code was ordered, save where the court issued the aforesaid orders on the initiative of a foreign country. In these instances, and in instances where a provisional securing of the request for confiscation of proceeds was ordered in conjunction with other criminal offences, the bodies referred to in the second paragraph of this Article may only surrender criminal file to another country if, prior to surrendering it, they satisfy themselves that the country in question has an appropriate legislation in connection with the confiscation of proceeds and surrendering of criminal files to another country, and if they take into consideration the value of the provisionally secured proceeds.

(7) If the accused is in remand the foreign country shall be requested through the shortest possible channels to report within fifteen days if it assumes prosecution.

Article 520

(1) The request of a foreign country that the Republic of Slovenia should assume prosecution of a citizen of the Republic of Slovenia, or a person with permanent residence in the Republic of Slovenia, for a criminal offence committed abroad shall be transmitted, together with the files, to the competent public prosecutor in whose territory that person has permanent residence.

(2) Indemnification claims filed with the competent body of a foreign country shall be treated as if they have been filed with the court of jurisdiction.

(3) Information about the refusal to assume criminal prosecution and the final decision thereon shall be sent to the foreign country which requested that the Republic of Slovenia assume prosecution.

Chapter Thirty-One

PROCEEDINGS FOR THE EXTRADITION OF ACCUSED AND CONVICTED PERSONS

Article 521

(1) Unless provided otherwise in the international agreement, the extradition of accused and convicted persons shall be requested and carried out pursuant to the provisions of this Act.

(2) An alien may only be extradited in instances provided for by the international agreements binding on the Republic of Slovenia.

Article 522

The preconditions for extradition shall be:

1) that person whose extradition is requested is not a citizen of the Republic of Slovenia, except in instances defined by an international agreement binding on the Republic of Slovenia;

2) that the act which prompted the request for extradition was not committed in the territory of the Republic of Slovenia against the Republic or a Slovenian citizen;

3) that the act which prompted the request for extradition is a criminal offence both within the meaning of the domestic law and the law of the country in which it was committed;

4) that under the domestic law criminal prosecution or the execution of punishment was not statute-barred before the alien was detained or interrogated as an accused person;

5) that the alien whose extradition is requested has not been convicted of the same offence by the domestic court or has not been acquitted under a final decision of the domestic court, or criminal proceedings against him have been suspended by a final decision, or the charge against him has been rejected by a final decision, or that in the Republic of Slovenia criminal proceedings have not been instituted against the alien for the same offence committed against the Republic of Slovenia, and - in the event that criminal proceedings have been instituted for an offence committed against a citizen of the Republic of Slovenia - that the indemnification claim of the injured party has been secured;

6) that the identity of the person whose extradition is requested has been established;

7) that there is sufficient evidence to suspect that the alien whose extradition is requested has committed a criminal offence, or that a final judgement exists thereon.

Article 523

(1) Proceedings for extradition of an accused or convicted alien shall be instituted on petition of a foreign country.

(2) The petition shall be submitted through diplomatic channels.

(3) A petition for extradition shall be accompanied by:

1) means of identification of the accused or convicted person (accurate description, photographs, fingerprints and similar);

2) certificate or other data about the alien's citizenship;

3) the charge sheet, or judgement, or detention order, or another equivalent document, in the original or a certified copy. These papers shall contain: the name and surname of the person whose extradition is requested and other data necessary to establish his identity, the description of the act, statutory qualification of the act, and evidence on which suspicion rests;

4) an extract from the criminal law of a foreign country to be applied, or which was applied, against the accused regarding the offence which prompted the request for extradition; if the offence was committed in a third country, also an extract from the criminal low of that country.

(4) If the petition and annexes were drawn up in a foreign language, a certified copy of translation into Slovenian shall be enclosed.

Article 524

(1) The ministry responsible for internal affairs shall transmit the petition for extradition of an alien through the ministry responsible for justice to the investigating judge in whose territory the alien resides or in whose territory he is to be found.

(2) If the permanent or temporary residence of the alien whose extradition is requested is not known, his whereabouts shall first be established through the police.

(3) If the petition complies with the conditions specified in the preceding Article and if grounds for detention as specified in Article 201 of this Act exist, the investigating judge shall order that the alien be detained, or shall take other steps to secure his presence, unless it is clear from the petition itself that extradition is impermissible.

(4) The investigating judge shall immediately upon establishing the identity of the alien inform him why and on what grounds his extradition is requested, whereupon he shall invite the alien to say what he has to say in his defence.

(5) The examination and the statement of the alien shall be entered in the record. The investigating judge shall instruct the alien that he may retain a counsel, or shall appoint one for him *ex officio* if a criminal offence for which defence is mandatory is involved or if detention against the alien has been ordered.

Article 525

(1) In urgent cases where there is a danger that the alien might flee or go into hiding the police shall be allowed to arrest the alien upon petition by a foreign competent body, irrespective of the manner in which the petition was sent. The petition should contain the data necessary for the establishment of identity of the alien, the type and designation of the criminal offence, the number of the decision together with the date, place and address of the foreign body which ordered detention and the statement that extradition shall be requested by a regular route.

(2) The police shall, without any delay, bring the arrested alien before the investigating judge of the court with jurisdiction for interrogation. If the investigating judge orders detention against the alien, the investigating judge shall notify the ministry responsible for foreign affairs thereof.

(3) The investigating judge shall release the alien if grounds for detention cease to exist or if the request for extradition is not filed within the time determined by him in allowing for the distance of the requesting country from Slovenia; this period of time may not be in excess of three months from the day the alien was detained. The foreign country shall be notified of the aforesaid time limit. Upon petition by the foreign country the panel of the court of jurisdiction may extend this period by two months at most in well-founded instances.

(4) If the petition is filed within the fixed time the investigating judge shall proceed as provided by the third and fourth paragraphs of the preceding Article.

Article 526

(1) After hearing the views of the public prosecutor and defence counsel the investigating judge shall perform, if necessary, other investigative acts to determine if grounds exist for the extradition of the alien or the delivery of objects upon which or by means of which the criminal offence was committed, provided such objects were seized from the alien.

(2) On completing inquiries the investigative judge shall send the files to the panel (sixth paragraph of Article 25), together with his opinion on the matter.

(3) If criminal proceedings for the same or another criminal offence are in progress before a domestic court against the alien whose extradition is requested, the investigating judge shall put a note thereon in the files.

Article 527

(1) If the panel of the circuit court finds that statutory prerequisites for extradition have not been fulfilled, it shall render a ruling rejecting the request for extradition. The court shall, *ex officio*,

forward the ruling to the court of second instance which, after hearing the opinion of the public prosecutor, may affirm, annul or modify the ruling.

(2) If the alien is in remand the panel of the court of first instance may decide that he remain in custody until the ruling by which extradition has been rejected becomes final.

(3) The final ruling by which extradition is rejected shall be transmitted via the ministry responsible for justice to the ministry responsible for foreign affairs, which shall notify the foreign country thereof.

Article 528

If the panel of the circuit court finds that the statutory prerequisites for extradition (Article 522) have been fulfilled, it shall confirm such finding by a ruling. The alien shall have the right to lodge an appeal against this ruling with the court of second instance.

Article 529

If the court of second instance finds upon appeal that the statutory prerequisites for extradition of the alien have been fulfilled, or no appeal against the ruling to that effect of the court of first instance has been filed, it shall refer the matter to the minister responsible for justice who shall decide on extradition.

Article 529.a

(1) If an international agreement so determines, the extradition of an alien may be permitted at the request of the foreign extradition or remand body, with the purpose of effecting extradition without implementation of the procedure from Articles 526 to 529 of this Act if the alien, after being instructed by the investigating judge, states that he agrees with his extradition.

(2) In the case referred to in the preceding paragraph the alien may, after being instructed by the investigating judge, withdraw from the application of the provisions referred to in Article 531 of this Act.

(3) Consent to extradition may be withdrawn until the decision from the fifth paragraph of this Article is taken by the minister responsible for justice.

(4) When taking testimony the investigating judge shall inform the alien of the possibility of consenting to extradition, instruct him that consent to extradition is voluntary and that it is only possible to withdraw consent until the decision is taken by the minister responsible for justice, and warn him that, should he consent to extradition, the decision will be taken in a summary procedure. The investigating judge shall also instruct this person of the significance and content of the rule of speciality, the consequences of terminating the rule of speciality and of the fact that termination is voluntary and irrevocable. The defence counsel and the competent public prosecutor may be present at the hearing. The instruction from the first and second paragraphs, the consent from the first paragraph and the termination from the second paragraph of this Article, as well as the statement of the alien that his consent and termination were given voluntarily and in the presence of counsel shall be entered in the record.

(5) After examining the conditions from points 1 to 6 of the first paragraph of Article 522 of this Act, the investigating judge shall immediately send the case file to the minister responsible for justice, who shall decide on extradition and inform the foreign country of his decision. If any of the conditions from points 1 to 6 of the first paragraph of Article 522 of this Act have not been fulfilled or if the foreign person has withdrawn his consent, the regular extradition procedure shall take place.

Article 530

(1) The minister responsible for justice shall issue a decision whereby extradition is either granted or rejected. He may decide that extradition be postponed because proceedings for another criminal offence are pending before a domestic court against the alien whose extradition is requested, or because the alien is serving his sentence in the Republic of Slovenia.

The minister responsible for justice shall not permit the extradition of an alien if the latter enjoys the right of asylum in the Republic of Slovenia, if a political or military offence is involved or an international agreement with the country demanding the extradition does not exist. He may decline extradition if a criminal offence punishable by up to three years imprisonment according to the domestic law is involved, or if a foreign court had imposed a sentence for a prison term of up to one year.

Article 531

(1) In the ruling by which he grants extradition of an alien the minister responsible for justice shall state:

1) that the alien may not be prosecuted for another criminal offence committed prior to the extradition;

2) that he may not be punished for another criminal offence committed before his extradition;

3) that a severer punishment than the one to which he was sentenced may not be imposed on him;

4) that he may not be surrendered to a third country for prosecution of a criminal offence which he had committed before his extradition was granted.

(2) In addition to the aforesaid conditions the minister responsible for justice may order yet other preconditions for extradition.

Article 532

(1) The decision regarding extradition shall be communicated to the foreign country involved through diplomatic channels.

(2) The decision by which extradition is granted shall be forwarded to the ministry responsible for internal affairs, which shall order that the alien be transported to the state border where, at a place agreed upon earlier, he shall be surrendered to the bodies of the foreign country which had requested extradition.

Article 533

(1) Where several countries request extradition of the same person for the same criminal offence, priority shall be given to the country whose citizen that person happens to be; if this country does not request extradition, priority shall be given to the country in whose territory the criminal offence was committed; if the offence was committed in the territories of several countries or the site of commission is not known, priority shall be given to the country which requested extradition first.

(2) Where several countries request extradition of the same person for several criminal offences, priority shall be given to the country whose citizen that person happens to be; if this country does not request extradition, priority shall be given to the country in whose territory the gravest criminal offence was committed; if the criminal offences are of equal gravity priority shall be given to the country which requested extradition first.

Article 534

(1) If criminal proceedings are pending in the Republic of Slovenia against a person who resides in a foreign country, or if that person has been punished by a domestic court, the minister responsible for justice may file a request for his extradition.

(2) The request shall be sent to the foreign country concerned through diplomatic channels, together with the documents and data referred to in Article 523 of this Act.

Article 535

(1) If there is a danger that the person whose extradition is requested might flee or go into hiding, the minister responsible for justice may request, before taking action referred to in the preceding Article, that the necessary measures be taken for his apprehension.

(2) In the request for provisional detention, the requesting party shall provide data on the identity of the person sought, the name and nature of the criminal offence, the number and date of the detention order, the place and name of the body which ordered detention, and information about the finality of the judgement, and a statement that extradition shall be requested through regular channels.

Article 536

(1) If the person sought is extradited he may only be prosecuted or punished for the criminal offence for which extradition was granted.

(2) If such person was also convicted by a domestic court of other criminal offences committed before extradition for which extradition was not granted, the provisions of Article 407 of this Act shall apply *mutatis mutandis*.

(3) If extradition was granted and accepted subject to specific conditions regarding the type and amount of punishment, the court shall be bound by these conditions in imposing punishment. If the enforcement of an already imposed sentence is involved, the court which adjudicated in last instance shall modify the judgement and bring the sentence imposed into line with the conditions of extradition.

(4) If the extradited person was in detention in a foreign country for the criminal offence for which he has been extradited, the time spent in detention shall be counted in the punishment.

Article 537

(1) If a foreign country requests extradition from another foreign country and the person to be extradited is to be transported through the territory of the Republic of Slovenia, the minister responsible for justice may upon petition of the country concerned grant transportation, provided that the person is not a citizen of the Republic of Slovenia and that the extradition does not take place for a political or military offence.

(2) The petition for transit through the territory of the Republic of Slovenia shall contain all data specified in Article 523 of this Act.

(3) If reciprocity exists, the costs of transportation of the aforesaid person through the territory of the Republic of Slovenia shall be charged to the budget.

Chapter Thirty-Two

PROCEEDINGS FOR COMPENSATION, REHABILITATION AND THE EXERCISE OF OTHER RIGHTS OF UNJUSTIFIABLY CONVICTED OR ARRESTED PERSONS

Article 538

(1) The right to seek the recovery of damages inflicted by an unjustified judgement of conviction shall be enjoyed by a person who was convicted by a final decision or found guilty and then acquitted and the subsequent proceedings of extraordinary judicial review were discontinued by a final decision, or he was acquitted of charge by a final decision, or the charge against him was rejected, or the charge sheet was dismissed by a final decision, except in the following instances:

1) where proceedings were discontinued or a judgement rejecting the charge was passed because in new proceedings the injured party acting as prosecutor or the private prosecutor refrained from prosecution or the injured party withdrew the motion and the refrain and withdrawal were effected in agreement with the accused;

2) where in reopened proceedings the charge sheet was dismissed by a ruling for lack of jurisdiction of the court, whereupon the authorised prosecutor started prosecution before the court of jurisdiction.

(2) The convicted person shall not be entitled to seek recovery of damages if by a false confession or in some other way he deliberately brought about his conviction, unless he was forced into it.

(3) Where the sentence for concurrent offences is involved, the right to seek recovery of damages may also refer to individual criminal offences in respect of which conditions for recognition of indemnification have been fulfilled.

Article 539

(1) The right to seek recovery of damages shall be barred by the statute of limitation after a lapse of three years from the finality of the judgement whereby the accused was acquitted of the charge in first instance or the charge was rejected, or after a lapse of three years from the finality of the ruling whereby the charge sheet was dismissed or proceedings in first instance were discontinued; if the appeal was decided by a higher court, the statute of limitation shall apply after a lapse of three years from the receipt of the decision of that court.

(2) Before filing the claim for damages with the court, the injured person shall address his claim to the Office of the State Attorney General to try and reach agreement about the existence of the damage and the type and extent of compensation.

(3) In the instance referred to in point 2 of the first paragraph of the preceding Article, the request may only be processed if the authorised prosecutor fails to institute prosecution at the court of jurisdiction within three months of receipt of the final ruling. If the authorised prosecutor starts prosecution at the court of jurisdiction after expiry of that time limit, proceedings for the recovery of damages shall be suspended until criminal proceedings have been concluded.

Article 540

(1) If the request for recovery of damages is not granted or the Office of the State Attorney General and the injured person do not reach accord within three months of the filing of the request, the injured person may file a claim for damages with the court of jurisdiction. If accord was only reached regarding a part of the claim, the injured person may sue for the outstanding part.

(2) The statute of limitation from the first paragraph of Article 539 of this Act shall not apply for as long as the procedure from the preceding paragraph is pending.

(3) The claim for the recovery of damages shall be filed against the Republic of Slovenia.

Article 541

(1) Heirs shall only succeed to the right of the injured person to recover damages. If the injured person has already filed the claim, the heirs may only continue proceeding within the limits of his indemnification claim.

(2) After the death of the injured person, his heirs may continue proceedings for the recovery of damages, or may initiate proceedings if the injured person had died before the action became statute-barred without waiving the right to claim for damages.

Article 542

(1) The right to compensation shall also be enjoyed by:

1) a person who was held in remand and criminal proceedings against him were not instituted or the charge sheet was dismissed by a final ruling or proceedings were discontinued or he was acquitted of charge by a final judgement or the charge was rejected;

2) a person who served sentence in a correctional institution and on whom, by reason of the reopening of criminal proceedings or a request for the protection of legality, a shorter sentence was pronounced than the one he has already served or on whom a criminal sanction not involving arrest was pronounced, or who was found guilty and then acquitted;

3) a person who by reason of an error or unlawful act of a body was unjustifiably arrested or held for some time in remand or in a penal institution;

4) a person who was held in remand longer than the prison term to which he was sentenced.

(2) A person who without statutory grounds was arrested under Article 157 of this Act shall be entitled to compensation if detention was not ordered against him and the time he spent under arrest was not counted in the punishment imposed on him for a criminal offence or an infraction.

(3) The right to compensation shall not be enjoyed by the person whose arrest was caused by his own reprehensible conduct. In instances referred to in points 1 or 2 of the first paragraph of this Article, the right to compensation shall be excluded if circumstances exist as specified in points 2 or 3 of the first paragraph of Article 538.

(4) In proceedings for compensation under the first and second paragraphs of this Article provisions of this chapter shall apply *mutatis mutandis*.

Article 543

(1) If an instance of unjustifiable conviction or unfounded arrest of a person was shown in the media and the reputation of that person was thereby harmed, the court shall upon request of that person announce in a newspaper or other media a report on the decision from which it is evident that the conviction was unjustifiable or the arrest unfounded. If the case was not announced in the media the court shall, upon request of that person, send such report to his employer. After the death of a convicted person such right shall be held by his spouse, or the person with whom he had lived in domestic partnership, and by his children, parents, brothers and sisters.

(2) The request from the preceding paragraph is permissible even if the recovery of damages was not sought.

(3) Conditions provided by Article 538 of this Act aside, the request from the first paragraph of this Article shall also be permissible where in connection with extraordinary legal remedy the legal qualification of the act was changed, if due to the legal qualification in the previous judgement the reputation of the convicted person was seriously impaired.

(4) The request referred to in the first, second and third paragraphs of this Article shall be submitted within six months (first paragraph of Article 539) to the court which adjudicated in criminal proceedings in first instance. The request shall be decided by the panel (sixth paragraph of Article 25). In the consideration of the request, paragraphs two and three of Article 538 and third paragraph of Article 542 of this Act shall apply *mutatis mutandis*.

Article 544

The court which adjudicated in criminal proceedings in first instance shall, *ex officio*, render a ruling annulling the entry of unjustifiable conviction in criminal records. The ruling shall be sent to the ministry responsible for justice. Data from the annulled entry must not be communicated to anybody.

Article 545

Persons who were authorised to inspect and copy the files (Article 128) relating to the unjustifiable conviction or unfounded arrest of a person may not use data from these files in a manner which would prejudice the rehabilitation of the person against whom criminal proceedings were conducted. The president of the court shall warn such person thereof, and a note to that effect shall be written on the file against the signature of that person.

Article 546

(1) The person who by virtue of unjustifiable conviction or unfounded arrest has lost employment or the rights under the welfare and social security system, or who was prevented from or delayed from obtaining employment which he would otherwise have obtained, shall be entitled to have the time of employment or insurance lost in that way counted as if he was employed during the time lost through unjustifiable conviction or unfounded arrest. The time of unemployment resulting from an unjust conviction or unfounded arrest shall also be counted in the years of service, unless the person is himself responsible for that unemployment.

(2) In any disposition regarding the rights arising from the length of service or of social insurance the relevant agency shall take into account the length of time recognised pursuant to the preceding paragraph.

(3) Should the agency from the preceding paragraph disregard the length of time recognised under the first paragraph of this Article the injured person may request the court from the first paragraph of Article 540 to confirm that he has this time recognised by law. The claim shall be filed against the agency which refuses to recognise the recognised period, and against the Republic of Slovenia.

(4) On request of the agency at which the right from the second paragraph of this Article is exercised, the contribution prescribed for the period recognised under the first paragraph of this Article shall be paid out of the budget of the Republic of Slovenia.

(5) The length of social insurance recognised under the first paragraph of this Article shall in entirety be included in the length of service for retirement.

Chapter Thirty-Three

PROCEDURE FOR THE ISSUING OF WANTED NOTICES AND PUBLIC ANNOUNCEMENTS

Article 547

If permanent or temporary residence of a accused is not known the court shall, whenever so required by the provisions of this Act, request the police to locate the accused and inform the court of his address.

Article 548

(1) Issuing of a wanted notice may be ordered when the accused against whom criminal proceedings have been instituted for an offence prosecuted *ex officio* and punishable by two or more years imprisonment is in flight and when an order for his compulsory production or an order for his detention have been issued.

(2) Issuing of a wanted notice shall be ordered by the court conducting criminal proceedings.

(3) Issuing of a wanted notice shall also be ordered where an accused has escaped from the institution in which he is serving his sentence, irrespective of the amount of punishment, or when he escapes from the institution in which he is kept in custody under the order of an institutional measure. In this case the order shall be issued by the warden of the institute.

(4) The order on the wanted notice issued by the court or the warden shall be sent to the police for execution.

(5) The police shall keep records of the wanted notices issued. Data about the persons against whom a wanted notice was issued shall be deleted from the records as soon as the competent agency has revoked the notice.

Article 549

(1) Where information is needed about particular objects connected with a criminal offence or where it is necessary to find such objects and, in particular, where that is necessary for establishing the identity of an unidentified body, the agency which conducts proceedings shall order the issuing of a public announcement with a request that information and reports be addressed to the agency which conducts proceedings.

(2) The police may publish photographs of bodies and missing people if grounds exist to suspect that the death or disappearance have been caused by the commission of a criminal offence.

Article 550

The body which has ordered the issuing of a wanted notice or announcement shall revoke them as soon as the person or the object sought are found, when criminal prosecution or the enforcement of

punishment becomes statute-barred, or when other reasons indicate that the wanted notice or the announcement are no longer necessary.

Article 551

(1) The wanted notice and public announcement shall be issued by the ministry responsible for internal affairs.

(2) Mass media may also be used to inform the public of the issuing of the wanted notice or announcement.

(3) Where probability exists that the wanted person is abroad, the ministry responsible for internal affairs may issue an international wanted notice.

(4) Upon request of a foreign agency the ministry responsible for internal affairs may issue a wanted notice for a person suspected of being in the Republic of Slovenia, provided the foreign agency states in the request that it will request his extradition if he is found.

(5) The provisions of this Article shall apply *mutatis mutandis* to cases when the police announces the search for persons or objects.

The Criminal Procedure Act – ZKP (Official Gazette of the Republic of Slovenia, no. 63/94) contains the following transitional and final provisions:

Chapter Thirty-Four

TRANSITIONAL AND FINAL PROVISIONS

Article 552

(1) The time limit referred to in the first paragraph of Article 52 of this Act and relating to criminal offences which pursuant to provisions of the Penal Code are prosecuted upon motion shall start to run from the day this Act enters into force.

(2) Criminal proceedings for offences which prior to the entry into force of this Act were prosecuted *ex officio* or upon a private charge, and which will be prosecuted upon motion after this Act has entered into force, shall be conducted according to provisions applied before this Act took effect if charges were filed before it took effect.

(3) If, after this Act has entered into force, a judgement is annulled in connection with an ordinary or extraordinary legal remedy or the reopening is allowed of criminal proceedings for a criminal offence which on the entry into force of this Act will be prosecuted upon a motion, a private charge shall be considered as the motion of the entitled person, whereas continuation of proceedings for a criminal offence which prior to the entry into force of this Act was prosecuted *ex officio* shall require that a motion be made. The period of time for making motions shall run from the day the rightful claimant was informed that the judgement was annulled or the reopening of criminal proceedings allowed.

Article 553

Regulations relating to the refunding of costs of criminal proceedings referred to in Article 99, and regulations relating to the keeping of criminal records and records of educational measures pronounced on minors pursuant to Article 135 of this Act shall be issued by the minister responsible for justice within three months of the entry into force of this Act.

Article 554

The ministry responsible for justice shall, within six months of the entry into force of this Act, cancel from criminal records all sentences for which conditions for statutory rehabilitation have been fulfilled (Article 508).

Article 555

The ministry responsible for justice shall take criminal records over from the ministry responsible for internal affairs within two months of the entry into force of this Act.

Article 556

(1) Requests for the reopening of criminal proceedings against judgements which became final before 25 June 1991 and were passed by the former military court of jurisdiction for the territory of the Republic of Slovenia shall be decided by the court of first instance which in terms of the provisions of this Act would have jurisdiction to adjudicate in first instance.

(2) The provision of the preceding paragraph notwithstanding, requests for the reopening of criminal proceedings against judgements which became final before 25 June 1991 and were passed by the military court of jurisdiction for any of the republics of former Yugoslavia shall be decided by the circuit court in Ljubljana. Persons entitled to request the reopening of criminal proceedings against such judgements shall be the convicted persons who are, or who were at any earlier period, Slovenian citizens under statutory provisions which were in force until 25 June 1991.

(3) The provision from the preceding paragraph shall apply *mutatis mutandis* to proceedings defined in Chapters Twenty-Nine and Thirty-Two of this Act.

Article 557

Jurisdiction over the reopening of criminal proceedings for cases which prior to 1 January 1954 were adjudicated at first instance by the Supreme Court of the People's Republic of Slovenia shall be vested in the court which within the meaning of this Act would be the court of jurisdiction in first instance.

Article 558

In respect of convicted persons who until the entry into force of this Act were finally sentenced *in absentia* in accordance with the provisions of paragraphs 3 and 4 of Article 300 of the Criminal Procedure Act (Official Gazette of the Socialist Federative Republic of Yugoslavia, no. 4/77, 14/85, 74/87, 57/89 and 3/90) criminal proceedings may be reopened pursuant to conditions specified in Article 410 of the aforesaid Act.

Article 559

The period of time specified in paragraph three of Article 421 of this Act notwithstanding, the convicted person, defence counsel and persons referred to in paragraph two of Article 367 of this Act shall be entitled, within two years of this Act entering into force, to file requests for the protection of legality against judicial decisions which became final before the entry into force of this Act and against judicial proceedings conducted before such final decisions.

Article 560

(1) In line with the provisions of this Act, requests for the protection of legality and requests for extraordinary mitigation of punishment against judgements which became final prior to 25 June 1991 and were passed by the military court of jurisdiction over the territory of the Republic of Slovenia shall be possible.

(2) The provision from the preceding paragraph notwithstanding, requests for the protection of legality and extraordinary mitigation of punishment against judgements which became final before 25 June 1991 and which were passed by the military court of jurisdiction over any republic of former Yugoslavia shall pursuant to provisions of this Act be possible provided the convicted person concerned is or was a Slovenian citizen under provisions effective until 25 June 1991.

Article 561

If the request of a convicted person for extraordinary review of a final judgement is not determined until the entry into force of this Act, such request shall be considered according to the provisions for the protection of legality contained in this Act.

Article 562

The right to start a legal action of persons who were unjustifiably convicted before 1 January 1954 and who, due to the expiry of the term specified in the first paragraph of Article 539 of this Act, would not be entitled to exercise the right to compensation, shall, under the statute of limitation, expire within three years of this Act entering into force.

Article 563

The right to compensation under Article 538 of this Act shall also be granted to a person who has served his term in a corrective institution and in connection with the request for the extraordinary review of the final judgement received a shorter prison term than the one he has served, or received a penal sanction which did not involve imprisonment, or after being found guilty was acquitted.

Article 564 – Amendment from ZKP-E Taken into Account

The rights and duties vested under this Act in the president of the district court, except those under Articles 191 and 213.d of this Act, shall, in respect of criminal offences falling within the jurisdiction of the district court, be vested in the president of the district court.

Article 565

On the day this Act enters into force the Criminal Procedure Act (Official Gazette of the Socialist Federative Republic of Yugoslavia, no. 4/77, 14/85, 74/87, 57/89 and 3/90) shall cease to be valid.

Article 566

This Act shall enter into force on 1 January 1995.

The Act Amending the Criminal Procedure Act – ZKP-A (Official Gazette of the Republic of Slovenia, no. 72/98) contains the following transitional and final provisions:

TRANSITIONAL AND FINAL PROVISIONS

Article 82 – Amendment from ZKP-D Taken into Account

(ceased to be valid)

Article 83

The rules on settlement shall be prescribed by the minister responsible for justice in agreement with the minister responsible for labour, family and social affairs within a period of three months after the entry into force of this Act.

Article 84

(1) The minister responsible for justice shall, within a period of three months after the entry into force of this Act, issue more detailed regulations on the execution of detention.

(2) Until the issuing of the regulations from the preceding paragraph, the provisions of the Rules on the execution of detention (Official Gazette of the Socialist Republic of Slovenia, no. 22/81) shall apply, unless they are in violation of this Act.

Article 85

On the day this Act enters into force, the provisions of the Enforcement of Penal Sanctions Act (Official Gazette of the Socialist Republic of Slovenia, no. 17/78 and Official Gazette of the Republic of Slovenia, no. 12/92, 58/93 and 10/98) referring to the implementation of detention shall cease to apply.

Article 86

Procedures in requests for the protection of legality lodged prior to the entry into force of this Act shall be implemented and completed under the current provisions of the criminal procedure act.

Article 87

The Government of the Republic of Slovenia shall adopt the regulations referred to in the second paragraph of Article 76 of this Act (Article 506.a of the Act) within three months of the entry into force of this Act.

Article 88

This Act shall enter into force three months after its publication in the Official Gazette of the Republic of Slovenia.

The Act Amending the Criminal Procedure Act – ZKP-D (Official Gazette of the Republic of Slovenia, no. 111/01) contains the following transitional and final provisions:

TRANSITIONAL AND FINAL PROVISIONS

Article 26

The minister responsible for justice shall issue the regulation specified in the second paragraph of Article 117 of the Act within three months of this Act entering into force.

Article 27

Within three months of this Act entering into force, the minister responsible for justice shall amend the rules on the execution of detainment (Official Gazette of the Republic of Slovenia, no. 36/95) in line with the provision in the fourth paragraph of Article 213.b of the Act.

Article 28

On the day this Act enters into force, the provision of Article 82 of the Act Amending the Criminal Procedure Act – ZKP-A (Official Gazette of the Republic of Slovenia, no. 72/98), the Act Amending the Act Amending the Criminal Procedure Act – ZKP-B (Official Gazette of the Republic of Slovenia, no. 6/99) and the Act Amending the Act Amending the Criminal Procedure Act – ZKP-C (Official Gazette of the Republic of Slovenia, no. 66/2000) shall cease to apply.

Article 29

This Act shall enter into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia.

The Act Amending the Criminal Procedure Act – ZKP-E (Official Gazette of the Republic of Slovenia, no. 56/03) contains the following transitional and final provisions:

TRANSITIONAL AND FINAL PROVISIONS

Article 62

The Government of the Republic of Slovenia shall issue the regulation referred to in the second paragraph of Article 160.a of this Act within six months of the coming into force of this Act.

Article 63

If a term for the filing of a request for the protection of legality against a decision referred to in the fourth paragraph of Article 420 of this Act has already commenced on the day this Act takes effect, the term shall expire according to regulations which were in force until the coming into force of this Act.

Article 64

The provisions of Article 12 of this Act (amended Article 148 of the Act), Article 13 of this Act (amended Article 148.a of the Act), Article 16 of this Act (amended Article 157 of the Act) and Article 22 of this Act (amended Article 169 of the Act) shall start to apply a year after this Act enters into force.

Article 65

This Act shall enter into force on the thirtieth day following its publication in the Official Gazette of the Republic of Slovenia.

The Act Amending the Criminal Procedure Act – ZKP-F (Official Gazette of the Republic of Slovenia, no. 43/04) contains the following transitional and final provisions:

TRANSITIONAL AND FINAL PROVISIONS

Article 26

On the day this Act enters into force, Article 49 of the Police Act (Official Gazette of the Republic of Slovenia, no. 110/03 – official consolidated text) and Articles 96 to 107 of the Rules on Police Powers (Official Gazette of the Republic of Slovenia, no. 51/2000) shall cease to be valid.

An order from the competent body must be obtained for measures which, on the day this Act enters into force, are being carried out on the basis of permission from the director-general of the police or the competent public prosecutor pursuant to the second paragraph of Article 49 of the Police Act within two months of the entry into force of this Act, in accordance with the provisions of this Act.

Article 27

The Public Prosecutor General shall harmonise the general instructions from the seventh paragraph of Article 161a within three months of the entry into force of this Act.

Article 28

The Public Prosecutor General shall issue the general instructions referred to in the sixth paragraph of Article 162 within three months of the entry into force of this Act.

Article 29

This Act shall enter into force on 23 May 2004.

The Act Amending the Criminal Procedure Act – ZKP-G (Official Gazette of the Republic of Slovenia, no. 101/05) contains the following transitional and final provisions:

TRANSITIONAL AND FINAL PROVISIONS

Article 19

For the purpose of provisional securing of claims for the confiscation of proceeds ordered on the day of entry into force of this Act on the basis of provisions applied until this Act has entered into force, the public prosecutor must propose the extension in compliance with the first paragraph of Article 502.c of the Act within three months after the entry into force of this Act, unless the court set a shorter time limit in the last decision issued prior to the enforcement of this Act.

Article 20

(1) Notwithstanding the time limit referred to in the third paragraph of Article 421 of the Act, a convicted person, the defence counsel, persons referred to in the second paragraph of Article 367 of the Act and persons related collaterally at three removes may file a request for the protection of legality by 31 December 2008 against the court decision for criminal offences referred to in the second paragraph of this Act that became final up to 2 July 1990 and about which a final decision was not taken on the basis of the request for the protection of legality pursuant to Article 559 of the Criminal Procedure Act (Official Gazette of the Republic of Slovenia, no. 63/94) and against the court procedure that was initiated prior to such a final decision.

(2) The request for the protection of legality set out in the preceding paragraph may be filed against the court decision on criminal offences referred to in the:

1. Criminal Offence against the People and the State Act (Official Gazette of the Federative People's Republic of Yugoslavia, no. 66/45 and Official Gazette of the Socialist Federative Republic of Yugoslavia, no. 59/46);

2. Combating Illicit Speculation and Economic Sabotage Act (Official Gazette of the DFJ, nos. 26/45, 32/45 and 53/45);

3. Suppression of Illicit Trade, Illicit Speculation and Economic Sabotage Act (Official Gazette of the Federative People's Republic of Yugoslavia, nos. 56/46, 66/46, 74/46, 105/46, 44/47 and 104/47);

4. Criminal Offences against Common People's Property and the Property of Cooperative and other Social Organisations Act (Official Gazette of the Federative People's Republic of Yugoslavia, no. 87/48);

5. Punishment of Crimes and Transgressions against the Slovenian National Honour Act (Official Gazette of SNOS and NVS, no. 7/45);

6. Decrees on Military Courts (Vestnik, official gazette of the headquarters personnel of the NOV and PO Slovenia, no. 6 of 20 October 1944);

7. Confiscation of Property and Execution of Confiscation Act (Official Gazette of DFJ, no. 40/45);

8. Confiscation of Property and Execution of Confiscation Act (Official Gazette of DFJ, no. 61/46);

9. Military Criminal Offences Act (Official Gazette of the Federative People's Republic of YugoslaviaNo. 107/48):

– Article 16 (hostile talking about the army);

– Article 34 (evasion of military service due to religious or other personal belief);

10. Fundamental Act on Agricultural Cooperatives (Official Gazette of the Federative People's Republic of Yugoslavia, no. 49/49):

– Article 112,

– Article 113;

11. Penal Code (Official Gazette of the Federative People's Republic of Yugoslavia, no. 13/51, 30/59, 11/62 and 31/62, and Official Gazette of the Socialist Federative Republic of Yugoslavia, no. 15/65, 15/67, 20/69 and 6/73):

– Article 109 (cooperation in hostile operation against the Federative People's Republic of Yugoslavia),

– Article 117 (assembling against the nation and state),

– Article 133 (hostile propaganda),

– Article 236 (unfulfilling obligatory delivery of agricultural products),

– Article 237 (submitting false data concerning the delivery and artificial increase of weight of delivered products),

– Article 238 (negligence of cultivated land and breeding of livestock),
– Article 239 (pest in agriculture),
– Article 240 (undermining of cooperatives),
– Article 241 (breaching voluntaries of membership in cooperatives),
- Article 292.a (spreading of lying consciousness);

12. Penal Code of the Socialist Federative Republic of Yugoslavia (Official Gazette of the Socialist Federative Republic of Yugoslavia, nos. 44/76,34/84, 74/87, 57/89, 3/90 and 38/90):
– Article 131 (cooperation in hostile operation),
– Article 133 (hostile propaganda),
– Article 201 (unfulfilling the order or renouncing obedience),
– Article 202 (refusal of acceptance or use of weapons),
– Article 214 (disobedience in calling up for military service and evasion of military service);

13. Penal Code of Socialist Republic of Slovenia (Official Gazette of the Socialist Republic of Slovenia, nos. 12/77, 3/78, 19/84, 47/87, 33/89 and 5/90):
– Article 228 (spreading of lying consciousness),
Article 236 (misuse of faith and church).

(3) In connection with the court decisions and court proceedings referred to in the preceding paragraphs against priests and women priest and/or monks and nuns of registered religious communities the request for the protection of legality pursuant to this Article can also be submitted by legal representatives of their registered religious communities.

(4) The request for the protection of legality against the court decisions and court proceedings referred to in the preceding paragraphs that were dismissed as being belated due to the expiry of the time limit referred to in Article 559 of the Criminal Procedure Act (Official Gazette of the Republic of Slovenia, no. 63/94) may be resubmitted in compliance with the preceding paragraphs.

(5) Persons related collaterally at three removes and legal representatives of religious communities may submit a request for the protection of legality referred to this Article after the death of the convicted person and to his benefit.

Article 21

The provisions of the first and second paragraph of Articles 4 and 12 of this Act shall begin to apply on the day of the entry into force of the Act as referred to in the third paragraph of Article 141.a of the Act.

Article 22

This Act shall enter into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia.