THE CRIMINAL PROCEDURE CODE
Official Gazette of the Republic of Serbia, No. 46/2006

-TABLE OF CONTENTS-

PART I- GENERAL PROVISIONS 4
Chapter I- Basic Rules 4
Chapter II- Jurisdiction of the Court 14
1. Subject matter jurisdiction and composition of the courts 14
2. Territorial jurisdiction 15
3. Joinder and severance of proceedings 18
4. Transfer of territorial jurisdiction 19
5. Assessment and conflict of jurisdiction 20
Chapter III- Recusal 21
Chapter IV- Public Prosecutor 24
Chapter V- Injured Party and Private Prosecutor 26
Chapter VI- Defense Counsel 33
Chapter VII- Evidentiary Actions 38
1. Search of apartment, other premises and persons 39
2. Temporary seizure of objects 43
3. Examination of defendant 51
4. Examination of witnesses 55
5. Site inspection and reconstruction 69
6. Expert analysis 71
7. Presentation of photographs, audio recordings and audio/video recordings 82
Chapter VIII- Special Investigative Techniques 83
1. Secret audio and visual surveillance of a suspect 84
2. Rendering simulated business services and conclusion of simulated legal affairs 86
3. Engagement of an undercover agent 89
4. Controlled delivery 92
5. Automatic computerized search of personal and other data 94
6. Examination of cooperating witnesses 96
Chapter IX- Measures for securing the presence of a defendant and undisturbed conduct of criminal proceedings 101
1. General Provisions 101
2. Summons 102
3. Compulsory Appearance 103
4. Prohibition of leaving certain locations and other limitations 103
5. Bail 105
6. Detention 108
7. Rights of detainee 111
Chapter X- Rendering and Pronouncing Decisions 114
Chapter XI- Service of Documents and Examination of Files 116
Chapter XII- Briefs and Records 121
Chapter XIII- Terms 127
Chapter XIV- Enforcement of Decisions 130

Chapter XV- Costs of Criminal Proceedings 132
Chapter XVI- Claims for Indemnification 136
Chapter XVII- Prejudicial Issues and Other Provisions 141

PART TWO- THE COURSE OF PROCEEDINGS 144
A. Criminal Offense Report, Preliminary Investigation and Notification of Criminal Offense 144
Chapter XVIII- Criminal offense report 144
Chapter XIX- Preliminary Investigation and Submission of Notification on Criminal Offence 145
B. Preliminary Proceedings 159
Chapter XX- Investigation 159
Chapter XXI- Indictment and the Examination of the Indictment 173
Chapter XXII- Plea Bargaining 180
C. Trial and Judgment 185
Chapter XXIII – Preparations for the Trial 185
Chapter XXIV- The Trial 189
1. Public nature of the trial 189
2. Conducting the trial 190
3. Prerequisites for holding a trial 195
4. Adjournment and recess of the trial 197
5. Record of the trial 200
6. Commencement of the trial an interrogation of defendant 203
7. Rules of evidence 208
8. Amendment and augmentation of indictment and other criminal offence of the defendant 214
9. Closing arguments 215
10. Dismissal of charges 217
Chapter XXV- Judgment 217
1. Rendering of the judgment 217
2. Types of judgment 218
3. Pronouncement of judgment 220
4. Drawing up and serving of the judgment 222
D. Judicial Review 225
Chapter XXVI- Regular Legal Remedies 225
1. Appeal against the judgment of the first instance court 225
a) The right to appeal 225
b) Contents of an appeal 227
c) Grounds for challenging a judgment 227
d) Appellate proceedings 230
e) Scope of appellate review 235
f) Decisions of a court of second instance on appeal 236
2. Appeal against judgment of the second instance court 240
3. Appeal against a ruling 240
Chapter XXVII- Extraordinary Legal Remedies 242
1. Reopening of criminal proceedings 242

2. Extraordinary mitigation of penalty ____ 248
3. Motion for the protection of legality ____ 250

E) Special Provisions on Summary Proceeding, Proceedings for the imposition of criminal sanctions without holding a trial, Mediation for the purpose of Settlement and Proceedings for pronouncing the judicial admonition ____ 254
Chapter XXVIII- Summary Proceeding ____ 254
Chapter XXIX- Proceedings for the imposition of criminal sanctions without holding a trial ____ 261
1. Proceedings for sentencing without trial ____ 261
2. Procedure for sanctioning and pronouncement of suspended sentence by the Investigative Judge ____ 263
3. Expedited procedure ____ 264
Chapter XXX- Mediation procedure aimed at achieving settlement between Defendant and Injured Person ____ 267
Chapter XXXI- Special Provisions of Judicial Admonition ____ 271

PART III- SPECIAL PROCEEDINGS ____ 273
Chapter XXXII- Proceedings for implementation of security measures, for the confiscation of material gain, revocation of suspended sentence and for release on parole ____ 273
1. Proceedings for implementation of security measures ____ 273
2. Proceedings for the confiscation of pecuniary benefit ____ 277
3. Proceedings for revocation of suspended sentence ____ 279
4. Proceedings for Release on Parole ____ 280

Chapter XXXIII- Proceedings for rendering a decision on the expungement of criminal records, for cessation of legal effects of conviction and security measures ____ 280
Chapter XXXIV- Procedure for international legal assistance and enforcement of international treaties in criminal matters ____ 283
Chapter XXXV- Proceedings for extradition of Defendants and Convicted Persons ____ 287
Chapter XXXVI- Proceedings for compensation of damages, rehabilitation and realization of other rights of unjustifiably convicted persons/persons illegally deprived of liberty ____ 294
Chapter XXXVII- Proceedings for issuance of arrest warrant and notice ____ 299
Chapter XXXVIII- Transitional and Final Provisions ____ 301

THE CRIMINAL PROCEDURE CODE

Official Gazette of the Republic of Serbia, No. 46/2006

Part I
GENERAL PROVISIONS

Chapter I
BASIC RULES

The purpose of the Criminal Procedure Code

Article 1

(1) The present Code contains rules aimed at enabling fair conduct of the criminal proceeding, so that no innocent person is convicted, and to enable a perpetrator of a criminal offense to be sanctioned in accordance with conditions envisaged by the Criminal Code and based on the lawfully conducted proceeding.

(2) Prior to rendering a final judgment or ruling on sentencing, the rights of the defendant and his freedom may be limited only under conditions stipulated by the present Code and only to the extent necessary in order to implement the purpose of the criminal proceeding set forth in paragraph 1 of the present Article.

The right of the court to impose criminal sanctions

Article 2

Criminal sanctions against a perpetrator of a criminal offense may be imposed only by the decision of the court having jurisdiction within the proceedings instigated and conducted in accordance with the present Code.

The presumption of innocence

Article 3

(1) Each person shall be considered innocent until proven guilty by the final decision of the competent court.

(2) Government authorities, the media, citizens' associations, public figures and other persons are under obligation to adhere to the rules defined in paragraph 1 of the present Article, as well as to sustain from violating other rules of the

proceeding, rights of the defendant and injured party, judicial independence and impartiality with their public statements on the ongoing criminal proceeding.

(3) The Investigative Judge during preliminary investigation, i.e. the President of the Court upon completion of the investigation or after submitting the direct indictment, shall *ex officio* or upon the proposal of the parties, defense counsel, injured party, i.e. his proxy, issue a public warning to anyone breaching obligations set forth in paragraph 2 of the present Article, to be published in the media on the expense of the person in question.

(4) If obligation set forth in paragraph 2 of the present Article is breached in a specifically serious manner, and especially if circumstances obviously imply that it has been done in order to exert influence on the court and other competent bodies, or with the aim of causing serious consequences concerning the defendant or the injured party, or other participants of the criminal proceeding, the public warning to that person may be coupled with a fine up to 150,000 CSD, and for legal entities up to 1,500,000 CSD.

(5) If the individual despite the measures from paragraph 3, i.e. paragraph 4 of the present Article breaches the obligation set forth in paragraph 2 of the present Article, the individual shall be fined up to 300,000 CSD, and the legal entity up to 3,000,000 CSD if, after the public warning, it violates obligations set forth in paragraph 2 of the present Article. For every subsequent violation of obligation set forth in paragraph 2 of the present Article, the individual may be fined with up to 450,000 CSD, and the legal entity up to 4,500,000 CSD, and any new explanation of the ruling on sentencing may be published in the media on the expense of the sanctioned party.

(6) An appeal may be taken from a ruling on sanctions from paragraphs 4 and 5 of the present Article, if the ruling was rendered by the Investigative Judge the appeal shall be decided upon by the President of the Court, while the appeals against a rulings rendered by the President of the Court shall be decided upon by the chamber set forth in Article 24 paragraph 6 of the present Code.

“In doubt for the benefit of the defendant” Rule

Article 4

If upon gathering of all available evidence and its presentation in the criminal proceeding, only suspicion remains concerning the existence of a relevant elements of a criminal offense or concerning facts upon which the application of a certain provision of Criminal Code or the present Code depends upon, the court, i.e., another competent body shall always render a judgment more favorable for the defendant.

Defendant's right to a defense

Article 5

(1) The defendant shall be warned before the first interrogation that everything that he says can be used against him as evidence.

(2) The defendant has to be informed of the criminal offense he is charged with, as well as of the evidence on which the charges are based as soon as during the first interrogation.

(3) The defendant may not be forced to testify against himself or to admit his guilt.

(4) The defendant has to have the opportunity to give a statement concerning all facts and evidence held against him, as well as to present all facts and evidence in his favor.

(5) The defendant has to be provided with sufficient time and opportunity to prepare his defense.

(6) The defendant has the right to defend himself or with the professional assistance of a counsel, chosen by himself from the line of counsels and who may be present during the interrogation of the defendant.

(7) Prior to the first interrogation, the defendant will be advised of his right to obtain a defense counsel, of his right to have the defense counsel present at his interrogation.

(8) The defendant has the right for the court to appoint him the defense counsel in situations stipulated by the present Code.

(9) The suspect has the right to a defense counsel in accordance with the present Code.

***Ne bis in idem* after the final decision of the court**

Article 6

(1) No person shall be prosecuted and sanctioned for a criminal offence for which he has already been acquitted or convicted by a final judgment or for which criminal proceedings has been discontinued by a final decision or the charges has been denied by a final decision.

(2) In the criminal proceedings instituted upon the extraordinary judicial remedy a final court judgment cannot be revised to the prejudice of the defendant.

The rights of a person deprived of liberty

Article 7

(1) A person deprived of liberty by the competent government authority has to be immediately informed, in his native language or a language he understands, about the reasons for deprivation of liberty, as well as concerning everything that is held against him, as well as of the following rights:

1) that he is not obliged to make any statements and that any statement he makes may be used as evidence against him;

2) to retain a defense counsel of his choice;

3) to communicate with the defense counsel without impediment;

4) to have the defense counsel present at his interrogation;

5) to request that any information concerning the time, place and any change of place of detention be immediately communicated to persons selected by him, as well as to the diplomatic or consular representative of the state he is citizen of, i.e. representative of the relevant international organization if the person in question is a refugee or without citizenship;

6) if the person is a foreign citizen or without citizenship, to communicate without impediment with the diplomatic or consular representative or representative of the relevant international organization as defined in item 5 of this paragraph;

7) if the person is not familiar with the official language, he may submit briefs to the court in his own language;

8) to request to be examined at any time, at his expense, and without any delay by a physician of his choice, or if unavailable, a physician to be selected by the detention authority;

9) to instigate before a court a proceeding in order to examine the legality of the deprivation of liberty;

10) to request compensation for unfounded deprivation of liberty.

(2) Any person deprived of liberty without a court decision has to be immediately brought before the Investigative Judge having jurisdiction, except in cases envisaged by Article 264 paragraph 1 of the present Code.

(3) Any person deprived of liberty has the right to instigate a proceeding within which the Investigative Judge having jurisdiction shall urgently examine the legality of the deprivation of liberty and shall order release if the deprivation of liberty was illegal.

The official language in criminal proceeding and the right to use own language

Article 8

(1) The official language in the criminal proceeding is the Serbian language with both *ekavian* and *jekavian* dialect and Cyrillic script and the Latin script in accordance with the Constitution and the law.

(2) In the courts having jurisdiction over territory where members of national minorities are living, languages and scripts of national minorities are also in official usage in criminal proceedings and shall be used in accordance with law.

(3) The correspondence and legal assistance between courts shall be carried out in a language which is in official use in the respective courts.

(4) The parties, witnesses and other persons participating in the proceedings shall have the right to use their own language in the proceedings.

(5) Accusatory pleadings, appeals and other written documents shall be submitted to the court in the language that is officially used in court.

(6) The court shall send summons, decisions and other briefs in the Serbian language, i.e. in the language of the national minority which is in compliance with the law on use of official language in court, and if the person who these documents are sent to does not speak the Serbian language, the summons, orders and other briefs shall be sent to that person translated into the language that the person understands, reads and speaks.

(7) If the proceeding is not conducted in the language of a person referred to in paragraph 4 of the present Article, interpretation shall be provided for anything that the person may state, or anyone else might state, as well as the translation of personal documents and other written evidence. The interpretation/translation shall be entrusted to a Court Interpreter.

(8) The person referred to in paragraph 4 of the present Article shall be advised of his rights regarding translation/interpretation, and the person may waive that right if he speaks and understands the official language of the proceedings. The records shall note that the advice has been given, as well as the statement of the participant.

The prohibition of violence and extorted statements in the criminal proceeding

Article 9

It shall be forbidden and punishable to employ any kind of violence on a person who is deprived of liberty or whose liberty is restricted, as well as violence against defendant or any other person participating in the criminal proceedings, i.e. to extort a confession or any other statement from the defendant or any other person participating in the proceedings.

The rights of persons unjustifiably convicted or unreasonably deprived of liberty

Article 10

(1) A person who was unjustifiably convicted for a criminal offence or whose deprivation of liberty was unfounded shall be entitled to rehabilitation, compensation from the state, and other rights established by law.

(2) All government authorities have the obligation to urgently react regarding the implementation of rights as defined in paragraph 1 of the present Article.

Advising inexperienced persons of their rights

Article 11

(1) The court and other government authorities participating in the proceedings shall in due time inform the defendant or other procedural participant, who is likely to omit to perform an action or fail to exercise his rights due to ignorance, of the rights to which he is entitled according to the present Code as well as about the consequences of such omission.

(2) Public Prosecutor, defendant's counsel, proxy of the injured party, injured party as a subsidiary prosecutor or private prosecutor are not considered to be persons referred to in paragraph 1 of the present Article.

Trial within a reasonable period of time

Article 12

(1) The defendant has the right to be brought before the court within the shortest period of time and to be tried without any unjustified delay.

(2) The court is obliged to conduct the proceeding without delays, as well as to prevent any abuse of rights of the participants in the proceedings.

(3) The detention period and other restrictions of personal freedom, i.e. freedom of movement determined by the present Code (Article 168) must be brought down to the shortest necessary period of time.

The principle of truth and equity in the criminal proceeding

Article 13

(1) The court and government authorities participating in the criminal proceeding shall be obligated to truthfully and fully establish the facts essential for rendering a lawful decision.

(2) The court and the government authorities shall be bound to examine and establish with equal attention both the incriminating and exculpatory facts.

The principle of free assessment of evidence

Article 14

The right of the court and government authorities participating in the criminal proceeding to assess the existence or non-existence of facts is not linked, conditioned, nor limited by any special formal evidence rules.

Legally inadmissible evidence

Article 15

Court decisions may not be based on evidence which per se, or by method of collection are contrary to the provisions of the present Code, any other law, or have been collected or presented by virtue of violating human rights and fundamental freedoms envisaged by the Constitution or ratified international treaties.

The principle of accusation

Article 16

(1) The criminal proceeding shall be initiated and conducted upon the request of the authorized prosecutor.

(2) For criminal offenses prosecuted *ex officio* the authorized prosecutor is the Public Prosecutor, and for criminal offenses prosecuted on the basis of private charges the authorized prosecutor is a private prosecutor.

(3) If the Public Prosecutor assesses there is no basis for initiating or continuation of a criminal proceeding, the injured party may take his role as subsidiary prosecutor, under conditions stipulated by the present Code, unless such a possibility is exceptionally excluded under the provisions of the present Code.

The principle of mandatory criminal prosecution for criminal offenses prosecuted *ex officio*

Article 17

(1) Except as otherwise provided by the present Code, the Public Prosecutor shall be obliged to instigate criminal prosecution without delay when the existing evidence indicates reasonable suspicion that a person committed a criminal offense subject to *ex officio* prosecution.

(2) The Public Prosecutor shall be obligated to prosecute until, according to his assessment, the evidence exists that indicate reasonable suspicion that a person committed a criminal offense subject to *ex officio* prosecution.

The composition of the court

Article 18

(1) In the criminal proceedings the court shall sit in chambers.

(2) Single Judge shall sit in the courts of first instance when envisaged by the present Code.

Limitation of certain rights due to instigation of criminal proceeding

Article 19

Except as otherwise provided by law, when the instigation of criminal proceedings entails restriction of certain rights, such restriction shall take effect upon the indictment becoming final, and for criminal offences punishable as a principal punishment with a pecuniary fine or imprisonment for a term of less than three years - from the day the judgment of conviction is rendered, irrespective of whether it is final or not.

The meaning of the term "criminal offense" in the present Code

Article 20

The term «criminal offense» in the provisions of the present Code, is equal to the notion of an act which according to its objective characteristics corresponds to a criminal act and does not include the guilt of the person the proceeding is instituted against, until such guilt is established by a final decision of the court.

The meaning of the term "organized crime" in the present Code

Article 21

The term "organized crime" in the present Code pertains to cases where reasonable suspicion exist that a criminal offense for which four years of imprisonment or a more severe sentence is envisaged, is a result of actions performed by three or more persons associated in a criminal organization, i.e. criminal group, with the aim of committing grave criminal offenses in order to gain proceeds or power and when, in addition at least three of the following conditions have been met:

1) that each member of the criminal organization, i.e. criminal group, had previously determined, i.e., obviously determinable task or role;

2) that the activity of the criminal organization was planned for an extensive or indefinite period of time;

3) that the activities of the organization are based on implementing certain rules of inner control and discipline of members;

4) that the activities of the organization are planned and implemented internationally;

5) that the activities include applying violence or intimidation or that there is readiness to apply them;

6) that economic or business structures are used in the activities;

7) that money laundering or illicit proceeds are used;

8) that there exist influence of the organization, or part of the organization, on political structures, the media, legislative, executive or judicial authorities or other important social or economic factors.

The meaning of other terms in the present Code

Article 22

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

1) *Suspect* is a person against whom the competent government authority has taken certain acts due to existence of grounds of suspicion or reasonable suspicion that he committed the criminal offense, and against whom a Ruling on instigating the investigation has not yet been issued, nor has the direct indictment been raised.

2) *Defendant* is a person regarding whom, according to the assessment of the prosecutor or court, exists a reasonable suspicion that he committed the criminal offense, and against whom a Ruling on instigating the investigation has been issued or against whom a direct indictment, motion to indict or private suit has been filed.

3) *Indictee* is a person against whom the indictment entered into force.

4) *Convicted person* is a person found guilty of committing certain criminal offense based on the final judgment or final ruling on sentencing.

5) The term "*defendant*" is a general term for a suspect, defendant, indictee and convicted person, i.e., for a person against whom a criminal proceeding is being conducted.

6) *Injured party* is a person whose personal or property rights have been violated or endangered by a criminal act, while *injured party with a motion* is a person affected by a criminal act that, pursuant to the Criminal Code, is subject to *ex officio* prosecution only upon the motion of an injured party, and who submitted the aforementioned motion.

7) The *prosecutor* is the Public Prosecutor, private prosecutor and the injured party as subsidiary prosecutor.

8) The *party* is the prosecutor and the defendant.

9) A *document* is considered to be any subject that is suitable to serve or was determined to serve as evidence of a fact and bears significance for legal relations or for the criminal proceeding, which also pertains to computer data recorded in appropriate data carriers.

10) The term "*serial rape*" in the provisions of the present Code (Article 146, paragraph 1, item 4) encompasses one or more criminal acts stipulated in Article 178 of the Criminal Code, performed by an unknown perpetrator or unknown perpetrators, i.e. one or more suspects, in a manner and under circumstances which indicate a probability that this criminal act is being, in an identical or similar fashion, repeated within a certain time period or in a certain area.

(2) For the purpose of the present Code, and especially with the aim of the implementation of defense rights, it shall be considered that the criminal proceeding commences when a person acquires the status of a suspect.

(3) Records, documents, correspondence and other papers may be in electronic form or contained in appropriate data forms, as CDs, other disks, magnetic tapes and other data carriers, which also pertains to evidence and documents contained in records.

Chapter II

THE JURISDICTION OF THE COURTS

1.Subject matter jurisdiction and composition of the courts

Subject matter jurisdiction of the criminal court

Article 23

The courts shall adjudicate all cases within the limits of their subject matter jurisdiction prescribed by the law.

The composition of the Chambers of Judges and the functional Jurisdiction of the court

Article 24

(1) First instance courts sit in chambers of two judges and three lay judges when adjudicating criminal offences punishable by imprisonment for a term of thirty years or more severe punishment, and in chambers of one judge and two lay judges when considering criminal offences punishable by a lenient punishment. A Single Judge shall adjudicate in the first instance when special provisions on summary proceedings are applicable, as well as for criminal offenses punishable with up to eight years of imprisonment.

(2) Second and third instance courts sit in chambers of five judges when considering criminal offences punishable by imprisonment for a term of thirty years or more severe punishment and in chambers of three judges when considering criminal offences punishable by a lenient punishment.

(3) At a trial at second instance the court shall sit in a chamber of two judges and three lay judges, i.e. three judges if judgment is being rendered in accordance with Article 412 paragraph 5 of the present Code.

(4) In preliminary investigation and investigation, the Investigative Judge of the first instance court shall participate in accordance with the present Code.

(5) The President of the Court and the President of the Chamber shall decide in cases envisaged by the present Code.

(6) First instance courts sit in a chamber of three judges when deciding on appeals against rulings of the Investigative Judge and other rulings when prescribed by the present Code, render decisions in the first instance outside the trial, conduct the proceedings and render a judgment in accordance with the provisions of Article 511 paragraphs 2 to 6 of the present Code and make motions in cases as provided by the present Code or other law.

(7) The chamber composed of three judges shall adjudicate in first instance in the proceedings for criminal offenses of organized crime and criminal offenses against humanity and other rights protected by international law, while in the second instance a chamber shall consist of five judges.

(8) The provisions of the present Code referring to the rights and obligations of the President of the Chamber and the trial chamber shall consequently be applied to a Single Judge when he, in compliance with the provisions of the present Code, conducts the criminal proceeding.

(9) The court shall decide on requests for the protection of legality in a chamber consisting of three judges, and in a chamber consisting of five judges when deciding on requests for the protection of legality against the decision of the chamber of that court due to violation of the law.

(10) Unless otherwise provided by the present Code, the higher instance courts shall also decide in a chamber consisting of three judges in cases not envisaged in previous paragraphs of the present Article.

2. Territorial jurisdiction

General rules on determining territorial jurisdiction

Article 25

(1) As a rule, the court within whose territory the criminal offense is committed shall have jurisdiction. It shall be considered that the criminal offense is committed both in the place where the perpetrator acted or was obligated to act, as well as the place where the consequence, entirely or partly, occurred. In cases of attempted criminal offense, the jurisdiction belongs to the court of the territory on which the last act was committed or omitted, and if the last act was committed or omitted outside the territory of the Republic of Serbia, it falls under the jurisdiction of the

court of the territory on which the consequence of a criminal offense should have occurred.

(2) If the criminal offence is committed within the territory of several courts or on their border, or if it is uncertain within which territory the offence has been committed, the court which on the request of authorized prosecutor has first instituted proceedings shall have jurisdiction, and if proceedings have not yet been instituted - the court to which the request for commencement of proceedings was first submitted shall have jurisdiction.

Territorial jurisdiction for criminal offenses committed on domestic ships or aircrafts

Article 26

If a criminal offense has been committed on a domestic ship or domestic aircraft while in domestic harbor, it shall fall under the jurisdiction of the court of the territory of the harbor. In other cases when the criminal offense is committed on a domestic ship or domestic aircraft, it shall fall under the jurisdiction of the court of the territory of the home port of the ship, i.e. aircraft or domestic port where the ship or aircraft stops first.

Territorial jurisdiction for criminal offenses committed in the media or via the global information network

Article 27

(1) If the criminal offense has been committed through the press, it shall fall under the jurisdiction of the court of the territory on which the text was published. If the place is unknown or if the text was printed abroad, it shall fall under the jurisdiction of the court of the territory on which the printed text is being distributed.

(2) If, according to law, the responsible person is the author of the text, the court of the territory on which the author has domicile shall have jurisdiction, or the court of the territory on which the event that the text refers to occurred.

(3) If the text or statement has been broadcasted via the radio, television, internet or other media, the court of the territory on which it has been published shall have jurisdiction and provision of paragraph 2 of the present Article shall consequently be applied to these cases as well.

Determination of territorial jurisdiction according to domicile or residence of the defendant

Article 28

(1) If the place where the criminal offense has been committed is not known or if it is beyond the territory of the Republic of Serbia, it falls under the jurisdiction of the court of the territory of domicile or residence of the defendant.

(2) If the court on whose territory the defendant has domicile or residence has already instigated a proceeding, the jurisdiction remains with that court even if the place where the criminal offense was committed is subsequently disclosed.

Determination of territorial jurisdiction according to the place where the defendant has been apprehended or where he turned himself in

Article 29

If the place where the criminal offense was committed is unknown, as well as the domicile or residence of the defendant, or both are beyond the territory of Serbia, the jurisdiction lies with the court of the territory on which the defendant has been apprehended or approached the authorities by himself.

Determination of territorial jurisdiction in cases where the criminal offense was committed in the Republic of Serbia and beyond its territory

Article 30

If a person commits a criminal offense in the Republic of Serbia and in the Republic of Montenegro, i.e., abroad, the jurisdiction lies with the court competent for the criminal act committed in the Republic of Serbia.

Determination of territorial jurisdiction by the decision of the Supreme Court of Serbia

Article 31

If according to the provisions of the present Code it is not possible to determine which court has territorial jurisdiction, the Supreme Court of Serbia shall designate one of the courts that has subject matter jurisdiction as the court before which the proceeding shall be conducted.

3. Joinder and severance of proceedings

Joinder of criminal proceedings

Article 32

(1) If the same person is defendant for several criminal offenses, and for some of the offenses the lower courts are the ones having jurisdiction, and for the other jurisdiction lies with the higher instance courts, then the higher court shall be deemed to have jurisdiction, and if the courts are of the same level, than the court which first instigated the proceeding upon the request of the authorized prosecutor is deemed to have jurisdiction of the case. If the proceeding has not yet been instigated - then the court that first received the request for instigating the proceeding.

(2) In cases when at the same time the injured party committed a criminal offense against the defendant, jurisdiction shall be determined also pursuant to the provisions of paragraph 1 of the present Article.

(3) The court that that shall have jurisdiction over the accomplices, as a rule shall be any court that had jurisdiction over one of them and first instigated the proceeding.

(4) The court that shall have jurisdiction over the perpetrator of a criminal offense shall also by rule, have jurisdiction over accomplices, accessories after the fact, aiders and abettors, as well as over the persons who failed to report the preparation of a criminal offense, execution of a criminal offense or the perpetrator.

(5) In all cases the previous paragraphs pertain to, by rule one joint proceeding shall be conducted and a joint judgment rendered.

(6) The court may decide to conduct one joint proceeding and to pass a joint judgment also in cases when several persons are charged for several criminal offenses, but only provided that a mutual link between the committed criminal offenses exist as well as the same evidence. If lower courts have jurisdiction over some of these criminal offenses, and higher court over others, then only the higher instance court shall be deemed to have jurisdiction for conducting a joint proceeding.

(7) If before the same court separate proceedings are conducted against the same person for several criminal offenses, or against several persons for the same criminal offense, that court may decide to conduct a joint proceeding and render a joint judgment.

(8) The court that has jurisdiction to conduct joint proceeding shall rule on the joinder of the proceedings. There is no appeal permitted against the ruling joining the proceedings, nor against the ruling on denying the joinder motion.

(9) Provisions on joinder of proceedings (paragraphs 1 to 8 of the present Article) are consequently also applied when in the preliminary investigation or investigation the proceeding is being conducted by the Public Prosecutor, who's decision it is whether to carry out a joint investigation proceeding.

Severance of the criminal proceeding

Article 33

(1) The court that has jurisdiction pursuant to Article 32 of the present Code, may upon the proposal of the parties, i.e., the defense counsel or *ex officio*, for important reasons or reasons of expediency and until the end of the trial decide to sever the proceeding for certain criminal offenses or against certain defendants and separately end the proceedings, or to confer it to another court having jurisdiction.

(2) There is no appeal against the ruling on severing the proceedings or ruling on the denial of the severance motion.

4. Transfer of territorial jurisdiction

Transfer of territorial jurisdiction by decision of the directly higher instance court

Article 34

(1) When the court that has jurisdiction is prevented from conducting criminal proceeding, due to legal or factual reasons, it is obliged to inform about it the first directly higher instance court, which in turn shall designate another court that has subject matter jurisdiction on its territory.

(2) No appeal may be taken from said ruling.

The transfer of territorial jurisdiction by decision of the Supreme Court of Serbia

Article 35

The Supreme Court of Serbia may, upon the proposal of the Investigative Judge, Single Judge or President of the Chamber or upon the proposal of the competent Public Prosecutor, i.e., upon proposal of the defendant or his counsel, determine another actually competent court on the territory of the Republic of Serbia to

conduct criminal proceeding if it is obvious that it would facilitate the implementation of the proceeding or due to other existing important reasons.

5. Assessment and conflict of jurisdiction

The duty of the court to examine its subject matter and territorial jurisdiction and obligations of the court lacking jurisdiction

Article 36

(1) The court is bound do examine its subject matter and territorial jurisdiction, and as soon as it determines a lack thereof, shall declare it's lack of jurisdiction and, after the ruling becomes final, shall refer the case to the court having jurisdiction.

(2) If pending trial, the court determines that a lower court has jurisdiction to conduct the proceedings, it shall not refer the case to the lower court, but shall carry out the proceedings and render a decision.

(3) After the indictment becomes final, the court may not decline exercising its territorial jurisdiction nor can the parties raise the objection of want of territorial jurisdiction.

(4) The court lacking jurisdiction shall undertake such procedural actions with respect to which there is a danger in delay.

Instigation of proceeding for resolving jurisdictional disputes

Article 37

(1) If the court to which the case has been referred as the court having jurisdiction considers that the court that referred the case or another other court has jurisdiction, it shall initiate the proceedings for resolving the conflict of jurisdictions.

(2) When a second instance court rendered a decision upon an appeal taken from the ruling of the first instance court which declined exercising jurisdiction, this decision shall also be binding with respect to jurisdiction, for the court to which the case has been referred, if the second instance court has jurisdiction for resolving jurisdictional disputes between the courts involved.

Settlement of the dispute

Article 38

(1) A jurisdictional dispute between courts shall be decided by the court immediately superior to the courts involved.

(2) Before rendering a ruling on a jurisdictional dispute, the court shall ask the opinion of the Public Prosecutor representing the prosecution before that court in cases when criminal proceedings are conducted upon his request.

(3) The ruling on a jurisdictional dispute is not subject to appellate review.

(4) If the conditions referred to in Article 34 of this Act are met, the court may concurrently with the decision on jurisdictional dispute also render *ex officio* a decision on the transfer of territorial jurisdiction.

(5) Until the jurisdictional dispute between the courts is resolved, each of the courts involved shall be bound to undertake procedural actions with respect to which there is a danger in delay.

Chapter III

RECUSAL

Reasons for recusal

Article 39

A judge or lay judge shall not exercise the judicial power:

1) If he has been injured by the criminal offense;

2) If he is the spouse, i.e. former spouse, a relative by blood either in direct line or in collateral line up to the fourth degree, or in-law up to the second degree of the defendant, his defense counsel, the prosecutor, the injured person, their legal guardian or proxies;

3) If the defendant, i.e., his counsel or prosecutor, the injured party, i.e., his proxy, the injured party as the plaintiff or private applicant, are his godfather/godmother, best man, maid of honor and vice versa or have baptized each others children;

4) If he has a relationship of guardianship, adoptive or fostering relationship with the defendant, his counsel, the prosecutor or injured party;

5) If he has previously conducted evidentiary actions in the same criminal case or participated in the proceedings as a judge, prosecutor, defense counsel, legal representative or proxy of the injured person, i.e. prosecutor or if he has testified as a witness or an expert witness;

6) If he has taken part in rendering a decision of a lower court in the same case or has taken part in the same court in rendering the decision that is being appealed;

7) In the case of other circumstances which may shed doubt on his impartiality.

Conduct of a judge or lay–judge upon becoming aware of a reason for recusal

Article 40

(1) As soon as the judge or lay-judge becomes aware of a reason for his recusal stipulated in Article 39 paragraphs 1 to 6 of the present Code, he shall be obliged to cease all performance connected with the case and inform the President of the Court, who shall appoint his substitute. In an instance of a recusal of the President of the Court, he shall be replaced by the judge who is doyen by appointment, and should this not be possible, the substitute shall be appointed by the President of the next higher court.

(2) Should the judge or the lay-judge deem that there are other circumstances that justify his recusal (Article 39 paragraph 7), he shall inform the President of the Court of this.

Persons who may request the recusal of a judge or lay-judge

Article 41

(1) The recusal may be requested by the parties and the defense counsel.

(2) The motion for the recusal of a judge or lay - judge can be submitted by the parties or the defense counsel prior to commencement of the trial, and should they become aware of such reasons at a later date, the motion should be submitted immediately after becoming aware of the reasons.

(3) The motion for the recusal of the President of the Court for reasons stipulated in Article 39 paragraph 7, can be submitted up to 15 days from the receipt of the summons to the trial.

(4) The motion for the recusal of the judge of the higher court can be submitted along with the appeal or along with the response to the appeal, by the parties and the defense counsel.

(5) The parties and the defense counsel may request that a specific judge, i.e. lay-judge proceeding in the case be recused.

(6) The parties and the defense counsel are obliged to substantiate the request by stating the circumstances due to which they consider that there exists a legal base for the recusal. The reasons stated in an earlier motion that was denied may not be repeated.

Ruling on a Motion for Recusal

Article 42

1) The decision on the recusal motion is delivered by the President of the Court.

2) In case the recusal is sought of only the President of the Court or of the President of the Court and of the judge, i.e. lay-judge, the decision is delivered by the deputy president judge.

3) Prior to arriving at the decision on recusal, the statement of the judge, lay -judge or President of the Court should be provided and, if necessary, other investigations should be carried out.

4) An appeal can not to be taken from a ruling granting the recusal motion. The ruling denying the recusal motion can be through a special appeal, and if such a ruling is rendered after the indictment has been raised, then it can be challenged only in an appeal on the judgment.

5) If the recusal motion has been submitted in a manner contrary to the provision of Article 41 paragraphs 2, 3, 5 и 6 of the present Code, or if it is obviously submitted with the aim to prolong the process, the request shall be dismissed in full, i.e. in part. An appeal cannot be taken from the ruling dismissing the recusal motion. The ruling dismissing the recusal motion shall be delivered by the President of the Court, and after the opening of the session – by the chamber. The judge whose recusal is requested can participate from the opening of the session in rendering such a ruling.

Actions of a judge or lay- judge after becoming aware of the fact that a request for his recusal had been submitted

Article 43

When the judge or lay -judge becomes aware of the fact that a motion had been submitted for his recusal, he is obliged to immediately cease all activities related to the case, and should the recusal be requested according to Article 39 paragraph 7 of

the present Code, he can perform only those activities where danger of delay exists until the ruling is rendered.

Application of the rules on recusal of judges and lay- judges *mutatis mutandis*

Article 44

(1) Except as otherwise stipulated (Articles 129 of the present Code), the provisions on the recusal of the judges and the lay-judges shall be applied *mutatis mutandis* to the Public Prosecutors and their deputies, court reporters, interpreters, experts and expert witnesses. The Public Prosecutor, i.e. his deputy, shall not be recused if he had carried out evidentiary actions in the same criminal case, i.e. if he has taken participation in this proceeding as the prosecutor, (Article 39, item 5) or if he has participated in this proceeding before a lower court.

(2) The Public Prosecutor shall decide about the recusal of persons who are, according to the law, authorized to represent him in the criminal proceeding. The decision on the recusal of the Public Prosecutor is delivered by the immediately higher prosecutor. For the recusal of the Republic Public Prosecutor the provisions of relevant law are applied.

(3) The decision on the recusal of the recording clerk, interpreter, professional or expert shall be delivered by the chamber, the President of the Chamber or judge.

(4) When authorized police officials who are undertaking evidentiary activities in compliance with the present Code, the decision on their recusal shall be delivered by the Investigative Judge. If the court reporter participates in the undertaking of these activities the authorized police official undertaking the activity shall decide on this recusal.

Chapter IV
PUBLIC PROSECUTOR

Authorities of the Public Prosecutor

Article 45

For criminal offences prosecuted *ex officio*, the Public Prosecutor shall be authorized to:

1) conduct the preliminary investigation and to by issuing binding orders or by immediate supervision guide the activities of the law enforcement in the preliminary investigation;

2) render rulings on postponing of criminal prosecution in compliance with the present Code;

3) render Rulings on instigating the investigation and to conduct investigation by performing evidentiary activities;

4) conclude a plea agreement with the defendant in compliance with the present Code;

5) raise and represent the indictment, i.e. motion to indict before a court that has jurisdiction.

6) take an appeal from the court decisions that are not final and file extraordinary legal remedies against final court decisions.

7) perform other activities stipulated in the present Code.

Duty of the police and other government authorities participating in the preliminary investigation to act pursuant to the Public Prosecutor's request

Article 46

(1) In the aim of exercising the prerogatives set forth in Article 45, item 1 of the present Code all the authorities participating in the preliminary investigation are obliged to notify the appropriate Public Prosecutor of each undertaken activity. The police and other government authorities which have jurisdiction to discover the perpetrators of criminal offenses are obligated to act upon each request given by the appropriate Public Prosecutor.

(2) If the police or some other government authority fails to act upon the request of the Public Prosecutor, as stipulated in paragraph 1 of the present Article, the Public Prosecutor shall immediately notify the head of government authority in question, and if necessary the appropriate minister, government or parliament.

(3) If the police or some other government authority fails to act upon the request of the Public Prosecutor set forth in paragraph 1 of the present Article within 24 hours of the receipt of the notice from paragraph 2 of the present Article, Public Prosecutor shall without delay initiate commencement of disciplinary proceeding against the person for whom reasonable suspicion exists that he may be responsible for failing to act pursuant to Prosecutor's request.

Actions of the Public Prosecutor before the appropriate court and the subject matter jurisdiction of the Public Prosecutor

Article 47

The Public Prosecutor shall proceed before the appropriate court in accordance with the law, while the subject matter jurisdiction of the Public Prosecutor shall be

determined according to the rules on determining the subject matter jurisdiction of the court, except when stipulated differently by the relevant law.

Territorial jurisdiction of the Public Prosecutor

Article 48

The territorial jurisdiction of the Public Prosecutor is determined according to the provisions regulating territorial jurisdiction of court before which the Public Prosecutor is proceeding.

Actions taken in the proceeding by a Public Prosecutor lacking jurisdiction

Article 49

The actions taken in the proceeding which cannot be delayed shall be carried out by the Public Prosecutor lacking jurisdiction, but he must immediately inform of it the Public Prosecutor who has jurisdiction.

Conflict of jurisdiction between Public Prosecutors

Article 50

Conflict of jurisdiction between Public Prosecutors is settled by the Public Prosecutor who is immediately higher in rank to both of them.

Dismissal of prosecution by the Public Prosecutor

Article 51

The Public Prosecutor may dismiss the request for prosecution prior to the conclusion of the trial held before the trial court, and in front of a higher court - in cases provided for by the present Code.

Chapter V

THE INJURED PARTY AND THE PRIVATE PROSECUTOR

Term prescribed for the submission of the request of the injured party and private charges

Article 52

(1) For the criminal offences for which prosecution is undertaken upon the request of the injured party or based on private charges, the request or private charge shall be submitted within three months from the date the authorized person becomes aware of the criminal offence and of the person for whom there is a reasonable suspicion to believe is the perpetrator.

(2) If the private charge has been submitted for the criminal offence of defamation, the defendant can until the conclusion of the trial initiate a cross complaint even after the expiry of term set forth in paragraph 1 of the present Article against the plaintiff who has also committed the act of defamation against the defendant at the same time and in such a case, the court shall render one joint decision for both private charges.

Submission of request for criminal prosecution or private charges

Article 53

(1) The request for a criminal prosecution is submitted to the authorized Public Prosecutor, and the request for private prosecution is submitted to the court of jurisdiction.

(2) If the injured party has submitted the criminal offense report or an indemnification claim in the criminal proceeding, it shall be deemed that he has in this manner also submitted a request for prosecution.

(3) If the injured party has submitted criminal offense report or request for prosecution, and during the process it is determined that this is a criminal offence which is subject to private prosecution, the criminal offense report, i.e. request shall be considered to be filed in timely fashion if they were filed within the term prescribed for submitting private charges. The private prosecution submitted in a timely manner shall be considered to be a request of the injured party submitted in a timely manner, if it is determined during the proceeding that this is a criminal offence which is subject to prosecution based upon the request.

Submission of request for criminal prosecution or private charges by legal representative

Article 54

(1) For minors and persons fully deprived of their legal capacity, the request or private prosecution shall be submitted by their legal representative.

(2) The minor who has turned sixteen can submit the request or private charges by himself.

Submission of the request for criminal prosecution, or private charges or the continuation of process after the death of the injured party or private prosecutor

Article 55

Should the injured party or private prosecutor die within the time period stipulated for the submission of the request or private charges, or during the proceeding, his spouse, person living with him in a common law marriage, children, parents, adopted children, adopter, siblings may within a period of three months of his death submit a request or charges, i.e. state they shall continue the proceeding.

Concurrence of parties injured by criminal offence prosecuted pursuant to request of injured party or private charges

Article 56

If several persons were injured by the same criminal offence, the prosecution shall be undertaken, or continued pursuant to the private charges of any of the injured persons.

Withdrawal of request for criminal prosecution or private charges

Article 57

The injured party or private prosecutor may withdraw their request, i.e. private charges until conclusion of the trial, by declaring so before the court conducting the proceeding. In said case they shall loose the right to re-submit the request, i.e. private charges.

.

The presumed withdrawal of the private prosecutor and return to previous state of affairs

Article 58

(1) If the private prosecutor fails to appear at the trial although duly summoned or if the summons could not have been served due to his failure to inform the court of the change of address or residence, i.e. due failure provide the address or providing the incorrect address or residence in the private prosecution, it shall be deemed that he has withdrawn the request, unless stipulated otherwise by the present Code (Article 456).

(2) The Presiding Judge shall allow return to the previous state of affairs to the private prosecutor, who due to legitimate cause was unable to appear at the trial or inform the court of the change of address of residence in a timely manner, if he files a motion to return to the previous state of affairs within eight days of the termination of the impediment.

(3) The return to the previous state of affairs cannot be sought after the expiry of three months from the day of the omission.

(4) The ruling granting the return to the previous state of affairs cannot be appealed.

(5) The ruling on the dismissal of the proceeding rendered in case of paragraph 1 of the present Article, shall enter into force upon expiry of all the terms set forth in paragraphs 2 and 3 of the present Article.

The right of the injured party and private prosecutor to have the evidence disclosed to them and have the evidentiary initiative during the criminal proceeding

Article 59

(1) During the investigation the injured party shall have the right to point out all the facts and propose evidence that he considers to be significant for the criminal offence and his indemnification claim.

(2) At the trial the injured party and the private prosecutor shall have the right to propose evidence, question the defendant, witnesses, and expert witnesses, to state their remarks and explanations regarding their testimonies and give other affidavits and proposals.

(3) The injured party, the injured party as a subsidiary prosecutor and the private prosecutor shall have the right to examine the documents and view the objects used as evidence.

(4) The Public Prosecutor and Investigative Judge in the preliminary investigation and investigation, i.e. President of the Chamber after the indictment was raised shall inform the injured party and the private prosecutor of the aforementioned rights stipulated in paragraphs 1 to 3 of the present Article.

General rules on becoming subsidiary prosecutor

Article 60

(1) When the Public Prosecutor assesses that that there is no grounds for undertaking prosecution for the criminal offence prosecuted *ex officio* or when he assesses that there is no case against any of the accomplices, he shall be obliged to inform the injured party of this within 8 days and to advise the injured party of his right to assume the prosecution on his own.

(2) The injured party shall have the right to undertake, i.e. assume the prosecution, within 8 days of the receipt of the notice set forth in paragraph 1 of the present Article.

(3) Should the Public Prosecutor dismiss the charges, the injured party may, assuming on himself the prosecution, stand by the raised indictment or raise a new one.

(4) The injured party who has not been informed that the Public Prosecutor has not instigated prosecution or has dismissed the charges, may declare before the court having jurisdiction that he shall undertake or assume the proceeding within three months from the date of dismissal of charges, i.e. from the date when the ruling on dismissal of charges has been rendered.

(5) When the Public Prosecutor, i.e. court advises the injured party that it can assume prosecution, he shall also send a notice containing the advice on which actions need to be undertaken in order for him to enforce this right.

(6) Should the injured party as a subsidiary prosecutor die within the time period stipulated for the initiating the prosecution or during the proceedings, his spouse, the person living with him in a common law marriage, children, parents, adopted children, adopters, siblings, may commence prosecution within three months from his death, i.e. may declare before the court that they are continuing the process.

(7) The ruling on dismissal of charges based on Public Prosecutor's withdrawal of charges shall come into effect upon the expiry of terms stipulated in paragraphs 2 and 4 of the present Article.

Withdrawal of criminal charges by the Public Prosecutor at the trial

Article 61

(1) When the Public Prosecutor drops the charges at the trial, the injured party shall be obliged to state immediately orally, or no longer than within 8 days in writing, whether he wants to continue with the prosecution. If the injured party is not present

at the trial, and he has been duly summoned or if the summons could not be served due to his failure to inform of the change of address or residence, it shall be deemed that he does not want to continue with the prosecution.

(2) The President of the Chamber of the first instance court shall allow the return to the previous state of affairs to the injured party who was not duly summoned or who was duly summoned but could not appear, due to valid reasons, at the trial at which a judgment was rendered to dismiss charges because the Public Prosecutor had withdrawn charges, if the injured party within 8 days from the receipt of judgment submits a motion for the return to the previous state of affairs and if in this request he states that he is continuing the prosecution. In this case the trial shall be set again and the previous judgment shall be overturned with a judgment rendered at the new trial. If the duly summoned injured party does not appear at the new trial the prior judgment shall remain in force. The provisions of Article 58 paragraph 3 and 4 of the present Code shall also be applied in this case.

(3) The judgment denying the charges rendered in the case stipulated in paragraph 1 of the present Article, shall become legally binding when the terms for submitting the request for return to the previous state expire.

Presumed waiver of rights of injured party to undertake criminal prosecution, i.e. to withdrawal of the charges by the injured party as the subsidiary prosecutor

Article 62

(1) It the injured party does not initiate or continue prosecution within the time period proscribed by the law, or if the injured party as the subsidiary prosecutor who has been duly summoned does not appear at the trial, or if the summons could not have been served due to failure to notify the court of the change of address or residence, it shall be deemed that he has waived his rights for criminal prosecution.

(2) In case the subsidiary prosecutor does not appear at the trial to which he was duly summoned, the provisions of Article 58 paragraph 2 to 5 of the present Code shall be applied.

Consequential rights of the injured party as the subsidiary prosecutor and the taking over of criminal prosecution by the Public Prosecutor

Article 63

(1) The injured party as the prosecutor has the same rights as does the Public Prosecutor, except those that belong to the Public Prosecutor in the capacity of the government authority.

(2) In the proceeding conducted on the request of the injured party as the subsidiary prosecutor, the Public Prosecutor has the right to examine the course and the documentation of the criminal prosecution, and can, until the conclusion of the trial, take over the criminal prosecution and the proving of the indictment.

When the injured party is a procedurally a minor

Article 64

(1) If the injured party is a minor or a person fully deprived of work capacity, his legal representative is authorized to give all the statements and to undertake all the actions that the injured party is authorized to take according to the present Code.

(2) If the injured party has turned sixteen he is authorized to give statements and undertake activities in the process.

Proxy of the private prosecutor, of the injured party and of the subsidiary prosecutor

Article 65

(1) The private prosecutor, injured party or injured party as subsidiary prosecutor, as well as their legal representatives, may exercise their rights through a proxy.

(2) When the proceeding is conducted upon the request of the injured party as subsidiary prosecutor, for a criminal offense subject to more than five years of imprisonment pursuant to the present Code, a proxy can be appointed to the injured party as prosecutor upon his own request if it is in the interest of achieving the aim of the criminal prosecution (Article 1, paragraph 1) and if the injured party as subsidiary prosecutor, due to his financial status is unable to cover the representation costs. The public prosecutor that shall decide upon this during the investigation, i.e. President of the Chamber after the indictment had been raised, and the proxy shall be appointed by the President of the Court from the ranks of the attorneys.

The obligation of the injured party, private prosecutor or injured party as subsidiary prosecutor

Article 66

The private prosecutor, the injured party and the injured party as subsidiary prosecutor, as well as their legal representatives have the obligation to advise the court of each change of address and residence.

Chapter VI
DEFENSE COUNSEL

The right of the defendant to professional defense

Article 67

(1) The defendant may have a defense counsel during the entire criminal proceeding and at any time.

(2) The defense counsel may also be hired by his legal representative, spouse, person living with him in a common law marriage, blood relative in the direct line, adopted child, adopter, brother, sister and foster parent.

(3) Only an attorney can be retained as defense counsel, and he can be replaced by a trainee lawyer only in cases the prosecution is conducted for a criminal offence with a stipulated penalty of up to five years of imprisonment. Only an attorney can appear as defense counsel before the Supreme Court of Serbia.

(4) Defense counsel shall be obligated to submit the power of attorney to the authority before which the proceeding is being conducted. The defendant may grant the power of attorney to the defense counsel orally, which is recorded in front of the authority before which the proceeding is being conducted. The defense counsel shall be obliged to state in the power of attorney his place of business and the accurate address and all the other data needed by the authority conducting the criminal proceeding, for the purpose of summoning the defense counsel and serving him with written notices.

(5) The defense counsel shall have the obligation to inform the body conducting the proceeding in a timely manner of each change of address and residence.

(6) The authority conducting the proceeding may impose a fine of CSD 150,000 on the defense counsel who fails to perform duties stipulated in paragraphs 4 and 5 of the present Code and oblige him to cover all the costs which have arisen in connection with the failure to perform these duties.

(7) The defense counsel may file an appeal against the order stipulated in paragraph 6 of the present Article. The appeal is decided by the Chamber referred to in Article 24, paragraph 6 of the present Code and does not stay its execution.

Several defense counsels and a joint defense counsel

Article 68

(1) Several of the defendants may have a joint defense counsel only if this is not

contrary to the interests of their defense and if the authority conducting the proceeding has assessed that there was no potential conflict of interest between the defendants.

(2) A single defendant may at the same time have up to three defense attorneys, and in exceptional cases and subject to the approval of the court, the maximum of five defense attorneys. It shall be considered that the defense has been secured when at least one of the defense counsels is present during the proceedings.

Persons who cannot be defense counsel

Article 69

(1) A co-defendant, injured party, spouse of the injured party or of the prosecutor, nor their relatives that are related in the direct blood line up to any degree, in the collateral line up to the fourth degree and by marriage up to the second degree, cannot act as the defense counsel to the defendant.

(2) Defense counsel can neither be a person summoned as a witness, except if such person has according to the present Code been revealed of its duty to testify and has declared that he shall not testify.

(3) The defense counsel cannot be a person who has in the same case acted as a Judge or a Public Prosecutor or has undertaken activities in the preliminary investigation.

Exclusion of defense counsel from criminal proceeding

Article 70

(1) It the defense counsel has abused the contact with the defendant while he is in detention, with an aim to mediate in exerting the influence on witnesses, co-defendants or aiders and abettors, i.e. if the defense counsel has in any other way by means of abuse of his right to contact the detainee, participated in the performance of a criminal offence, preparation of escape of the detainee or obstruction, i.e. frustration of the purpose of detention, the court shall issue an order by which he is excluded from this criminal proceeding and fined with CSD 300.000.

(2) In the circumstances stipulated in paragraph 1 of the present Article, the defendant shall be called to take another counsel, and in cases of mandatory defense**,** the defense counsel shall be appointed by the court in compliance with Article 71, paragraph 4 of the present Code.

(3) When there has been a change of defense counsels as provided for in paragraphs 1 and 2 of the present Article, the court shall leave enough time for the counsel to

get acquainted with the case ant prepare the defense.

(4) The court shall issue ruling from the paragraph 1 of the present Article upon hearing the defense counsel for whom the probable cause exists that he abused his position in the manner described in paragraph 1 of the present Article, in the presence of the prosecutor, the defendant and the representative of the Attorney Bar Association of which the defense counsel is a member, and upon examining other necessary evidence.

(5) An appeal may be taken from exclusion ruling, which shall be determined by the Chamber referred to in Article 24, paragraph 6 of the present Code and which shall stay the enforcement of the ruling.

(6) The Attorney Bar Association shall be notified of the exclusion ruling of defense counsel when the ruling becomes final and shall, within one month of the receipt of the notice, inform the President of the Court of the measures that it has undertaken.

(7) The exclusion order of defense counsel and the imposed fine stipulated in paragraph 1 of the present Article, shall not exclude the possibility of criminal prosecution of the defense counsel, if his actions constitute the significant elements of a specific criminal offence.

Obligatory defense in the criminal proceeding

Article 71

(1) If the defendant is mute, deaf, or is not able to successfully defend himself, or if the proceeding is conducted for a criminal offence with a stipulated penalty of more than ten years of imprisonment or a more severe penalty, the defendant must have a defense counsel from the moment of the first interrogation.

(2) The defendant who was placed in detention must have a defense counsel from the moment the custody is imposed and during the time he is held in detention.

(3) The defendant who is tried in absence (Article 328) must have a defense counsel from the moment of rendering a ruling on trial *in absentia*.

(4) If the defendant, in the event of obligatory defense stipulated in the previous paragraphs does not obtain a counsel himself, the President of the Court shall appoint a defense counsel *ex officio* for the further course of the criminal proceeding up to the final judgment, and if a jail sentence of over thirty years is imposed – the defense counsel shall also be appointed for the proceedings on extraordinary legal remedies. When the defense counsel is appointed *ex officio* to

the defendant after the indictment has been raised, the defendant shall be notified of this along with the service of the indictment. If in cases of obligatory defense, the defendant is left without a defense counsel during the trial, and he does not obtain another defense counsel himself, the President of the Court before which the proceeding is being held shall appoint a defense counsel *ex officio*.

(5) An attorney who is capable of providing adequate legal assistance to the defendant in the criminal case which is the subject of the proceedings, shall be appointed as the defense counsel, according to place on the list of the attorneys that has been compiled upon the proposal of the relevant Attorney Bar Association, by the President of the first instance Court, i.e. Public Prosecutor or Chief of Police who has jurisdiction in cases when the defense counsel is appointed to the defendant during the preliminary investigation or investigation, and the interrogation of the defendant is conducted by the Public Prosecutor or the Police in compliance with the provisions of the present Code.

Appointment of defense counsel to an indigent defendant

Article 72

(1) When the conditions do not exist for an obligatory defense, and the proceeding is conducted for a criminal offence with a prescribed sentence of over three years of imprisonment and in other cases when this is in the interest of justice, a defense counsel shall be appointed upon the request of the defendant who is not able to bear the costs of his defense due to his financial status.

(2) The ruling on this request shall be rendered by the Investigative Judge, President of the Chamber, i.e. Single Judge and the defense counsel shall be appointed by the President of the Court. The provision stipulated in paragraph 5 Article 71 of the present Code shall be applied when appointing the defense counsel

Release of defense counsel

Article 73

(1) The defendant, i.e. another authorized person (Article 67, paragraph 2) may take another defense counsel instead of the appointed defense counsel (Articles 71 and 72). In that case the appointed counsel shall be released of his duties.

(2) The defense counsel appointed in compliance with Article 71 paragraph 2 of the present Code is released of his duties when the Ruling on discontinuance of detention becomes final.

(3) The appointed defense counsel can request to be released for justified reasons.

(4) Regarding the release of the defense counsel in circumstances provided for in paragraphs 1 and 2 of the present Article, prior to the commencement of the trial the ruling is rendered by the Investigative Judge, i.e. President of the Chamber, during the trial the ruling is rendered by the Trial Chamber, and during the appeal proceedings by the President of the first instance trial chamber, i.e. Chamber that has jurisdiction to rule on the appeal. Against such ruling the appeal is not allowed.

(5) The Public Prosecutor shall be obliged to inform the Investigative Judge, during the investigation, if the defense counsel is performing his duties unprofessionally, and the Investigative Judge may render a ruling on the release of the defense counsel in compliance with paragraph 4 of the present Article.

(6) The President of the Court, upon obtained opinion of the authority before which the criminal proceeding is being conducted, may release the appointed defense counsel who is performing his duties unprofessionally. The President of the Court shall appoint another defense counsel instead of the released defense counsel. The Attorney Bar Association shall be notified about the release of the defense counsel, and it shall be obliged to inform the President of the Court within two months, of the measures it has taken.

The right of the defense counsel to examine the evidence

Article 74

(1) After the Order on instigating the investigation has been issued or right after the direct indictment has been raised (Article 285), and even prior to this, if the suspect has been interrogated in compliance with the provisions provided for the interrogation of the defendant, the defense counsel has the right to examine the documentation and the collected items used as evidence, in the presence of an official person of the Clerk's office of the Public Prosecutor or Clerk of Court, who shall prepare an official note on this.

(2) The defense counsel does not have a right to copy the transcripts referred to in Article 147, paragraph 2 of the present Code.

(3) Immediately prior to the first interrogation of the suspect, the defense counsel shall have the right to read the criminal offense report, i.e. notification on the criminal offence.

The right of defense counsel to have contact with the defendant held in detention

Article 75

(1) If the defendant is held in detention, the defense counsel may exchange letters or talk with him.

(2) The defense counsel has the right to a confidential conversation with the suspect who has been detained even before the interrogation of the suspect, as well as with the defendant who is in detention. The only control allowed of this conversation prior to the fist interrogation and during the investigation shall be visual control, while audio control shall not be allowed.

(3) The defense counsel and the defendant may not confer on how the defendant should reply to question that has already asked.

(4) The Investigative Judge may *ex officio* or upon the request of a Public Prosecutor, order that the letters, sent by the defendant who is held in detention to his defense counsel or sent by the defense counsel to the defendant in detention, be handed over only after he has examined them, if there is reasonable cause to believe the they have been used in an attempt to organize escape, influence the witnesses, intimidate the witnesses or some other obstruction of the investigation. The Investigative Judge shall make an official note on retaining and examining of the letters.

(5) When the investigation is concluded or when the indictment, i.e. motion to indict without prior conducting of the investigation have been raised, the unsupervised correspondence and conversations between the defendant and defense counsel may no longer forbidden.

General authority of defense counsel and the termination of defense counsel

Article 76

(1) The defense counsel shall be authorized on behalf of the defendant to undertake all actions which the defendant is allowed to undertake, with the exception of those actions which, due to their nature and in compliance with the provisions of the present Code, may be performed only by the defendant personally.

(2) The defense counsel may not undertake actions which are contrary to the explicitly expressed will of the defendant, except in cases stipulated in Article 388, paragraph 6 of the present Code.

(3) The rights and obligations of the defense counsel cease when the defendant revokes or cancels the power of attorney, i.e. when he is released from duties or within a month from the date when the defense counsel has in compliance with the Code cancelled the power of attorney granted to him by the defendant, except when the defendant already has another defenses counsel or has obtained one.

Chapter VII
EVIDENTIARY ACTIONS

1. Search of apartment, other premises and persons

Reasons for search of apartment, other premises or persons

Article 77

(1) The search of apartment and other premises of the defendant or other persons, as well as movables which are found in those premises, may be conducted if it is probable that this will lead to the capture of the defendant or that evidence of a criminal offence will be found or objects of significance for the criminal proceeding.

(2) Search of Law Office may be conducted only for a certain object, file or document.

(3) The search of the person may be conducted when it is probable that the search would result in the finding of traces or objects, which may be significant for the criminal proceedings.

Search warrant and the time of search

Article 78

(1) The search is ordered by the court. The order is given in writing stating the reasons for the search and it shall contain:

1) name of the court;

2) facts based on which probable reasons arise for the search (Article 77 or the present Code);

3) name and function of the authorized police officer or Public Prosecutor, entrusted with the search, if the Investigative Judge decided to entrust the conduct of the search to one of the above-mentioned bodies;

4) name and surname, and if needed description of the person who is to be captured during the search of the apartment or other premises, or expected traces and description of objects needed to be found in the search process;

5) defining and description of the place in which the search will be conducted, stating its address, data related to the owner or occupant of the

objects or apartment and other premises, and other data relevant for determining of identity;

6) instructions that the search can be conducted in the manner stipulated in paragraphs 3 and 4 of the present Article and that the person being searched or whose premises are being searched has the rights stated in paragraph 2 of the present Article;

7) signature and official stamp of the court.

(2) Prior to commencement of the search, the search warrant shall be handed over to the person which is to be searched or whose premises will be searched. Before the search commences, the person referred to in the search warrant shall be asked to voluntarily hand over the wanted person, i.e. objects searched for. That person shall be advised that he has the right to a counsel, i.e. defense counsel who may be present during the search. If the person referred to in the search warrant requests a presence of a counsel, i.e. defense counsel to be present, the start of the search shall be postponed until his arrival no more than for three hours.

(3) The search may commence without handing over of the search warrant, as well as without the prior request to hand over the person or objects, and without the advice on the right to counsel, i.e. defense counsel, if there is justified reason to anticipate armed resistance or other types of violence or if it is obvious that preparations are being made to destroy or conceal the traces of criminal offense or objects relevant for the criminal proceeding or that such actions already began.

(4) The search shall be conducted during the day. The search may be conducted during the night as well if it began during the day but was not terminated, or if reasons stipulated in Article 81, paragraph 1 of the present Code exist.

Search rules

Article 79

(1) The occupant of the apartment or of other premises shall be called to be present during the search, and if he is absent, his representative shall be called or an adult person living in the apartment or a neighbor.

(2) Locked rooms, furniture or other objects shall be opened by force if their occupant is not present or does not want to open them voluntarily. During the opening unnecessary damages shall be avoided.

(3) During the search of the apartment, other premises or the person two adult citizens are to be present as witnesses. A female person may be searched only by a female, and the witnesses shall also be female. The witnesses shall prior to the start

of the search be warned to pay attention to the course of the search, as well as that they have the right to state their remarks, prior to the signing of search record, if they think that the content of the record is not accurate or that there has been an infringement of any of their rights during the search.

(4) When searching the premises of the government authorities, companies or other legal entities, their senior official shall be invited to be present.

(5) When a law office is searched in case referred to in paragraph 2 of the present Article, or in absence of the attorney to whom the law office belongs to, the representative of the competent Attorney Bar Association shall be invited, and if this is not possible, another attorney who is a member of the same Attorney Bar Association shall be invited. If the invited attorney does not arrive within three hours from the moment he receives the call, the search may be conducted without his presence.

(6) The search and inspection of a military building shall be conducted upon approval of the competent military official.

(7) The search of an apartment or person should be carried out carefully, having respect for the dignity and privacy of the person, without unnecessary obstruction of domestic life.

(8) A record shall be made of every search of the apartment, other premises or persons which has been conducted, that shall be signed by the persons being searched or whose premises are being searched and persons whose presence is mandatory. The course and the manner in which the search is being conducted shall by rule be audio and video recorded, with special attention to places in which certain persons or objects are found. The place of the search and some of its parts, as well as persons, i.e. objects found during the search, may be photographed. The audio and video recordings and photographs shall be enclosed in the search record and may used as evidence.

(9) During the search, only those objects and documents relevant to the purpose of the search shall be temporarily seized. Confiscated objects and documents shall be specified in the record, and shall also be included in the receipt which shall immediately be given to the person from whom objects and documents have been taken.

Discovery of items linked to another criminal offence

Article 80

(1) If during the search of the apartment, other premises or persons objects were found which have no connection with the criminal offence for which the search was ordered, but are probably connected to another criminal offense that is subject to ex off prosecution, these objects shall be described in the record and temporarily

seized, and a receipt of seizure shall immediately be issued.

(2) If the search was conducted by an Investigative Judge or the Police, and without the presence of the competent Public Prosecutor, the public prosecutor shall immediately be informed of the discovery of objects referred to in paragraph 1 of the present Article, for the purpose of initiating a criminal prosecution. These objects shall immediately be returned if the Public Prosecutor finds that there are no grounds for initiation of criminal proceeding, and no other legal grounds exist for the confiscation of these objects.

Search without a warrant

Article 81

(1) Authorized police officials or a Public Prosecutor, may enter a person's apartment or other premises without a court warrant and, if necessary, carry out a search for the following reasons:

1) when the occupant of the apartment or other premises requests so;

2) when somebody calls for help;

3) in order to execute a court order to place a person in detention or an order issued by a competent authority to bring a defendant;

4) to apprehend a fugitive perpetrator who has been caught in the act of committing a criminal offense subject to prosecution *ex officio*;

5) in order to remove serious risk to the life and health of people or to property of substantial value that could not be removed in any other way;

6) in order to secure evidence of importance for the criminal proceedings, if it is evident that the destruction of traces or objects of the criminal offense has started or is about to start at the apartment or other premises.

(2) The occupant of the apartment or other premises, if present, shall have the right to object to the proceedings carried out by the authorities referred to in paragraph 1 of the present Article. The authorized police official shall be bound to inform the

occupant of the apartment or other premises about this right and to include his objection in the document issued upon entering the apartment or in the record on the search of the apartment or other premises.

(3) A record shall not be made in the cases referred to in paragraph 1 of the present Article, however a receipt on entering shall be issued immediately to the occupant of the apartment or other premises, in which the reasons for entering the apartment or other premises and the objections of the occupant of the apartment or other premises shall be specified. If a search has also been carried out in premises of other persons, it shall be carried out pursuant to Article 79, paragraphs 3 and 7 of the present Code.

(4) A search may be carried out without the presence of witnesses if it is not possible to immediately arrange for their presence, and there is a risk of delay. The reasons for a search without the presence of witnesses shall be specified in the search record.

(5) The authorized police officials may carry out a search of a person without a search warrant and without witnesses, when executing a ruling on apprehension or during an arrest, if the person is suspected of being in possession of offensive weapons or tools that could be used for an attack, or if there is suspicion that he will dispose of, conceal or destroy the objects which need to be seized as evidence in the criminal proceedings.

(6) When conducting a search without a warrant, the authorized police officials shall be bound to submit immediately a report on the search to the Investigative Judge.

(7) If the prerequisites for a search without a warrant are met by the police in the preliminary investigation, a Public Prosecutor shall always be present during such a search, unless prevented by circumstances that are not subject to delay. In that case, the authorized police officials shall be bound to submit immediately a relevant report to the competent Public Prosecutor.

2. *Temporary seizure of objects*

Order for the seizure of objects and the seizure proceeding

Article 82

(1) Objects which in accordance with the Criminal Code have to be seized or which may be used as evidence in criminal proceedings shall temporarily be seized and delivered for safekeeping to the court, or their safekeeping shall be secured in some other way.

(2) Anyone who is in possession of such objects shall be bound to hand them over upon a relevant court order. The court order for the temporary seizure of objects shall include: the name of the court, legal grounds for the temporary seizure of objects, marking and detailed description of the object that is subject to temporary seizure, name and surname of the person the object is being temporarily seized from and location at which certain objects need to be temporarily seized.

(3) A person who refuses to hand over the objects may be fined with up to CSD 150,000 and in the case of further refusal the person may be fined once again with an additional amount of up to CSD 300,000. In the case of further refusal to hand over the objects, a person may be imprisoned. Imprisonment shall last until the person hands over the objects or until the final completion of the criminal proceedings, but not longer than for one month. The same proceeding shall be implemented against a person acting in an official capacity or a responsible person in a government authority, enterprise or other legal entity.

(4) The chamber (Article 24, paragraph 6.) shall decide on an appeal against a ruling imposing a fine or imprisonment. The appeal against the ruling on imprisonment shall not stay its execution.

(5) The authorized police officials may confiscate the objects referred to in paragraph 1 of the present Article when acting pursuant to the provisions of Article 255, paragraphs 1, 2 and 8 of the present Code, or when executing a court order.

(6) During the seizure of objects it shall be noted where they have been found with their description, and, if necessary, some other way shall be ensured to establish that these are the same objects. A receipt shall be issued for the seized objects.

Protection of the confidentiality of documents and data

Article 83

(1) State authorities may refuse to disclose or hand over their files or other documents if they deem that the disclosure of their contents would cause damage to public interests, except in cases under Article 87, paragraph 1 of the present Code. If the disclosure or hand-over of files and other documents is denied, the final decision thereon shall be made by the chamber (Article 24, paragraph 6).

(2) Enterprises or other legal entities may request that data related to their business be not publicly disclosed. The chamber (Article 24, paragraph 6) shall decide on the request.

Inventory of the temporarily seized documents and confidentiality protection

Article 84

(1) The temporarily seized files which may be used as evidence shall be listed. If this is not possible, the files shall be put in an envelope and sealed. The owner of the files may put his own seal on the envelope.

(2) The person from whom the files have been seized shall be summoned to attend the opening of the envelope. If he fails to appear or is absent, the envelope shall be opened, the files examined and listed in his absence.

(3) During the examination of files, due care must be taken to prevent unauthorized persons from learning about their contents.

Temporary seizure of letters, telegrams and other dispatches

Article 85

(1) Upon the proposal of the Public Prosecutor, the Investigative Judge may order postal, telegraphic and other enterprises, companies and entities licensed for information transfer, to retain and deliver to him with a delivery confirmation letters, telegrams and other dispatches sent to the suspect or defendant or sent by him if circumstances indicate that it is reasonably expected that these postal items shall be used as evidence in the proceedings.

(2) The Investigative Judge shall open the dispatches in the presence of two witnesses. When opening, due care shall be taken not to damage the seals, while the envelopes or wrappings and addresses shall be preserved. A record shall be made on the opening.

(3) The Investigative Judge shall inform the Public Prosecutor about the contents of the letters, telegrams and other dispatches and shall forward to the prosecutor upon his own request, their copies and a copy of the record referred to in paragraph 2 of the present Article.

(4) If this does not violate the interests of the proceedings, the suspect or defendant or the addressee may be fully or partially informed of the contents of the dispatch, which may be also delivered to him. If the defendant or suspect is absent, the dispatch shall be returned to the sender unless this is against the interests of the proceedings.

Acquiring information from a bank or other legal entity and suspension or temporary seizure of financial transactions

Article 86

(1) A Public Prosecutor may request that the competent government authorities, banking or other financial institutions make an inspection of business activities of certain individuals and submit to him documents and data that may be used as evidence of a criminal offense or proceeds from criminal offense, as well as information on suspicious financial transactions referred to in the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds arising from criminal offense.

(2) Under the conditions referred to in paragraph 1 of the present Article, the Public Prosecutor may issue an order by which a competent authority or institution shall be requested to temporarily suspend the payment, i.e. issuance of suspicious money, securities or objects.

(3) In the order referred to in paragraphs 1 and 2 of the present Article, the Public Prosecutor shall describe in more detail the contents of the measure or action he has requested to be undertaken.

(4) Upon a proposal from the Public Prosecutor, the court may issue a ruling by which the financial transaction, suspected of constituting a criminal offense or of being intended for the execution or concealment of a criminal offense or proceeds from criminal offense, shall be suspended.

(5) Under the decision referred to in paragraph 4 of the present Article, the court shall order the funds to be temporarily seized, either from an account or in cash, and deposited to a special account for safekeeping until the final completion of the criminal proceedings, or until conditions for their return are created.

(6) The decision referred to in paragraph 4 of the present Article may be appealed by the parties and defense lawyer, or by the owner of the funds or his authorized representative, or by the legal entity from whom the funds have been temporarily seized. The chamber referred to in Article 24, paragraph 6 shall decide on the appeal.

Temporary seizure of objects or proceeds that are suspected of resulting from criminal offense and the destruction of narcotics before the final end of the proceedings

Article 87

(1) If there is reasonable suspicion that an object or proceeds result from a criminal offense punishable by imprisonment of ten years or more severe penalty, the court may order the objects and the assets to be seized in a way other than that described in the general conditions referred to in Articles 82 to 86 and Articles 491 to 497 of the present Code.

(2) Unless otherwise provided for by the present Chapter, provisions of the Code on the Enforcement Proceeding and relevant provisions of the present Code shall be applied, as appropriate, in the course of temporary seizure of objects and assets referred to in paragraph 1 of the present Article.

(3) When narcotics are temporarily seized, the authority in charge of proceedings shall as a rule, and especially in the case of a large quantity of narcotics, ensure the safeguarding of a quantity which is at least ten times greater than the lowest amount needed for appropriate expert analysis, while the rest shall be destroyed in the presence of the President of the Court or the judge appointed by him, Public Prosecutor and authorized police official, on which a record shall be made.

Request for the temporary seizure of objects and proceeds for which reasonable suspicion exist that they result from criminal offense

Article 88

(1) Investigative Judge or the Trial Chamber before which the trial is being held shall decide upon the request of the Public Prosecutor on the measures of temporary seizure of objects and proceeds.

(2) The request of the Public Prosecutor referred to in paragraph 1 of the present Article shall include: a brief description and statutory title of the criminal offense, description of the objects or proceeds acquired through the commission of a criminal offense, data on the person who owns these objects or proceeds, evidence which serves as a basis for suspicion that the objects or proceeds have been acquired through the commission of a criminal offense, and reasons why it would be very difficult or impossible to seize the objects or proceeds from criminal offense by the end of the criminal proceedings.

Ruling on a temporary seizure of objects and proceeds for which reasonable suspicion exist that they result from criminal offense

Article 89

(1) In its ruling on a temporary seizure of objects or proceeds, the court shall specify the value and type of the objects or proceeds, and the period during which they shall remain seized.

(2) In its ruling referred to in paragraph 1 of the present Article, the court may specify that the measure does not apply to the objects or proceeds which need to be exempt under the rule on protection of bona fidae acquirers.

(3) The ruling referred to in paragraph 1 of the present Article may be appealed, and the chamber referred to in Article 24, paragraph 6, of the present Code shall rule on the appeal. The appeal shall not stay the execution of the decision.

(4) The Court shall serve the ruling containing statement of reasons referred to in paragraph 1 of the present Article upon the person against whom the measure shall be implemented, to bank or other institution in charge of payment operations, and, if necessary, to other persons and government authorities.

Appeal against a ruling on the temporary seizure of objects and proceeds for which reasonable suspicion exist that they result from criminal offense

Article 90

(1) If a ruling on the temporary seizure of objects and proceeds is appealed, the chamber referred to in Article 24 paragraph 6 of the present Code shall schedule a hearing and summon the person the ruling refers to, his defense counsel, i.e. his proxy and the Public Prosecutor.

(2) The hearing referred to in paragraph 1 of the present Article shall be held within one month from the date when the appeal has been filed. The summoned persons shall be heard at the hearing. Their failure to appear shall not prevent the hearing from being held.

(3) The chamber shall cancel the measure referred to in paragraph 1 of the present Article if legality of the origin of the objects or proceeds is proved with credible documents, i.e. if the Public Prosecutor fails to prove that the objects and proceeds probably result from criminal offense.

Duration of the measure of temporary seizure of objects and proceeds for which reasonable suspicion exist that they result from criminal offense

Article 91

(1) The maximum period in which the measure of temporary seizure of objects and proceeds may be implemented shall be until the completion of criminal proceedings before a court of first instance.

(2) If the measure referred to in paragraph 1 of the present Article has been ordered in the preliminary investigation, it shall be revoked *ex officio* unless an investigation

commences within three months from the date when the order on the implementation of this measure has been issued.

(3) This measure may be revoked by the court *ex officio,* or at the request of a Public Prosecutor or an interested party before the expiration of the deadlines referred to in paragraphs 1 and 2 of the present Article, if it is proven to be unnecessary or unjustified in view of the severity of the criminal offense, financial situation of the person subject to the measure or the person he has the legal obligation of supporting and circumstances that show that it would not be impossible nor very difficult to seize the objects or proceeds before the completion of the criminal proceedings.

Enforcement of a decision on the temporary seizure of objects and proceeds for which reasonable suspicion exist that they result from criminal offense

Article 92

(1) The measure of temporary seizure of objects and proceeds shall be enforced by the court in charge of enforcement under the Code on Enforcement Proceedings, which is in charge of all disputes arising from the enforcement of the measure.

(2) The day of opening of bankruptcy proceedings against the person in possession of the temporarily seized objects or proceeds shall create the right to file an interpleader regarding these objects and proceeds as amounts that matured.

Temporary management of assets and funds

Article 93

The government authority having jurisdiction shall manage the temporarily seized assets and funds with due diligence throughout the duration of the measure.

Return of the temporarily seized objects

Article 94

Objects that have been temporarily seized during the criminal proceedings shall be returned to their owner, i.e. the person was in possession if the proceedings are suspended and there are no reasons for their confiscation (Article 490). The objects shall be returned to the owner, i.e. possessor even before the completion of the criminal proceedings, as soon as the reasons for their seizure cease to exist.

3. Examination of the defendant

Basic rules for the examination of the defendant

Article 95

(1) At the first examination of a defendant, he shall be asked for his first name and surname; personal identification number; nickname, if any; the first names and surnames of his parents, maiden name of his mother or family name of a parent that was changed after marriage; place of his birth; address; day, month and year of birth; citizenship; occupation; employment status and employer's name; financial standing; family situation; if he is literate; his educational background; if he has served the army and if so where and when, if he has the rank of a reserve non-commissioned officer, officer or military official; if he is listed in the military records and if so at which authority in charge of defense; if he has been decorated; if he has ever been convicted and if so when and for which criminal offense; if he has ever been sentenced and if he has served the sentence and when; if a criminal proceeding is underway against him for another criminal offense; and if he is a minor, who his legal representative is.

(2) The defendant shall be instructed that he shall be bound to appear upon a summons and immediately notify the court of any changes of his address or of intention to change his place of residence, and shall be warned of the consequences if he does not act accordingly. Thereafter, the defendant shall be informed of his rights referred to in Article 5 paragraphs 1, 6 and 7 of the present Code as well as of:

1) why he is being charged and which criminal offense he is being charged with;

2) facts which serve as the basis for reasonable suspicion that he has committed the criminal offense;

3) that he is under no obligation to present his defense or answer any of the questions;

4) that if he decides to present his defense he is under no obligation to incriminate his close relatives, spouse or person living with him in a lasting common-law marriage.

(3) Upon having received the instruction in accordance with paragraph 2 of the present Article, the defendant shall be called on to present his defense if he wishes to.

(4) At his request, the defendant shall be allowed to read the criminal charges, i.e. notification on criminal offense immediately before the first hearing, but after reading it, and before the hearing, the defendant may not consult his defense counsel until the examination has been completed.

(5) The defendant shall be examined verbally, and during the hearing he shall have the right to use his notes.

(6) During the hearing, the defendant should have the opportunity to speak about all incriminating circumstances and state all facts in favor of his defense and his position in criminal proceedings without any interruptions.

(7) Once he has completed his statement, the defendant shall be asked questions if it is necessary to fill the gaps or remove contradictions and ambiguities in his story.

(8) The defendant shall be examined decently and with full respect for his dignity.

(9) Force, threat, deceit, promises, coercion, wearing-out tactics or similar means (Article 143, paragraph 5) must not be used to obtain a statement or confession or a particular action by the defendant that may be used as evidence against him or to achieve any other goal.

(10) The defendant may be heard in the absence of a defense counsel if he has expressly waived this right and defense is not mandatory, if the defense counsel is not present although he has been notified about the examination (Article 278, paragraph 8) and there is no possibility for the defendant to take another defense counsel, or if the defendant has not secured a defense counsel for the first hearing

within 24 hours from the time he has received the instruction on this right (Article 5, paragraphs 6 and 7), except in the case of mandatory defense.

(11) If any actions have been taken in violation of the provisions of paragraphs 9 and 10 of the present Article, or if the defendant has not been instructed about his rights referred to in paragraph 2 of the present Article, or if the defendant's statements pursuant to paragraph 10 of the present Article regarding the presence of a defense counsel have not been entered into the record, a judicial decision may not be based on the defendant's statement.

Questioning of the defendant, prohibition to assume admission, and change of the defendant's statement

Article 96

(1) Questions shall be put to the defendant in a clear, comprehensible and precise manner so that he can perfectly understand them. The hearing must not be based on the assumption that the defendant has admitted to something that he has not, nor must leading questions be asked.

(2) If subsequent statements made by the defendant differ from the previous ones, and particularly if the defendant revokes his admission, the authority in charge of his hearing shall invite the defendant to present his reasons for giving different statements, i.e. revoking his admission.

Confrontation of the defendant with other persons

Article 97

(1) The defendant may be confronted with a witness or another defendant if the important facts in their statements differ and if the authority in charge of the proceedings believes that this difference may be clarified through confrontation.

(2) The confronted persons shall be placed facing one another and shall be requested to repeat to one another, while maintaining eye contact, their statements regarding each disputable fact and to argue the truthfulness of their respective statements. The authority supervising the confrontation may question the

confronted persons. The course of the confrontation, the conduct and statements of the confronted persons shall be entered in the record and, if the authority in charge of the proceedings finds it opportune, an audio and video recording may be made. The recording of the confrontation shall be attached to the record as its integral part and may be used as evidence.

Identification of objects by the defendant

Article 98

(1) The objects that are in connection with the criminal offense or those that serve as evidence, i.e. those for which it needs to be established whether the defendant recognizes them, shall be presented to the defendant for identification after he has previously described them. If such objects cannot be brought to the defendant, he may be taken to the place where they are located so that they can be shown to him.

(2) Record shall be made on the course of the identification and statements of the defendant and, when the authority in charge of the proceedings finds it opportune, an audio and video recording of the process of identification and statement by the defendant may be taken. If identification is carried out at the location where the objects are, an audio and video recording shall be made as a rule. The recording of the identification shall be attached to the record as its integral part and may be used as evidence.

Recording of the defendant's statement

Article 99

(1) The defendant's statement shall be entered into the record as a first-person narrative, while the questions and answers shall be entered into the record only when they refer to a criminal matter.

(2) The defendant may be permitted to dictate his own statement into the record.

(3) As a rule, the defendant's statement shall be recorded with the audio or audio and video recording equipment, unless when this is impossible for important reasons. The recording of the defendant's statement constitutes an integral part of the record on the hearing of the defendant and may be used as evidence.

The defendant's confession

Article 100

When a defendant confesses that he has committed a criminal offense, the authority in charge of the proceedings shall have the obligation to continue gathering evidence on the criminal offense only if the confession has obviously been false, incomplete, contradictory or ambiguous or if the confession is not supported by other evidence, i.e. if there is suspicion that the confession has been made in order to conceal other perpetrators or other criminal offenses.

Examination of a defendant with a disability and examination of a defendant through an interpreter

Article 101

(1) The defendant shall be examined through an interpreter in the cases envisaged in the present Code.

(2) If the defendant is deaf, questions shall be posed in writing, and if he is mute, he shall be asked to answer in writing. If the examination cannot be carried out in this way, a person with whom the defendant is able to communicate shall be summoned to act as an interpreter.

(3) If the interpreter has not previously taken an oath, he shall swear that he shall faithfully communicate the questions put to the defendant as well as statements made by the defendant. If the interpreter refuses to take the oath, his statement to that effect shall be entered into the record and the authority in charge of the proceedings shall summon another interpreter.

(4) The provisions of the present Code on expert witnesses shall be applied to interpreters as appropriate.

4. Examination of witnesses

Persons examined as witnesses

Article 102

(1) Persons who are likely to have knowledge and to be able to provide information on a criminal offense, its perpetrator and other relevant circumstances shall be summoned and examined as witnesses.

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

(3) Every person summoned as a witness shall have the obligation to appear at court and, unless otherwise prescribed by the present Code, shall also have the obligation to testify.

Persons who may not be examined as witnesses

Article 103

The following persons may not be examined as witnesses:

1) a person whose testimony would violate his duty to keep a state, military or official secret until the competent authority releases him of this duty in a written statement;

2) a person whose testimony would violate the obligation of a legal privilege of confidentiality regarding the information gained in his professional capacity (member of clergy, lawyer, physician, nurse, midwife, psychologist, social worker, etc.), unless he has been released from this obligation by a special regulation or document, or a statement entered into the record by the person to whom such legal privilege of confidentiality belongs, or such a statement by his legal successor;

3) a minor who, in view of his age and mental development, is incapable of understanding the importance of his right not to testify (Article 104, paragraph 1), unless the defendant himself demands so;

4) the defendant's defense lawyer on what he, as the defense counsel, has been told by the defendant;

5) a person who is completely incapable of testifying due to his mental or physical illness or age;

Persons exempt from the duty to testify

Article 104

(1) The following persons shall be exempt from the duty to testify:

1) the defendant's spouse and the person with whom he lives in a lasting common-law marriage;

2) the defendant's blood relatives in a direct line, collateral relatives to the third degree and his in-laws to the second degree;

3) a person who is the defendant's godfather or best man, or to whom the defendant is godfather, or a person who is godfather to the defendant's children, or to whose children the defendant is godfather;

4) the defendant's adopted child or adoptive parent.

(2) The court in charge of the criminal proceedings shall have the obligation to instruct the persons referred to in paragraph 1 of the present Article, prior to their examination or as soon as it learns of their relationship with the defendant, that they do not have to testify. The instruction and the answer shall be entered in the record.

(3) A person who has reason not to testify against one of the defendants shall be exempt from the duty to testify against the other defendants if his testimony cannot be, by nature of the matter, limited only to these other defendants.

Procedural consequences of mistakes and abuse of the authority in charge of the proceedings during the examination of a witness

Article 105

If a person who may not be examined as a witness (Article 103) or a person who does not have to testify (Article 104) has been examined as a witness and has not been instructed of his right not to testify or has not explicitly waived it, or if this instruction and waiver has not been entered in the record, or if the testimony has been obtained from a witness by coercion, threat or similar forbidden means (Article 143, paragraph 5), a judicial decision cannot be based on such a testimony.

Right of a witness not to answer certain questions

Article 106

A witness is not obliged to answer individual questions by which he would be likely to expose himself or persons referred to in Article 104, paragraph 1 of the present Code to serious disgrace, considerable material damage or criminal prosecution.

Questions that may not be posed to the injured party or witness

Article 107

The injured party or a witness must not be asked questions that refer to his sexual activity and preferences, political and ideological preferences, racial, national and ethnic background, ethical criteria and other strictly personal and family circumstances, unless the answers to such questions are in direct and obvious connection with the need to clarify the important elements which constitute the criminal offense which is the subject matter of the proceedings.

Summoning a witness

Article 108

(1) A witness shall be summoned by serving a written summons which shall indicate the name and surname and occupation of the summoned person, when and where he is to appear, the criminal case in connection with which he is summoned, an indication that he is summoned as a witness and the consequences of unjustifiable non-compliance with the summons (Article 115).

(2) A witness who has agreed to this in the preliminary investigation or in a previous hearing and who has confirmed that he has the necessary technical requirements for being served such a summons, may also be summoned by e-mail or any other electronic messaging system, if the authority which is summoning the witness can thus receive a feedback that the witness has personally received such a summons.

(3) A minor younger than 16 shall be summoned as a witness through his parents or legal representative, except where this is not possible for reasons of urgency of proceedings or other circumstances.

(4) A witness who by reason of old age, illness or serious disability is unable to comply with the summons may be examined in his apartment or other place he is in.

Method of examining a witness

Article 109

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

(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 false testimony constitutes a criminal offense. A witness shall also be instructed that he need not answer any of the questions referred to in Article 106 of the present Code and the instruction shall be entered in the record.

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

(4) The witness shall be asked if he has the technical requirements for receiving summons by e-mail or any other electronic messaging system and, if so, whether he is the only person who has access to the PC, or has the password for opening e-mails and possibility to confirm by electronic means the receipt of the summons served to him in this way, and whether he agrees to be served summons in this way if the need for another examination arises.

(5) When a minor is examined, especially if he has been injured by the criminal offense, special care shall be taken to prevent any harmful effects of the hearing on his state of mind. If necessary, the minor shall be examined with the assistance of a psychologist, pedagogue or some other expert.

(6) After the general questions, the witness shall be asked to say everything he knows about the case, whereupon questions shall be asked so that the statement he has provided may be checked, supplemented, and clarified. The use of deception or leading questions shall not be allowed during the examination of a witness. A witness shall always be asked how he knows the things he is testifying about.

(7) Witnesses may be confronted if they give testimonies which substantially conflict with one another. Only two witnesses may be confronted at a time. In the confrontation of witnesses, provisions of Article 97, paragraph 2 of the present Code shall be applied.

(8) The injured party examined as a witness shall be asked whether he intends to pursue an indemnification claim in the criminal proceedings.

Rules for the examination of very sensitive injured parties and witnesses

Article 110

(1) The injured parties and witnesses whom the authority in charge of the proceedings has assessed as very sensitive in view of their age, experience, lifestyle, gender, state of their health, nature or consequences of the criminal offense, i.e. other circumstances of the case, and decided that the examination on the premises of the authority in charge of the proceedings might have harmful effects on their state of mind and physical state shall be examined in the way referred to in Article 108, paragraph 4 of the present Code.

(2) The injured party or witness referred to in paragraph 1 of the present Article may be examined at his apartment or in some other place where he is, or in an authorized institution/organization which employs experts for the examination of very sensitive persons.

(3) A proxy shall be appointed to the injured party or witness referred to in paragraph 1 of the present Article during the examination, when the authority in charge of the proceedings deems this necessary for providing assistance to the said persons..

(4) Questions to the injured party or witness referred to in paragraph 1 of the present Article may be asked only through the authority in charge of the proceedings, which will address this injured party or witness with special care, trying to avoid any harmful effects of the criminal proceedings on his person and physical and mental state.

(5) The injured party or witness referred to in paragraph 1 of the present Article may be examined with the assistance of a psychologist, social worker or some other expert, when this is necessary to prevent any harmful effects of the criminal proceedings on his person and mental and physical state, and the authority in charge of the proceedings may decide to use picture and sound transmission devices in the examination of this person. Such an examination is held without the presence of parties and other participants in the proceedings in the room where the injured party or witness is situated, so that the parties, defense lawyer and persons who have the right to ask questions shall do so through the authority in charge of the proceedings, psychologist, pedagogue, social worker or some other expert.

(6) The court may decide to examine the injured party or witness referred to in paragraph 1 of the present Article in a closed session, in which case all data on the identity of this person shall constitute an official secret.

(7) The identification of the defendant by the injured party or witness referred to in paragraph 1 of the present Article shall be carried out in all stages of the criminal proceedings in such a way that would completely prevent the defendant from seeing and hearing the injured party or witness.

(8) The injured party or witness referred to in paragraph 1 of the present Article may not be confronted with the defendant, and he may be confronted with other witnesses only at their own request.

(9) No special appeal is allowed against the decisions made by the authority in charge of the proceedings on the basis of the provisions of the present Article.

Identification of persons or objects by a witness

Article 111

(1) If it is necessary to determine whether a witness can recognize a person or object he has previously described, he shall be shown the person in question together with, as a rule, between five and eight other persons unknown to him, whose distinctive features should be similar to those described by him, or the object in question together with the objects of the same or similar kind, whereupon the witness shall be asked to say whether he can identify this person or object with certainty or with a certain degree of probability and, in case of an affirmative answer, he should point at the identified person or object.

(2) In the preliminary investigation, the identification of persons shall take place in the presence of the Public Prosecutor, in such a way as to prevent the person who is the object of identification from seeing the witness and to prevent the witness from seeing this person before the identification proceeding begins.

Examination of a witness through an interpreter and examination of a witness with a disability

Article 112

If a witness is examined through an interpreter, or if a witness is deaf or mute, he shall be examined as provided for in Article 101 of the present Code.

Oath or solemn promise of a witness

Article 113

(1) A witness shall be requested to take an oath or solemn promise prior to his testimony.

(2) A witness may take an oath or solemn promise before the trial only if there is a probability that he will be unable to attend the trial because of illness or some other important reason. The reason why the oath or solemn promise was taken at that time shall be entered in the record.

(3) The authority in charge of the proceedings shall ask the witness if he wishes to take an oath with religious contents or a solemn promise. The authority in charge of the proceedings must not ask the witness to state his religious affiliation or non-affiliation to a certain religion and shall have the obligation to inform the witness that he does not need to state his religious affiliation.

(4) If the witness decides to take the oath, its text shall go as follows: "I swear by one God and everything I hold holiest and dearest in this world that I shall say the truth about everything I testify of and about everything I am asked and that I shall not withhold anything I know of this matter, and as I tell the truth here, so help me God."

(5) The witness shall have the right to adapt the text of the oath referred to in paragraph 4 of the present Article to the name of God used in his religion, i.e. the witness may use another term which for him has the appropriate religious meaning.

(6) If the witness decides to take the solemn promise, its text shall go as follows: "I solemnly promise and swear upon my honor that in my testimony I will say nothing but the truth about everything I am asked and that I will not withhold anything that has come to my knowledge."

(7) The witness shall take the oath or solemn promise orally, by reading its text or by answering affirmatively after the text of the oath, i.e. solemn promise has been read out by the authority in charge of the proceedings or the official person he authorizes. Mute witnesses who can read and write shall sign their name under the text of the oath, i.e. solemn promise and deaf or mute witnesses who cannot read or write shall take the oath, i.e. solemn promise with the assistance of an interpreter.

(8) The refusal and reasons for the refusal of a witness to take the oath, i.e. solemn promise shall be entered in the record.

Persons who may not take the oath or solemn promise

Article 114

The oath or solemn promise may not be taken by persons;

1) who are under age at the time of the hearing;

2) against whom it has been proved or reasonable suspicion exists that they have committed the criminal offense they are testifying about or have participated in it's commission;

3) whose mental state prevents them from understanding the importance of the oath or solemn promise.

Failure of a witness to respond to summons and refusal to testify

Article 115

(1) If a witness who has been duly summoned fails to appear and does not justify his failure to appear or if he leaves the place where he should be examined without permission or a valid reason, such a witness may be compelled to appear and may be fined with up to CSD 150,000.

(2) If the witness appears, but, after being warned of the consequences, refuses to give testimony without legal justification, he may be fined with up to CSD 150,000, and if he still refuses to testify, he may once again be fined with up to CSD 300,000. If the witness still refuses to testify after being ordered to pay the second fine and the proceedings are being held before the court, he may be imprisoned. This imprisonment shall last for as long as the witness refuses to testify or until his testimony becomes unnecessary, i.e. until criminal proceedings end with a final judgment, but shall not exceed a period of one month.

(3) The chamber (Article 24, paragraph 6) shall decide on an appeal against a ruling imposing a punishment of a fine or imprisonment. An appeal against the ruling on sentencing shall not stay the execution of the ruling.

General rule of witness protection

Article 116

(1) The authority in charge of the proceedings shall have the obligation to protect the witness and the injured party from insults, threats and any other attacks.

(2) A participant in the proceeding or any other person who insults or threatens the witness or injured party or brings his safety into jeopardy in front of the authority in charge of the proceedings, shall be warned or fined by the authority in charge of the proceedings. In case of violence or serious threat, the court shall notify the Public Prosecutor for the purpose of prosecution and in the case the violence or serious threat occurred in the preliminary investigation or investigation before the Public Prosecutor, he himself shall initiate prosecution or inform the Public Prosecutor having jurisdiction about it. Provisions of Article 115 of the present Code shall accordingly be applied regarding any fine(s).

(3) The Public Prosecutor, Investigative Judge, President of the Trial Chamber or the President of the Court may request from police to take special measures for the protection of the witness and injured party.

Examination of a protected witness

Article 117

(1) If there are circumstances that clearly indicate that the life, health, physical integrity, freedom or any considerable assets of a witness in a criminal proceeding punishable by imprisonment of ten years or any stricter penalty, or persons close to him, would be seriously threatened due to his testimony and answers to some questions, the court may decide to grant this person the status of a protected witness and order a special method of examination of this witness in the criminal proceedings in order to prevent his identity from being disclosed during the proceedings.

(2) The decision referred to in paragraph 1 of the present Article may exceptionally be made in the case of criminal proceedings for a criminal offense punishable by imprisonment of four years or any stricter penalty, if special circumstances indicate that the witness or persons close to him may be exposed to the threat referred to in paragraph 1 of the present Article, and an alternative method of protection of a witness would be either impossible or considerably more difficult.

(3) The special way of examination of a protected witness includes one or several special protective measures:

1) closed trial;

2) alteration, removal from the record or ban on the disclosure of any data referring to the witness's identity;

3) withholding of any data referring to the witness's identity;

4) examination of the witness under a pseudonym;

5) concealment of the face of the witness;

6) testifying from a separate room through voice-distortion devices;

7) examination of the witness in a room outside the courtroom, in another place in the country or abroad, communicated to the courtroom by means of the picture and sound transmission devices, with the possibility of using voice- and image-distortion devices.

(4) When special protection measures include the use of technical devices, a skilled professional person shall handle these devices under the supervision of the authority in charge of criminal proceedings.

(5) Examination in the way referred to in paragraph 3, item 7 of the present Article may be also carried out when the presence of the witness or injured party at the trial cannot be ensured, and such an examination may be carried out also through international legal assistance in criminal matters.

Ruling on granting a person the status of a protected witness

Article 118

(1) The court may rule to grant the status of a protected witness at the request of a person who either should be examined as a witness or has already been examined as a witness in the previous stages of the proceedings, or *ex officio*, i.e. at the request of a party and with the consent of the person who should be granted such a status. The request must be in writing and substantiated and, exceptionally, upon the commencement of the trial, a witness may make such a request verbally, at the time

the court decides on the exclusion of public on which a special record shall be made.

(2) The request referred to in paragraph 1 of the present Article shall be filed in a sealed envelope bearing the marking: “witness protection – official secret – confidential.” The request shall contain: personal data on the person who should be examined as a witness, or on the witness; description and statutory title of the criminal offense which constitutes the subject matter of the proceedings in connection with which the person should be examined; circumstances to which the testimony would most likely refer; circumstances that result in the serious threat referred to in Article 117, paragraph 1 of the present Code, or due to which the condition referred to in Article 117, paragraph 2 of the present Code has been met.

(3) The court shall make the decision referred to in paragraph 1 of the present Article after assessing the probable importance of witness’s testimony for the proceedings and seriousness of the threat referred to in Article 117, paragraph 1 of the present Code, or fulfillment of conditions referred to in Article 117, paragraph 2 of the present Code, and for this purpose the court shall schedule a separate hearing which shall be attended by the witness to whom the request refers and the parties. Immediately upon the conclusion of this hearing, the court shall decide on the status of protected witness and inform the persons who have attended the hearing verbally about the contents of its decision. Once the court renders a ruling granting the protected witness status, it shall explicitly warn the present persons of their obligation to keep the information on the identity of the witness a secret and of the consequences of violation of this obligation.

(4) In its ruling on awarding the status of protected witness, the court shall specify one or several special protection measures referred to in Article 117, paragraph 3 of the present Code and the way for protecting the information on the identity of the witness in the documents.

(5) The Court shall serve its ruling denying the request referred to in paragraph 1 of the present Article on the person who has filed the request and shall not communicate it verbally.

Keeping a protected witness’s identity secret during the criminal proceedings

Article 119

(1) Before the examination begins, the protected witness shall be informed that the data referring to his identity shall not be disclosed to anyone, except to the court and the parties, i.e. the authority in charge of the proceedings, and he shall be informed about the special protection measures which shall be applied during his examination.

(2) The authority in charge of the proceedings shall warn all present persons of their obligation to keep secret all information they directly or indirectly learn about the protected witness and persons close to him and of the fact that to divulge this secret constitutes a criminal offense. This warning shall be entered in the record together with the names and surnames of all present persons.

(3) The authority in charge of the proceedings shall forbid any question the answer to which might directly or indirectly disclose the identity of the protected witness.

(4) The protected witness shall sign the record using his pseudonym.

(5) Exceptionally, in especially justified cases, if the authority in charge of the proceedings assesses that the life, health or freedom of the witness have been seriously threatened and that the witness is convincing, the defendant and his lawyer may be denied temporarily and at the latest until the scheduling of the trial all or some information about the identity of the protected witness.

(6) The defendant and his lawyer must be given the opportunity in the proceedings to contest the justifiability of the measure referred to in Article 117, paragraph 3 of the present Code.

Keeping the identity of a protected witness secret in the documents

Article 120

(1) Data on the identity of a protected witness and persons close to him as well as of some other facts that may directly or indirectly lead to the disclosure of their identities shall be placed in a special envelope bearing the marking “witness protection – official secret – confidential,” sealed by the official seal of the court and given to the Investigative Judge for safekeeping.

(2) The sealed envelope may be opened only by the second instance court when deciding on an appeal against the decision of the first instance court that ended the criminal proceeding. The date and hour of the opening and names of the members of the trial chamber of the second instance court who are familiar with its content shall be written on the envelope. After that, the envelope shall be resealed and returned to the Investigative Judge of the first instance court.

(3) Service on a protected witness shall be made in such a way as to ensure that his identity remains a secret.

(4) Data on the protected witness and persons close to him represent an official secret which must be kept by all persons who learn it in any way and in any capacity.

Protection of data on a protected witness in criminal proceedings instituted as a result of his testimony

Article 121

In criminal proceedings instituted as a result of the testimony of a protected witness, the secrecy of information on the protected witness shall be ensured.

Appropriate implementation of some provisions on the protected witness

Article 122

Provisions of Articles 117 to 121 shall apply, as appropriate, to a suspect, defendant and injured party who also appears as a witness in criminal proceedings.

5. Site inspection and reconstruction

Site inspection

Article 123

The site inspection is conducted by the authority in charge of the proceedings when direct observation is needed in order to determine or clarify a fact that is important for criminal proceedings.

Reconstruction

Article 124

(1) In order to check the presented evidence or establish facts of importance for the clarification of a matter, the authority in charge of the proceedings may order a reconstruction of the events, which shall be conducted by recreating activities or situations under the circumstances in which, on the basis of the evidence taken, the event has occurred. If activities or situations are presented differently in testimonies of individual witnesses or defendants, the reconstruction of the event shall as a rule be carried out with each of them separately.

(2) The activity referred to in paragraph 1 of the present Article may be carried out completely or partly through computer generated simulations.

(3) The reconstruction must not be carried out in such a way that would violate the public order, offend public morals or endanger the lives or health of people.

(4) If necessary, some evidence may be presented again during the reconstruction.

Participation of specialists and expert witnesses in site inspections and reconstructions

Article 125

(1) The authority in charge of the investigation or reconstruction may request the assistance of a specialist on criminal offense technology, traffic or other field of expertise, who will, if necessary, find, protect or describe traces, make the necessary measurements and recordings, draw sketches or gather other information.

(2) An expert witness may also be invited to a site inspection or reconstruction if his presence would be useful for his findings and opinion.

6. Expert analysis

Order for an expert analysis

Article 126

An expert analysis shall be ordered when the determination or assessment of an important fact calls for the finding and the opinion of a specialist possessing the necessary professional knowledge.

Order for the engagement of an expert witness

Article 127

(1) The authority in charge of the proceedings shall order an expert analysis in writing. The order shall specify the facts for which the expert analysis is required and the persons to whom the expert analysis shall be entrusted. The order shall also be delivered to the parties.

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

(3) When the authority in charge of the proceedings designates an expert witness, it shall as a rule designate one expert witness, but if the expert analysis is complicated it shall designate two or more expert witnesses.

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

(5) A person whose place of residence is abroad may be designated as an expert witness only exceptionally, when this is obviously justified by the nature of the expert analysis and, especially because of an insufficient number of domestic experts or professional institutions for the specific type of expert analysis, or if other very important circumstances demand it.

(6) Upon a written approval of the President of the Supreme Court of Serbia, an expert analysis may, under the conditions referred to in paragraph 5 of the present Article, be entrusted to a foreign professional institution, i.e. particular authority of some other state only in the case of a proceeding for a criminal offense punishable by imprisonment of more than ten years and when this is obviously justified by the particular complexity of the case, nature of the expert analysis or some other important circumstances.

Duties of an expert witness

Article 128

(1) A person summoned as an expert witness shall have a duty to comply with the summons and give his findings and opinion within the time period specified in the order. The time period from the order may be extended at the request of the expert witness for justified reasons.

(2) If an expert witness who has been duly summoned fails to appear and does not justify his absence or if he refuses to perform an expert analysis, i.e. if he fails to give his findings and opinion within the time period specified in the order, he may be fined up to CSD 300,000 and in the case of a professional institution the fine may be up to CSD 3,000,000. If his failure to appear is unjustifiable, an expert witness may be compelled to appear.

(3) The chamber (Article 24, paragraph 6) shall decide on an appeal against the ruling by which a fine has been imposed.

Recusal of an expert witness

Article 129

(1) A person who may not be examined as a witness (Article 103) or who has been exempted from the duty to testify (Article 104), or against whom the criminal offense has been committed may not be appointed as an expert witness, and if he has been appointed, a judicial decision may not be based on his findings and opinion.

(2) Another reason for the recusal of an expert witness (Article 44.) is also in the case of a person employed by the injured party or the defendant, or a person who has the same employer as one or both of them.

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

(4) Where a special appeal has been allowed against the ruling denying the request for the recusal of an expert witness (Article 42, paragraph 4), the appeal shall stay the execution of the expert analysis, except where there is danger in delay.

Proceeding of expert analysis

Article 130

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

(2) The expert witness shall be requested to take an oath before the expert analysis. Before the expert analysis, a permanent expert witness shall be only reminded of the oath already taken.

(3) Prior to the trial, an expert witness may take an oath only before the court and only where there is a danger that he might fail to appear at the trial because of illness or some other reason. The reason why he has taken an oath at that time shall be entered in the record.

(4) The text of the oath goes as follows: “I swear by my personal and professional honor that I shall perform my expert analysis conscientiously and to the best of my

knowledge and that I shall state my findings and opinion accurately and completely."

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

(6) The expert witness may be provided with clarifications and may be allowed to inspect the case file. The expert witness may propose that evidence be collected or that objects and data material to his analysis and opinion be secured. If he attends a site inspection, a reconstruction or some other evidentiary action, the expert witness may propose that specific circumstances be clarified or that the person being examined be asked specific questions.

Examination of the objects of expert analysis

Article 131

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

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

Entry of findings and opinions in the record or subsequent filing of written findings and opinion

Article 132

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

Expert analysis by a professional institution or government authority

Article 133

(1) If an expert analysis is entrusted to a professional institution or a government authority, the authority in charge of the proceedings shall issue a warning that a person referred to in Article 129 of the present Code or a person who for some other reason provided for in the present Code is exempt from being an expert witness may not participate in giving findings and opinions, as well as warning them of the consequences of presenting a false finding and opinion.

(2) The professional institution, i.e. government authority shall be provided with the material necessary for the expert analysis, and, if necessary, shall proceed in accordance with provisions under Article 130, paragraph 4 of the present Code.

(3) The professional institution, i.e. government authority shall present its findings and opinion in writing, signed by the persons who carried out the expert analysis.

(4) The parties may request from the head of the professional institution i.e. government authority the names of the experts who will perform the expert analysis.

(5) Provisions under Article 130, paragraphs 1 to 5 of the present Code shall not be applied when the expert analysis has been entrusted to a professional institution, i.e. government authority. The authority in charge of the proceedings may request the professional institution or government authority to provide explanations regarding their findings and opinion.

Record of the expert analysis and right to inspect it

Article 134

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

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

Additional expert analysis

Article 135

If the opinion of an expert witness contains contradictions or deficiencies, or if a reasonable suspicion arises about the accuracy of the presented opinion, and if these deficiencies or suspicion cannot be removed by a new examination of the expert witnesses, the opinion of other expert witnesses shall be sought or a new expert analysis carried out by other expert witnesses.

Post mortem examination and autopsy

Article 136

(1) A post mortem examination and autopsy shall always be performed when there is a suspicion or it appears obvious that death was caused directly or indirectly by a criminal offense or is in connection with the commission of a criminal offense. If the body has been buried, an exhumation shall be ordered to view the body and perform an autopsy.

(2) Before the examination and post mortem of a body, and especially in order to assess whether there is reason to suspect that the person died as a result of a criminal offense, the authority in charge of proceedings may request the professional opinion of the doctor who has physically examined the body for the purpose of establishing the cause and time of death.

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

(4) When necessary, professional and scientific identification methods shall be used – fingerprinting of the body, analysis of a DNA sample and comparison of the

obtained DNA profile with the DNA profile of a missing or other person, blood relatives of the person thought that he might be identified and, if necessary, other analyses and other professional and scientific methods with the aim of establishing the identity of the body.

Post mortem examination and autopsy of a body outside an institution and recusal of the doctor who treated the deceased

Article 137

(1) Whenever an expert analysis is conducted outside a professional institution, the post mortem examination and autopsy of the body shall be performed by one, or if necessary, two or more forensic doctors. The Public Prosecutor or Investigative Judge assigned to the preliminary investigation or investigation, i.e. the President of the Trial Chamber president after the conclusion of the investigation or after an indictment has been raised, shall direct this expert analysis and shall enter the findings and opinion of the expert witness in the record.

(2) The doctor who treated the deceased cannot be designated as an expert witness. The doctor who treated the deceased may be examined as a witness during the autopsy in order to give explanations about the course and circumstances of the disease.

Contents of the expert witness's opinion and his obligations during the post mortem examination and autopsy of a body

Article 138

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

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

(3) In the case provided for in paragraph 2 of the present Article it should be established in particular whether death was caused by the very type and general nature of the injury, by the personal characteristics or the particular condition of the injured person, by accidental circumstances or by circumstances in which the injury was inflicted. It should also be determined whether timely assistance might have prevented death from occurring.

(4) The expert witness has the obligation to pay attention to any biological traces found (blood, saliva, sperm, urine, etc.), to describe and preserve them for the purpose of biological analysis, if ordered.

Post mortem examination and autopsy of a fetus and newborn child

Article 139

(1) During a post mortem examination and autopsy on a fetus, its stage of development, its capacity to survive outside the womb and the cause of its death should be established.

(2) During a post mortem examination and autopsy on a newborn child, it must be established in particular whether the baby was delivered alive or dead, if he was capable of living, how long he lived, when he died and the cause of death.

Suspicion that death was caused by poisoning

Article 140

(1) If poisoning is the suspected cause of death, suspicious substances (blood, urine, vitreous body fluid, organs of the body, etc.) which have been found in the body or elsewhere shall be sent for expert analysis to an institution in charge of carrying out toxicological research.

(2) In analyzing suspicious substances, the expert witness shall focus in particular on establishing the kind, quantity and effect of the poison discovered, and in case of

an analysis of substances found in the body, he shall also establish the quantity of the poison used, wherever possible.

(3) The institution in which the toxicological analysis is being carried out shall have the obligation to keep the remainder of the analyzed material in the appropriate way for the purpose of another analysis, or repeated or additional analyses, if ordered.

Expert analysis of bodily injuries

Article 141

(1) The expert analysis of bodily injuries is as a rule carried out by a physical examination of the injured person, but if this is not possible or necessary, as an exception, it is conducted on the basis of medical documentation or other information in the files.

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

(3) In the expert analysis, the expert witness has the duty to act in accordance with the provisions under Article 138, paragraph 4 of the present Code.

Expert analysis of the defendant's mental state

Article 142

(1) In case of suspicion that the mental competence of the defendant has been lost or diminished, the expert analysis of the defendant's mental state shall be ordered.

(2) If the expert witness believes that longer observation is necessary, the defendant shall be sent to an appropriate health care institution for observation. The relevant decision is made by the Investigative Judge, Individual Judge or the Trial Chamber. The observation may be extended and last for more than two months only upon a substantiated proposal of the manager of the health care institution, after the receipt

of the expert witness's opinion, but it may not last longer than six months under any circumstances.

(3) The defendant and his defense lawyer may appeal the decision referred to in paragraph 2 of the present Article within 24 hours after the moment when the decision was served on the defendant or his defense attorney. The Chamber referred to in Article 24, paragraph 6 of the present Code shall decide on the appeal within 48 hours and if this Chamber has already rendered the ruling which is subject to an appeal, the Ruling is then made by the Chamber of the directly superior Court. The appeal shall not stay the execution of the ruling.

(4) If the expert witnesses determine that the defendant has a mental disorder, they shall establish the nature, type, degree and duration of the disorder and present their opinion on the past and present effects of such mental state on the perception and actions of the defendant, his competence and will and if and to what extent the mental disorder existed at the time of commission of the criminal offense.

(5) If a defendant, who is in detention, is to be sent to a health care institution, the Investigative Judge, Individual Judge or the President of the Trial Chamber shall inform this institution about the reasons due to which this person has been detained in order to take the necessary measures to ensure the purpose of the detention.

(6) The time spent in the health care institution shall be included in length of the defendant's detention or sentence, if imposed.

Physical examination of a suspect or defendant

Article 143

(1) A physical examination of a suspect or defendant shall be conducted without his consent if this is necessary to establish facts of importance for the criminal proceedings. The physical examination of other persons may be conducted without their consent only if there is a need to establish whether a particular trace or consequence of a criminal offense can be found on their bodies.

(2) Taking of a blood sample and other medical steps which, under the rules of medicine, are necessary for the purpose of analyzing, identifying persons and establishing other facts of importance for criminal proceedings may be carried out

without the consent of the person who is to be examined, except if this might be detrimental to his health.

(3) Samples of saliva may always be taken for the purpose of conducting a DNA analysis, whenever this is needed in order to identify a person, or in order to make a comparison with other biological traces and other DNA profiles. This neither requires the consent of the person in question, nor is it regarded as an activity that might be detrimental to one's health.

(4) Activities referred to in paragraphs 1, 2 and 3 of the present Article shall be taken only upon the order of the court having jurisdiction, except in the case referred to in Article 255, paragraph 10 of the present Code.

(5) No medical interventions may be carried out or substances given to a suspect, defendant or witness that might affect their conscience and will during their testimonies.

Expert audit of business books

Article 144

(1) When an expert audit of business books is necessary, the authority in charge of the proceedings shall instruct the expert witness as to the aim and scope of the audit and the facts and circumstances which have to be ascertained.

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

(3) The ruling on regularizing accounts shall be rendered by the authority in charge of the proceedings, upon a written and substantiated report by the expert witness appointed to examine the business books. The ruling shall also specify the amount to be deposited with the court by the enterprise, some other legal person or entrepreneur as an advance on the costs entailed in regularizing the accounts. No appeal shall be permitted against this ruling.

(4) After the accounts have been regularized, the authority in charge of the proceedings shall, on the basis of the report of the expert witness, render a ruling by

which it shall determine the amount of the costs incurred thereby and order the person whose accounts were the subject of regularization to pay this amount. This person may appeal against the decision on refunding the costs. The chamber of the first instance court (Article 24, paragraph 6) shall decide on the appeal.

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

(6) Before the expert analysis referred to in paragraph 1 of the present Article, an inventory of business books and other business documents in connection with business books shall be made in the presence of the Public Prosecutor or authorized police official.

7. Presentation of photographs, audio recordings and audio/video recordings

Article 145

(1) Photographs, audio, i.e. audio and video recordings of the undertaken evidentiary actions in compliance with the present Code may be used as evidence and serve as a basis for a judicial decision.

(2) When audio recordings are used as evidence in criminal proceedings, they must be transcribed and entered in the case file.

(3) Photographs, audio, i.e. audio and video recordings which are not referred to in paragraph 1 of the present Article may be used as evidence in criminal proceedings if their authenticity has been proved and any possibility of photomontage or video montage or any other form of tampering has been excluded and if the photograph or the recording has been taken with the tacit or explicit agreement of the suspect or defendant, where he or his voice are in the photograph or recording.

(4) Photographs, audio, i.e. audio and video recordings which have been taken without the consent of the suspect or defendant if he or his voice is at the photograph or recording may also be used as evidence in the criminal proceedings if the photograph, audio, i.e. audio and video recording also shows another person, or his voice, who has given his tacit or explicit agreement to the taking of the photograph or audio, i.e. audio and video recording.

(5) If a photograph, audio, i.e. audio and video recording contains only some objects or events and persons who are neither a suspect nor a defendant, the photograph, audio or audio and video recording may be used as evidence on condition that it has not been created through the commission of a criminal offense.

(6) Photographs or audio, i.e. audio and video recordings made without the tacit or explicit agreement of the suspect or defendant who is on them or whose voice has been recorded, may be used as evidence in criminal proceedings if the photographs or audio, i.e. audio and video recordings have been taken as part of general security measures applied in public spaces – streets, squares, parking lots, schoolyards and yards of institutions and similar public areas, or within public facilities and rooms – government authorities buildings, institutions, hospitals, schools, airports, bus and railway stations, sports stadiums and arenas and other similar public premises and open spaces as well as at shops, stores, banks, exchange bureaus, business facilities and other similar facilities where recordings are regularly made for security reasons.

(7) Photographs or audio, i.e. audio and video recordings taken without the tacit or explicit agreement of the suspect or defendant who is shown in them or whose voice has been recorded, may be used as evidence in criminal proceedings if the photographs or audio, i.e. audio and video recordings have been taken as part of security measures taken by the occupant of an apartment and other premises or by some other person at the order of the occupant of the apartment and other premises, including gardens and similar open spaces.

(8) When photographs or audio, i.e. audio and video recordings have been taken in accordance with paragraph 1 and paragraphs 3 to 7 of the present Article, a part of the photograph or recording, extracted by appropriate technical means, and a photograph made from a frame in a video recording may be used as evidence in criminal proceedings.

(9) When photographs or video, i.e. audio and video recordings have been created in accordance with paragraph 1 and paragraphs 3 to 7 of the present Article, a drawing or a sketch made on the basis of the photograph or video recording may be used as evidence in criminal proceedings, if it has been made in order to clarify a detail in the photograph or recording and if the photograph or recording is part of the evidence.

Chapter VIII

SPECIAL INVESTIGATIVE TECHNIQUES

1. Secret audio and visual surveillance of a suspect

Order on the secret audio and visual surveillance of a suspect

Article 146

(1) Acting upon the written and reasoned proposal of a Public Prosecutor, an Investigative Judge may order the surveillance and recording of telephone and other conversations or communication by other technological devices and video recording or positioning and electronic surveillance of persons for whom grounds of suspicion exist that they have committed criminal offenses:

1) against the Constitutional order and security of the Republic of Serbia and SCG;

2) against humanity and other goods protected by international law;

3) belonging to organized criminal offense referred to in Article 21 of the present Code;

4) of murder, aggravated murder, serial rape, banditry, robbery, money counterfeiting, money laundering, tax evasion, unauthorized production, holding and trade in narcotics, unlicensed holding of weapons and explosive substances, giving and receiving bribe, abuse of office, blackmail, extortion and kidnapping.

(2) A special investigative technique referred to in paragraph 1 of the present Article may exceptionally be ordered if particular circumstances indicate that any of the criminal offenses referred to in paragraph 1 of the present Article is being prepared, and facts indicate that the criminal offense cannot be prevented in any other way or that its prevention would be very difficult, or that irreparable consequences would be caused to the lives or health of people or valuable assets.

(3) Measures referred to in paragraph 1 of the present Article shall be ordered at the proposal of the Public Prosecutor by the Investigative Judge in an explained order. The order shall include data on the person against whom the measure is to be applied, grounds for suspicion, way of implementation, scope and duration of the measure. The measures may last for up to three months and due to important

reasons they may be extended by another three months. The implementation of a special investigative technique, or measures it is made up of, shall be terminated immediately when the reasons for their implementation cease to exist.

(4) The order of the Investigative Judge referred to in paragraph 1 of the present Article shall be implemented by police, or the Security-Information Agency.

(5) Postal, telegraphic and other enterprises, companies and entities registered for the transfer of information have the obligation to enable police, or the Security-Information Agency to implement special investigative techniques referred to in paragraph 1 of the present Article.

(6) Recordings referred to in paragraph 1 of the present Article may be made at the order of the Investigative Judge in apartments, other premises and in the open.

(7) Authorized police officials or the Security-Information Agency, may, in order to carry out a special investigative technique referred to in paragraph 1 of the present Article, secretly enter an apartment or other premises and install in them or in the objects within them technical devices for the implementation of an activity referred to in paragraph 1 of the present Article, or maintain the already installed technical devices of this kind, as needed.

(8) The implementation of a special investigative technique referred to in paragraph 1 of the present Article shall not constitute a criminal offense. Authorized police official, or the Security-Information Agency, may not search the apartment or other premises, except when conditions referred to in Article 81, paragraph 1, of the present Code have been met, and shall have the obligation to use an audio and video recording device to record their entry into the apartment or other premises and installation of technical devices for the implementation of a measure referred to in paragraph 1 of the present Article.

(9) The recording referred to in paragraph 8, of the present Article shall be handed over to the Investigative Judge in keeping with Article 147, paragraph 1 of the present Code.

Presentation of the report and recordings to the Investigative Judge

Article 147

(1) Upon the completion of the special investigative technique referred to in Article 146 of the present Code, the authority (Art. 146, paragraph 4) which implemented the order referred to in Article 146, paragraph 1 of the present Code, shall without delay submit a report and recordings to the Investigative Judge .

(2) The Investigative Judge may order the transcribing and description of all of or part of the recordings obtained through the use of technical devices. The Investigative Judge shall invite the Public Prosecutor to familiarize himself with the material obtained through the use of a special investigative technique referred to in Article 146 of the present Code.

(3) If the information obtained through the use of measures referred to in Article 146 of the present Code are not necessary for the criminal proceedings or if the Public Prosecutor says he will not request the initiation of proceedings against the suspect, all of the collected material will be destroyed under the supervision of the Investigative Judge. The Investigative Judge shall make a relevant record.

(4) If during the implementation of a special investigative technique referred to in Article 146 of the present Code any action has been made in violation of the present Code or the order of the Investigative Judge, a judicial decision cannot be based on the collected data. Provisions of Article 105 of the present Code shall be implemented as appropriate on the obtained data and information. Provisions of Article 209, paragraph 1, Article 295, paragraph 5, Article 362, paragraph 3, and Article 398, paragraph 5, of the present Code shall be implemented as appropriate on the recordings made in violation of the provisions of the present Article and Article 146 of the present Code.

(5) If the use of a special investigative technique referred to in Article 146 of the present Code results in evidence that a criminal offense, other than the suspected specific criminal offense, has been committed (Article 146, paragraph 1 of the present Code), or that it is being prepared (Article 146, paragraph 2 of the present Code), such evidence may be used in criminal proceedings only if it refers to any of the criminal offenses listed in Article 146, paragraph 1 of the present Code.

(6) In the cases referred to in paragraphs 3 and 4 of the present Article, the collected data shall be regarded as official secret.

2. Rendering of simulated business services and conclusion of simulated legal affairs

Order for the rendering of simulated business services and conclusion of simulated legal affairs

Article 148

(1) At the request of the Public Prosecutor, the Investigative Judge may approve the implementation of special investigative techniques: rendering of simulated business services to and conclusion of simulated legal affairs with the person against whom there are grounds for suspicion that he has committed an organized criminal offense offence (Article 21) on his own or together with other persons.

(2) Special investigative techniques referred to in paragraph 1 of the present Article may be exceptionally ordered when there are grounds for suspicion that the person against whom such techniques are ordered has committed on his own or together with other persons some of the following criminal offenses: money counterfeiting, money laundering, unauthorized production and trade in narcotics, unlicensed holding of weapons and explosives, human trafficking, trafficking in children for the purpose of adoption, giving and receiving bribe and abuse of office.

(3) Special investigative techniques referred to in paragraph 1 of the present Article may be ordered if the circumstances of the case indicate that an act of organized criminal offense or some other criminal offense referred to in paragraph 2 of the present Article can be clarified and proved through the use of such techniques, and that it would be impossible or very difficult to clarify and prove it in any other way.

(4) Special investigative techniques referred to in paragraph 1 of the present Article may exceptionally be ordered if special circumstances indicate that some of the criminal offenses referred to in paragraphs 1 and 2 of the present Article are being prepared, and facts indicate that this criminal offense could not be prevented otherwise or that its prevention would be very difficult, or that it would result in irreparable damaging consequences to the lives or health of citizens or valuable assets.

(5) The reasoned written order of the Investigative Judge, in which special investigative techniques referred to in paragraph 1 of the present Article are ordered shall contain data on the person targeted by the measure, legal name and description of the criminal offense, and the way of implementation, scope, place and duration of the measure.

(6) Special investigative techniques referred to in paragraph 1 of the present Article may last for nine months. At the explained proposal of the Public Prosecutor, the Investigative Judge may extend the measure on up to three occasions, each time by three months. In the process of ordering and extending the measure, the Investigative Judge shall assess whether the implementation of the measure is necessary and whether the same result may be achieved in another way that would not limit civic rights to such an extent.

(7) A person who, in keeping with the order referred to in paragraph 5 of the present Article renders simulated business services and concludes simulated legal affairs, or, on the basis of the order referred to in paragraph 5 of the present Article participates in the rendering of simulated business services and conclusion of simulated legal affairs, shall not commit a criminal offense by performing these activities if they are defined in the Criminal Code as criminal activities.

Obligations of police and other government authorities in connection with the rendering of simulated business services and conclusion of simulated legal affairs

Article 149

(1) Special investigative techniques referred to in Article 148 of the present Code shall be implemented by police, or the Security-Information Agency. Police, or the Security-Information Agency shall make daily reports on the implementation of the measure and present them together with the collected documents to the Investigative Judge and Public Prosecutor at their request.

(2) Upon the completion of special investigative techniques referred to in Article 148 of the present Code, police, or the Security-Information Agency shall present to the Investigative Judge and Public Prosecutor a special report which shall contain: the dates when the measure has begun and ended, data on the official person who has implemented the measure, description of the used technical devices, number and identity of persons targeted by the measure and assessment of the appropriateness and results of the implemented special investigative technique.

(3) Together with the report referred to in paragraph 2 of the present Article, police, or the Security-Information Agency shall present to the Public Prosecutor all documents on the implemented special investigative technique, photographs, video, audio or electronic recordings and all other evidence collected through the implementation of the special investigative technique.

Cessation of rendering of simulated business services and conclusion of simulated legal affairs

Article 150

(1) The implementation of a special investigative technique referred to in Article 148 of the present Code shall cease upon the expiry of the deadline for its implementation or when the reasons for which it was ordered cease to exist.

(2) If the Public Prosecutor does not initiate criminal proceedings within six months after the cessation of a measure referred to in Article 148 of the present Code, all collected data shall have to be destroyed, and the persons to whom these data refer shall be informed about the implementation of the measure, if their identity can be established.

(3) Data collected through the implementation of measures referred to in Article 148 of the present Code, which refer to a criminal offense that does not belong to organized criminal offense (Article 21) or a criminal offense referred to in Article 146, paragraph 1 of the present Code, cannot be used in the criminal proceedings held in the case of this criminal offense.

3. Engagement of an undercover agent

Order on the engagement of an undercover agent

Article 151

(1) At the request of the Public Prosecutor, the Investigative Judge may order the engagement of a undercover agent for the purpose of clarification and proving of a criminal offense committed by at least three persons who have been organized in order to commit criminal offenses, if the circumstances of the case indicate that the criminal offense can be clarified and proved in this way and that it would be impossible or very difficult to clarify and prove it in any other way.

(2) The special investigative technique referred to in paragraph 1 of the present Article may be ordered upon the fulfillment of the conditions referred to in

paragraph 1 of the present Article if there are grounds for suspicion that some of the following criminal offenses have been committed:

1) against the Constitutional order and security of the Republic of Serbia and SCG;

2) against humanity and other goods protected by international law;

3) organized crime (Article 21);

4) for which a prison sentence of more than four years is envisaged.

(3) The special investigative technique referred to in paragraph 1 of the present Article may exceptionally be ordered if the condition referred to in paragraph 1 of the present Article has been fulfilled and particular circumstances indicate that some of the criminal offenses referred to in paragraph 2 of the present Article is being prepared, and all facts cause serious concern that this criminal offense might not be prevented in any other way or that its prevention would be very difficult, or that it would result in irreparable damage to the lives or health of people, security of citizens or valuable assets.

(4) The written and explained order of the Investigative Judge, in which the special investigative technique referred to in paragraph 1 of the present Article is ordered, shall contain data on the persons and group against whom the measure is being implemented, description of the criminal offense, way of implementation, scope, place and probable duration of the measure.

(5) The undercover agent shall be appointed by the minister in charge of internal affairs, or the director of the Security-Information Agency or the person he authorizes.

(6) As a rule an undercover agent shall be an authorized police official, and, exceptionally, when special circumstances of the case justify this, he may be an authorized police official who is retired, member of the Security-Information Agency, or an employee of another government authority.

(7) A person suspected of being a present or former member of an organized crime group or a person sentenced for criminal offenses punishable by a prison sentence or four years or any stricter penalty may not be an undercover agent.

(8) The special investigative technique referred to in paragraph 1 of the present Article shall last for as long as it takes for evidence to be collected and no longer than for six months.

Reports of the undercover agent and police

Article 152

(1) During the implementation of the special investigative technique referred to in Article 151 of the present Code, the undercover agent shall, as required, shall submit present reports to his direct superior, Investigative Judge and Public Prosecutor.

(2) Reports referred to in paragraph 1 of the present Article shall not be submitted if this may result in considerable danger to the life, body and health of the undercover agent or security of citizens.

(3) Once the engagement of the undercover agent ceases, the authorized official person of the police, or the Security-Information Agency shall submit to the Investigative Judge and Public Prosecutor the final report which shall contain: the dates when the special investigative technique has started and ended; data on the official person who has implemented the special investigative technique; description of the used technical devices; number and identities of persons targeted by the special investigative technique and assessment of the effectiveness and results of the implemented special investigative technique.

(4) The report referred to in paragraph 3 of the present Article, shall be submitted to the Public Prosecutor along with the photographs, audio and video recordings, documents accompanying these photographs and recordings and all other evidence obtained through the implementation of the special investigative technique.

(5) If through the implementation of the special investigative technique referred to in Article 151 of the present Code, evidence has been collected of a criminal offense other than the criminal offense for which there existed grounds for suspicion (Article 151, paragraph 2), or of its preparation (Article 151, paragraph 3), such evidence may be used in criminal proceedings only if it refers to some of the criminal offenses envisaged in Article 151, paragraph 2 of the present Code.

Prohibition of enticement to commission of a criminal offense, criminal offenses committed by an undercover agent and his examination in the capacity of a witness

Article 153

(1) The undercover agent is prohibited from enticing or provoking somebody to commit a criminal offense and may be punished if he does so.

(2) If, during the implementation of the order referred to in Article 151, paragraph 4 of the present Code and in direct connection with the contents of the order, an undercover agent commits a criminal offense against a member of the criminal group or within the criminal group or in connection with the activity of the criminal group, the provisions of the Criminal Code on legitimate self-defense or extreme necessity shall be implemented as appropriate, when the legal conditions for the implementation of these provisions have been fulfilled.

(3) If this is envisaged in the Investigative Judge's order, an undercover agent may use technical devices to record conversations, or devices to obtain photographs or audio and video recordings, on which the provisions of Articles 146 and 147 of the present Code shall be implemented, as appropriate.

(4) In order to carry out the activities referred to in paragraph 3 of the present Article, the undercover agent shall have the right to enter another person's apartment and other premises, and these actions shall not be regarded as illegal, which does not affect the right of the owner or occupant of the apartment or other premises, to recover damages in the civil proceedings if a damage has been caused as a result of the activity of the undercover agent.

(5) The undercover agent may be examined as a witness in the criminal proceedings. The examination shall be conducted in such a way as not to reveal the identity of the witness. The data pertaining to the identity of the undercover agent who is being examined as a witness shall represent an official secret. Other rules on the examination of protected witnesses (Articles 117, through 121) shall be implemented as appropriate during the examination of the undercover agent.

(6) The judicial decision may not be based only on the testimony of the undercover agent who has been examined as a witness.

4. Controlled delivery

Article 154

(1) The republican Public Prosecutor may approve a controlled delivery, under which illegal or suspicious shipments may leave, be transferred or enter the territory of one or several states, with the knowledge and under surveillance of their competent authorities, with the aim of conducting an investigation and identifying persons involved in a criminal offense. The republican Public Prosecutor shall issue a separate written approval for each individual delivery.

(2) The special investigative technique referred to in paragraph 1 of the present Article shall be implemented by police or another government authority.

(3) A controlled delivery shall be carried out with the agreement of competent authorities of interested states and on the basis of reciprocity, as well as in keeping with the ratified international conventions and bilateral or multilateral agreements, where they regulate the contents of this special investigative technique in more detail.

(4) The implementation of the special investigative technique referred to in paragraph 1 of the present Article shall not constitute a criminal offense. The special investigative technique referred to in paragraph 1 of the present Article may be taken only if the detection or arrest of persons involved in the illegal transport of narcotics, arms, stolen objects and other objects which result from a criminal activity or objects used for the purpose of committing a criminal offense would otherwise be either impossible or very difficult, or if the detection or proving of criminal offenses committed in connection with the delivery of illegal or suspicious shipments would be otherwise impossible or very difficult.

(5) Unless a ratified international convention, i.e. international agreement stipulates otherwise, the special investigative technique referred to in paragraph 1 of the present Article implies that all states through which illegal or suspicious shipments are passing shall explicitly:

1) agree to the entry in their territory of the relevant illegal or suspicious shipment and its exit from the territory of the state;

2) guarantee that the illegal or suspicious shipment shall be constantly monitored by the competent authorities of the state in whose territory the delivery is taking place;

3) guarantee that all necessary activities shall be taken to prosecute all persons who have participated in the delivery of illegal or suspicious shipments;

4) guarantee that the Republic Public Prosecutor, police, or other competent government authorities shall be regularly informed about the course and the outcome of the criminal proceedings against the persons indicted of criminal offenses which constituted the subject matter of the special investigative technique referred to in paragraph 1 of the present Article.

(6) The Republic Public Prosecutor shall determine the way of implementation of the special investigative technique referred to in paragraph 1 of the present Article.

(7) Upon the completion of the special investigative technique referred to in paragraph 1 of the present Article, the authorized official person of the police, or another government authority, shall submit to the republican Public Prosecutor a report which shall contain: the dates when the special investigative technique has started and ended; data on the official person who has implemented the special investigative technique; description of the implemented technical devices; number and identities of persons targeted by the special investigative technique and an assessment of the effectiveness and results of the implemented special investigative technique.

5. Automatic computerized search of personal and other data

Article 155

(1) The automatic computerized search of personal and other related data and their electronic processing may be carried out if there are grounds for suspicion that one has committed:

1) a criminal offense against the Constitutional order and security of the Republic of Serbia and SCG;

2) a criminal offense against humanity and other goods protected under international law;

3) an organized crime offense referred to in Article 21 of the present Code;

4) a criminal offense against sexual freedom;

5) murder, aggravated murder, banditry, robbery, money counterfeiting, money laundering, unauthorized production and trade in narcotics, unlicensed holding of weapons and explosives, human trafficking, trafficking in children for the purpose of adoption, giving and receiving bribe, abuse of office, blackmail, extortion and kidnapping.

(2) The special investigative technique referred to in paragraph 1 of the present Article may exceptionally be ordered if special circumstances indicate that some of the criminal offenses referred to in paragraph 1 of the present Article is being prepared, and facts indicate that this would be impossible or very difficult to prevent in any other way, or that there would be irreparable damage to the lives or health of people, or valuable assets.

(3) The special investigative technique referred to in paragraph 1 of the present Article shall consist of the automatic search of the already stored personal data and other data directly correlated with them, and their automatic comparison with the data that refer to a criminal offense referred to in paragraph 1 of the present Article and person that can be brought in connection with this criminal offense, in order to rule out as possible suspect persons who are unlikely to be in connection with the criminal offense, and to identify those persons for whom there are grounds for suspicion on the basis of the collected data.

(4) The special investigative technique referred to in paragraph 1 of the present Article shall be ordered by the Investigative Judge at the proposal of the Public Prosecutor, and in case circumstances exist due to which there may be no delay, the Public Prosecutor may issue an order himself, which shall have to be presented to the Investigative Judge for confirmation within 24 hours. If the Investigative Judge does not confirm the Public Prosecutor’s order within 24 hours after the moment he has received the order, it shall be revoked without any delay and all collected data shall immediately be destroyed under the supervision of the Investigative Judge and Public Prosecutor.

(5) The order referred to in paragraph 4 of the present Article shall contain: the statutory title of the criminal offense referred to in paragraph 1 of the present Article; specification of data whose automatic collection and sending is necessary; appointment of the government authority which has the obligation to collect the requested data automatically and to send them to the Public Prosecutor and police; scope of the special investigative technique and its duration.

(6) The special investigative technique referred to in paragraph 1 of the present Article may last for maximum three months, and it may be extended once again by three months due to important reasons.

(7) The special investigative technique referred to in paragraph 1 of the present Article shall be implemented by police, Security-Information Agency, a Customs authority or another government authority, and/or other legal persons who perform certain public duties under the law.

(8) All collected data shall be destroyed under the supervision of the Public Prosecutor and Investigative Judge if criminal proceedings are not initiated within six months after the implementation of the special investigative technique referred to in paragraph 1 of the present Article.

6. Examination of cooperating witnesses

A person who may become a cooperating witness

Article 156

(1) The Public Prosecutor may propose to the court to examine in the capacity of a witness a person for whom there are grounds for suspicion that he is a member of a criminal organization and who has explicitly admitted to this (hereinafter referred to as: cooperating witness), against whom an order of inquiry has been adopted or a direct indictment has been raised for an organized crime offense referred to in Article 21 of the present Code, which he has confessed in its entirety and his confession is corroborated by other evidence.

(2) In order for a person referred to in paragraph 1 of the present Article to become a cooperating witness, he must satisfy the following conditions:

1) that this is opportune in view of the nature and circumstances of the criminal offense for which he is suspected of having committed;

2) that there is reason to expect that the importance of his testimony for detecting, proving or preventing other criminal offenses by the criminal

organization shall be greater than the damaging effects of the criminal offense which he is suspected of committing;

3) that in view of the existing facts, there is reason to believe that the determination of important facts in criminal proceedings would be impossible or very difficult if the cooperating witness were not examined.

(3) Under the condition referred to in paragraph 1 of the present Article a person against whom an order of inquiry has been adopted or a direct indictment has been issued for a criminal offense against the Constitutional order and security of the Republic of Serbia and SCG, or a criminal offense against humanity and other goods protected by international law, which has been committed by three or more persons who have organized to commit criminal offenses, may become a cooperating witness.

Obligations of a cooperating witness

Article 157

(1) Before the proposal referred to in Article 156, paragraph 1 of the present Code has been made, the Public Prosecutor shall instruct the cooperating witness regarding his obligations referred to in Article 109, paragraph 2 and Article 113 of the present Code. The cooperating witness may not be exempted from the obligation to testify referred to in Article 104 of the present Code, and from the obligation to respond to certain questions referred to in Article 106 of the present Code.

(2) The Public Prosecutor shall include in the record, which shall also be signed by the cooperating witness, the instruction referred to in paragraph 1 of the present Article, cooperating witness's answers and his statement saying that he will testify about everything he knows and that he will not omit anything. The record shall be attached to the proposal to the court referred to in Article 156, paragraph 1 of the present Code.

Joinder of cases in the case of examination of a cooperating witness

Article 158

(1) If a criminal offense report or notification of criminal offense has been submitted against a person who the Public Prosecutor believes should be examined as a cooperating witness, the Public Prosecutor shall, before filing a motion for the examination of this person as a cooperating witness, render a Ruling on Instigating of Investigation or raise an direct indictment for an act or organized crime against this person (Article 21) and request a joinder of this proceeding with the proceeding in which this person should be examined as a cooperating witness.

(2) If prosecution has already started against the person whom the Public Prosecutor has proposed as a cooperating witness, and if joint proceedings are not already held, the Public Prosecutor shall request the joinder of criminal proceedings against this person with the proceedings in which he should be examined as a witness.

Persons who may not become cooperating witnesses

Article 159

A person for whom there are grounds for suspicion that he has organized a criminal group on his own or together with other persons in such a way that his contribution has been considerable, or a person who led a criminal offense group in a long period of time may not be a cooperating witness.

Ruling on the Public Prosecutor's motion

Article 160

(1) The Chamber referred to in Article 24, paragraph 6 of the present Code shall decide on the proposal of the Public Prosecutor referred to in Article 156, paragraph 1 of the present Code during the investigation and until the beginning of the trial, and at the trial this shall be done by the Chamber before which the trial is held. The Chamber shall decide to grant or to deny the Public Prosecutor's motion, and shall notify of its decision within 24 hours the party to whom the proposal refers and the victim of the criminal offense of which this person is suspected. In the ruling granting the Public Prosecutor's motion, the Chamber shall note that the proposed person has been granted the status of cooperating witness and, together with this ruling, it shall also render a ruling on the joining of criminal proceedings in accordance with Article 158, paragraph 1 of the present Code.

(2) The Chamber session shall be attended by the Public Prosecutor, person who has been proposed to become a cooperating witness and his defense attorney and the session shall be closed to the public.

(3) The Public Prosecutor may appeal the ruling referred to in paragraph 1 of the present Article under which his proposal is rejected, within 48 hours after having received the ruling. The decision on the appeal shall be rendered by a higher court within three days upon the receipt of the appeal and documents from the first-instance court. The higher court may dismiss the complaint as untimely or not permitted, grant it when it establishes that there exist conditions referred to in Article 156 of the present Code or deny it as unfounded. If the higher court grants the appeal, it shall state in its ruling that the proposed person has been granted the status of cooperating witness.

(4) If it grants the motion of the Public Prosecutor, the Chamber shall order the separation from the documents of records and official notes on the previous statements of the cooperating witness which he has given in the capacity of a suspect or defendant and these may not be used in the criminal proceedings, except in the case referred to in Article 164 of the present Code.

Appeal of the injured person

Article 161

The person injured by the criminal offense which cooperating witness is suspected of committing may file an appeal within 48 hours upon receiving the ruling.. The decision on the appeal shall be brought by a higher court within three days after the receipt of the appeal and documents of the first-instance court. The higher court may dismiss the appeal as untimely or not permitted, grant it when it determines that conditions referred to in Articles 156 and 159 of the present Code have not been met or deny it is as unfounded.

Examination of witnesses in closed sessions

Article 162

(1) The examination of a cooperating witness shall be closed to the public, unless the Chamber, upon the proposal of the Public Prosecutor and with the consent of the witness, decides otherwise.

(2) Before the decision referred to in paragraph 1 of the present Article is brought, the chamber president shall inform the cooperating witness in the presence of his defense attorney about the proposal of the Public Prosecutor and inform him about his right to be examined in a closed session. The cooperating witness's declaration stating that he consents to being examined in the open court shall be included in the record.

Fulfillment of obligations of the cooperating witness

Article 163

(1) A cooperating witness who has testified before the court in accordance with his obligations referred to in Article 157 of the present Code shall be sentenced within the limits envisaged in the Criminal Code for the act of organized crime which represents the subject matter of the proceedings, which he has confessed and which is proved to have been committed by him, and such a sentence shall then be reduced by half.

(2) The judgment referred to in paragraph 1 of the present Article may be appealed only as far as the sentence is concerned by the cooperating witness, all persons who may appeal to the benefit of the defendant in keeping with Article 388, paragraph 2. of the present Code, as well as the Public Prosecutor to the benefit of the cooperating witness.

(3) At the proposal of the Public Prosecutor, the court, taking into account the importance of the evidence presented by the cooperating witness, behavior of the cooperating witness before the court, his previous life and all other relevant circumstances, may exceptionally declare the cooperating witness guilty, but decide not to impose a sentence on him. This decision may not be appealed.

Failure of the cooperating witness to fulfill his obligations

Article 164

(1) If the cooperating witness fails to act in keeping with his obligations referred to in Article 157 of the present Code, he shall lose the status of cooperating witness, prosecution against him shall continue, and he shall receive a sentence within the limits envisaged in the Criminal Code.

(2) Once a person referred to in paragraph 1 of the present Article loses the status of cooperating witness, the records of all testimonies he has given as a cooperating witness shall be struck out from the case files and they may not be used as evidence in criminal proceedings.

(3) If the cooperating witness commits another act of organized crime offense (Article 21) before the final end of proceedings, the Public Prosecutor shall raise the indictment for this criminal offense and request the joinder of criminal proceedings, and this person shall lose the status of cooperating witness and receive a sentence within the limits envisaged by the Criminal Code.

(4) If an act of organized crime previously committed by the cooperating witness is detected during the proceedings (Article 21) the Public Prosecutor shall act in keeping with the provisions of Article 156 of the present Code.

(5) If a previous criminal offense committed by the cooperating witness, who does not represent an act of organized crime offense (Article 21), is detected in the proceedings, the Public Prosecutor shall act in keeping with the general rules of the present Code.

Chapter IX

MEASURES FOR SECURING THE PRESENCE OF A DEFENDANT AND UNDISTURBED CONDUCT OF CRIMINAL PROCEEDING

1. General Provisions

Article 165

(1) Measures facilitating the presence of a defendant and undisturbed conduct of criminal proceeding are summons, compulsory appearance, provision of movement and other limitations, bail and detention.

(2) When deciding on which of the mentioned measures to apply, the court having jurisdiction shall observe the conditions determined for application of each measure

and shall take into account not to apply a more severe measure if a lenient measure may achieve the same purpose.

(3) These measures shall also be vacated *ex officio* when the reasons for their application have ceased to exist, or shall be replaced with other lenient measure when the conditions for that have been met.

(4) The provisions of Articles 166, 167 and 168, paragraph 6 of the present Code shall accordingly be applied to the defendant.

2. Summons

Article 166

(1) The presence of the defendant in criminal proceedings shall be provided by serving him with summons. The summons shall be issued by an authority in charge of the criminal proceedings.

(2) The defendant shall be summoned by means of serving a sealed written summons containing: the indication of the summoning authority, the first name and surname of the defendant, statutory title of the criminal offence he is charged with, the place, date and hour of appearance, information that the addressee is being summoned as a defendant and the warning that in the case of his failure to appear he shall be brought in by force, the official seal and the first name and surname of the judge who is serving the summons.

(3) When summoned for the first time, the defendant shall be informed of his right to retain a defense counsel and of the right to have the defense counsel present during the interrogation.

(4) The defendant is bound immediately to notify the court of changes of his address as well as of his intention to change his place of residence. The defendant shall be instructed thereon at his first interrogation, or at the time the indictment without investigation is served (Article 258) or when the motion to indict or a private charge is served, and shall be warned of the consequences prescribed by the present Code.

(5) If the defendant is unable to appear due to illness or other unavoidable impediment, he shall be interrogated at the place where he is or transportation to the court or other location where the action is being carried out shall be provided.

(6) If a defendant has a defense counsel, the authority conducting the proceedings may, when it estimated that such summoning is justified and not in collision with the fair conduct of the criminal proceedings (Article 1, paragraph 1), after having been summoned for the first time pursuant to paragraph 2 of this Article, summon

the defendant trough the notice to his defense counsel, and the defendant shall be instructed thereof in the first summons.

(7) Defendant may be summoned pursuant to the Article 108, paragraph 2 of the present Code, after being summoned for the first time pursuant to paragraph 2 of the present Article.

3. Compulsory Appearance

Article 167

(1) A warrant for compulsory appearance may be issued by a court if a ruling on detention is issued or if a duly summoned defendant fails to appear and fails to justify his absence or if it was not possible to duly serve the summons and the circumstances clearly indicate that the defendant is evading the receipt of the summons.

(2) A warrant for compulsory appearance shall be executed by the police.

(3) A warrant for compulsory appearance shall be issued in a written form. A warrant shall contain: the first name and surname of the defendant who is to be brought in, the place and year of birth, statutory title of the criminal offence he is charged with along with the indication of the relevant provision of the Criminal Code, the ground for the issuance of the warrant for compulsory appearance, the official seal and the signature of the judge who issued the warrant.

(4) The person to whom the execution of the warrant is conferred shall serve it to the defendant and shall invite the defendant to accompany him. If the defendant refuses to comply he shall be brought in by force.

(5) The warrant for compulsory appearance issued against military personnel, members of the police authorities and penitentiary staff shall be executed by their headquarters, .i.e. institution.

4. Prohibition of leaving certain location and other limitations

Article 168

(1) If there are circumstances indicating that defendant could escape, hide or leave to an unknown place or abroad, the court may prohibit him to leave a residence without permission by issuing a ruling with a statement of reasons.

(2) If there are circumstances referred to in paragraph 1 of this Article, the Court may issue a reasoned ruling prohibiting defendant to leave the apartment of

residence or order him to leave the apartment only under the supervision of certain persons.

(3) In addition to the measures referred to in paragraphs 1 and 2 of this Article defendant may be:

1) prohibited from visiting certain places;

2) prohibited from meeting certain persons;

3) ordered to appear, occasionally and at exactly determined time, before the Court, or exceptionally to another government authority;

4) temporarily deprived of traveling documents;

5) temporarily deprived of drivers license and temporarily banned from driving.

(4) The measures referred to in paragraphs 1-3 of the present Article may not restrict during the course of its duration the right of the defendant to live in the apartment that he, his spouse or another person that he co-habites with, has the right of possession, to see members of his family, close relatives and defense counsel without impediment, as well as to perform his professional activity; but even these rights can be, in reasonable measure in connection to the purpose of the measures from paragraphs 1 to 3 of this Article may be restricted. Exceptionally the defendant who is under prohibition order from paragraph 2 of this Article, may leave the residence without permission or without supervision of authorized persons, if it is obviously due to a medical emergency pertaining to him or to the person residing with him, or due to prevention of severe danger to life, health, or valuable assets, but the defendant is obligated to notify the court without delay of this and of his whereabouts.

(5) Measures referred to in paragraph 3, item 1 and 2 may be ordered as independent measures, if necessary, in order to protect injured party and witnesses, prevent defendant from influencing the witnesses, accomplices or aiders and abettors, or if there is a danger that defendant should complete the criminal offense, repeat it, i.e. perpetrate the criminal offense he threatened to commit.

(6) Temporary confiscation of driver’s license can be ordered as an independent measure if the proceeding is being conducted for criminal offense against traffic safety with severe consequences or was committed with intent. The provisions from paragraphs 8, 10 to 12 of this Article shall also be applied in this case. The duration of the confiscation of driver’s license of a suspect or defendant who is not detained shall be computed into the rendered security measure of prohibition to operate motor vehicle or into the penalty of confiscation of the driver’s license.

(7) In the ruling imposing measures referred to in paragraphs 1 and 3 of the present Article, the defendant shall be warned that a detention may be ordered against him in the case of failure to comply with ordered prohibitions.

(8) The court may order a passport be given back to the defendant who due to a pressing need has to travel abroad, provided that the defendant designates a representative for receiving a mail in Serbia and Montenegro, and promises to be back upon the court summons or posts bail.

(9) Court may order electronic surveillance towards a defendant against whom one of more measures from paragraphs 1 to 3 of this Article have been imposed, in order to control the defendant's compliance with the imposed limitations, under the condition that these measures shall not endanger the health of defendant. Device for location of defendant (transmitter) shall be mounted to the arm wrist or ankle of defendant, i.e. in another way, by a professional, who shall at the same time provide detailed instructions to the defendant on device operation. A professional shall also manage the device that follows the whereabouts of the defendant and his position in area (receiver) remotely from a distance. Electronic surveillance shall be conducted by the police, Security Intelligence Agency or another government authority.

(10) In the course of the investigation the measures referred to in paragraphs 1 to 3 of the present Article shall be ordered and vacated by the Investigative Judge, and after the indictment has been raised, then by the President of the Chamber. If the measure is not proposed by the Public Prosecutor, and the proceedings are conducted for the criminal offense subject to public prosecution, the court shall, before rendering a ruling by ordering or vacating the measure, ask for the opinion of the Public Prosecutor.

(11) The measures referred to in the paragraphs 1 to 3 of the present Article may last as long as they are necessary, and no longer than until the judgment becomes final. The Investigative Judge or the President of the Chamber is bound to examine every two months whether the applied measure is still necessary.

(12) Against a ruling ordering, prolonging or vacating measures referred to in paragraphs 1 to 3 of the present Article, the parties and the defense counsel may file take an appeal, and the Public Prosecutor may also file an appeal against the ruling denying his motion for application of the measure. The chamber (Article 24, paragraph 6) shall decide on the appeal within a term of three days from the day the appeal is filed. The appeal does not stay the execution of the ruling.

5. Bail

Article 169

Reasons for determination of bail

(1) Defendant who should be detained or has already been detained only because of the existence of circumstances indicating the danger of fleeing or on the grounds referred to in Article 174, paragraph 1, item 5 of the present Code, may remain at liberty, i.e. may be released if he personally, or another person, offers bail guaranteeing that he shall not abscond until the end of proceedings and with further proviso that the defendant personally promises not to hide or leave his place of residence without permission.

(2) Bail can be determined as a safety measure for complying with limitations set forth in paragraphs 1 to 3 of the Article 168 of the present Code.

Determination of bail, subject of bail and keeping the deposited value

Article 170

(1) Bail shall always be set in a pecuniary amount determined with regard to the gravity of the criminal offence, the personal and family circumstances of the defendant as well as the financial situation of the person posting bail.

(2) The bail shall consist of:

1) depositions of cash, securities, valuables or other movables of more considerable value which can easily be kept and cashed

2) mortgages of real estate of the person posting bail in the amount of bail;

3) posting another form of deposit, if there are corresponding public registers for it, or

4) personal obligation of one or more persons that they will, in case of defendant’s escape, pay for determined amount of bail.

(3) If defendant absconds or violates restrictions set forth in paragraphs 1 to 3 of Article 168 of the Code, the Court shall in its ruling set that that the value posted as bail shall temporary be included in the judiciary budget. When the condemning judgment, i.e. another Court’s decision establishing that the defendant has committed the criminal offense becomes final, from the amount posted as bail the expenses of the criminal proceedings shall first be paid, and then if sufficient funds remain the indemnification claim. The rest of the amount belongs finally to the judiciary budget.

(4) If the bail was posted by another person, and Article 3 of this Article has been applied, this person can realize its right to reimbursement towards the defendant in the civil proceeding of the posted bail amount.

Vacation of bail and its replacement with detention

Article 171

(1) Detention shall be ordered against defendant for whom the bail was posted because of the danger to abscond, if he fails to appear after being duly summoned and fails to justify his absence, or if against him, following a decision that he remains at liberty, another legal ground for detention appears and there are no conditions to apply the limitations from Article 168, paragraph 1 to 3 of the present Code, that could have been set in lieu of detention.

(2)The defendant for whom the bail was posted on the grounds for detention referred to in Article 174, paragraph 1, item 5 of the present Code shall be detained if, although duly summoned he fails to appear at the first subsequent trial date and fails to justify his absence.

(3) In the case referred to in paragraphs 1 and 2 of the present Article, bail shall be vacated. The posted cash, valuables, securities or other movables shall be returned and the mortgage shall be released. The same proceeding shall be followed after criminal proceedings have been terminated by a final ruling discontinuing the proceedings or by a judgment.

(4) If the Court estimates based on exceptional circumstances, that defendant's refusal to respond to court summons from paragraph 1 of this Article, represents hiding or planning of the escape, it shall apply Article 171, paragraph 3 of the present Code, which shall always be applied in cases when conditions set forth in paragraph 2 of this Article have been met.

(5) If a judgment imposes a sentence of imprisonment, bail shall be vacated only when the convicted person begins to serve his sentence.

Jurisdiction in bail determination

Article 172

(1) The ruling on bail during the preliminary investigation and during the investigation shall be rendered by the Investigative Judge at the proposal of the parties of defense counsel. After the indictment has been raised the ruling on bail shall be rendered by the President of the Chamber, and during the trial by the Chamber.

(2) If the proceedings are conducted upon the request of the Public Prosecutor, the ruling on bail and on vacating the bail shall be rendered after the opinion of the Public Prosecutor has been obtained.

6. Detention

General rules on detention order

Article 173

(1) Detention may be ordered only under the conditions set forth in the present Code and only if the purpose for ordering detention cannot be successfully accomplished by any other measure.

(2) Duration of detention shall have to be reduced at all times to the shortest period.

(3) Obligation of all authorities involved in the criminal proceeding and those that provide legal aid, is to act immediately and without any unnecessary delay if the defendant is in detention.

(4) In the course of the proceeding, detention shall be vacated *ex officio* as soon as reasons for detention cease to exist.

Reasons for ordering detention

Article 174

(1) Detention can be ordered if there is reasonable suspicion that a certain individual has committed a criminal offence, if detention is necessary in order to provide unobstructed conduct of criminal proceeding and if any of the following reasons exist:

1) if defendant is in hiding or it is impossible to determine his identity, or the circumstances imply to danger of escape;

2) if there are circumstances indicating that defendant is to destroy, hide, alter or forge evidence of criminal proceeding or other evidence; or if specific circumstances indicate to disruption of criminal proceeding by defendant through the influence on witnesses, accomplices or aiders and abettors;

3) if specific circumstances indicate that defendant shall repeat a criminal offence or complete the attempted one, or perpetrate criminal offence he threatens to commit;

4) if sentence prescribed by the Code for the criminal offense is 10 years of imprisonment and order of detention is unavoidable because of the way of execution, consequences or other especially severe circumstances of criminal offense;

5) if duly summoned defendant avoids appearing at trial, or the Court tried on several occasions to serve the defendant with summons, and all circumstances indicate that defendant is avoiding receiving the summons;

6) if defendant has been sentenced by the first instance court to five years in prison or more, and ordering detention is obviously justified because of the manner of execution, consequences or other particularly severe circumstances of the criminal offense.

(2) In cases referred to in paragraph 1 of this Article, detention order solely for the reason of not being able to establish the identity of the person, shall last only until his identity has been established. In cases referred to in paragraph 2 of this Article, detention shall be vacated as soon as evidence because of which detention was ordered, have been obtained. Detention ordered for reasons set forth in paragraph 1, item 5 of this Article, may last until the judgment is rendered, but not longer than one month.

Order of detention, contents of the detention ruling and right to appeal detention ruling

Article 175

(1) Detention shall be ordered, at the proposal of the Public Prosecutor by a ruling of the Court having jurisdiction.

(2) A ruling ordering detention shall contain: the first name and the surname of a person against whom a detention is ordered, the criminal offence he is charged with, the legal ground for detention, the duration of detention, the time the person was deprived of liberty, instructions on the right to appeal, the statement of reasons with a separate statement on the grounds for ordering detention, the official seal and the signature of the judge who ordered detention.

(3) Defendant and his defense counsel are entitled to file an appeal against the ruling to a Chamber (Article 24, paragraph 6) within 24 hours from the moment of the receipt of the ruling. Appeal does not stay the execution of ruling.

Duration of detention in investigation

Article 176

(1) Based on decision given by Investigative Judge, defendant can remain in detention up to one month from the day of arrest. After this deadline, defendant can be held in detention based only on ruling on extending the detention.

(2) Detention can be extended by a decision of the Chamber (Article 24, paragraph 6) for up to two months. Filing of appeal against this ruling is allowed but it does not stay the execution of the ruling.

(3) The decision on the appeal from paragraph 2 of this Article, shall be brought by the Chamber of a court with directly higher jurisdiction.

(4) If the proceeding is conducted for the criminal offense punishable with up to five years in prison or more, the Chamber of the Supreme Court of Serbia may, upon a explained motion of the Investigative Judge or Prosecutor, for very important reasons, extend the detention no longer than for three months. Appeal is allowed against this ruling but it does not stay the execution of the ruling, and this appeal shall be decided by the Supreme Court of Serbia in a Chamber composed of three judges.

(5) Defendant shall be released from detention if, by the end of terms stipulated in paragraphs 2 and 4 of this Article, the indictment has not been raised.

Vacating of detention during investigation

Article 177

(1) In the course of investigation, Investigative Judge can vacate detention with consent of the competent Prosecutor. If there is no consent between Investigative Judge and the Prosecutor, Investigative Judge shall request the Trial Chamber to decide thereof (Article 24, paragraph 6 of the Code), which is obliged to render a decision within 48 hours.

(2) If detention has been vacated due to expiration of the term it was set fort, the decision thereof shall be rendered by the Investigative Judge.

Duration of detention after investigation has been concluded

Article 178

(1) After the indictment has been submitted to the Court, until the termination of trial, the detention may be ordered or vacated by the ruling of the Trial Chamber upon the proposal of the Prosecutor

(2) Even without a motion submitted by parties, the chamber is bound to review whether the grounds for detention still exist and to extend or vacate it by a ruling every month from the moment the last ruling on detention becomes final, and every two months from the moment the indictment becomes final.

(3) Appeal against the ruling from the paragraphs 1 and 2 of this Article does not stay the execution of the ruling..

(4) In the case of joint proceeding against several detained persons, their appeals against the ruling from paragraphs 1 and 2, shall be decided at the same time, without interruption of the trial

(5) The chamber of the directly higher court shall decide on the appeals against rulings from paragraphs 1 and 2 of this Article.

Information on arrest

Article 179

(1) Public Prosecutor, Police, i.e. Court, is obliged to immediately, and no later than within 24 hours, inform the family or the spouse of the person under arrest, about the arrest, unless arrested person explicitly objects it.

(2) If the arrested person explicitly objects that some of the persons from paragraph 1 of this Article are to be informed on his arrest, such person shall confirm this decision by signing statement given on record or its own personal statement.

(3) Authorized social services shall be informed about the arrest, if it is necessary to undertake measures for securing children and other family members that arrested person is taking care of.

7. Rights of detainee

Article 180

Protection of dignity of detainee, possibility of application of certain restrictions and rules of accommodation of detainees

(1) In the course of detention personal integrity, honor and dignity of detainee shall not be violated.

(2) Restrictions that can be applied towards the detainee are only those that prevent escape, instigation of third persons to destroy, hide, alter or forge evidence or other traces of criminal proceeding and direct or indirect contacts of detainees initiated to influence witnesses, accomplices and aiders and abettors.

(3) Detainees of opposite sex shall not be detained in the same room. According to the rules, same room cannot hold persons under reasonable suspicion to have

participated in committing the same criminal offence, nor persons serving their sentence with persons in detention. Persons for whom reasonable suspicion exists that they are repeated offenders shall not be, if possible, placed in the same room with other detainees, for the reason of possible harmful influence. In the course of placement of detainees into certain premises and collective accommodation, attention shall be paid, to the extent possible to the level and type of educational background, language they use and understand, personal preferences and type of criminal offense they are charged with.

Right to vacation, movement, personal clothes and other personal belongings and rights and obligations in performance of certain duties

Article 181

(1) Detainee shall have the right to eight hours of uninterrupted night rest everyday.

(2) Detainee shall be provided with movement on fresh air in duration of at least two hours per day.

(3) Detainees have a right to wear personal clothes, to use their sheets and obtain and use at their own expense food books, expert publications, press, tools for drawing and writing and other things suited for their daily needs, except for objects that can injure, violate health and safety, or can be used for escape.

(4) In the course of the investigation, the Investigative Judge may ex officio or at the motion of the Public Prosecutor rule to temporarily forbid or restrict a detainee's right to read newspapers, if this may be prejudicial for the course of the proceedings. Appeal can be taken from the ruling of the Investigative Judge to the Chamber from Article 24, paragraph 6 of the present Code.

(5) Detainee may be obliged to work on maintenance of the room he resides in. If detainee requests so, the Investigative Judge, i.e. President of the Chamber, in agreement with the Prison Administration, may allow him to work in prison premises corresponding to his mental and physical capacity or to be involved in his regular duties, providing that this is not prejudicial for the course of the proceedings. Detainee is entitled to a fee for this work, determined by the Prison Warden.

Visitation right and right to communicate with other persons

Article 182

(1) Upon the approval of the Investigative Judge and under his supervision or supervision of assigned persons, within the boundaries of the rules of behavior of the institution, detainee can be visited by a spouse or common-law partner, as well

as his close relatives, and based on his demand – by a physician and other persons. Certain visitations can be prohibited if it is prejudicial for the course of the proceeding.

(2) Diplomatic and consular representatives of foreign states that are signatory parties to international conventions have the visitation right, with the knowledge of the Investigative Judge, and speak without supervision with detainees who are citizens of their states. Investigative Judge shall inform the Head of the facility where detainee is being detained on the visitation of diplomatic and consular representatives.

(3) Detainee may maintain correspondence with persons outside the prison, with the knowledge of and under the supervision of the Investigative Judge. Investigative Judge may prohibit mailing and receiving of letters and other parcels that are prejudicial for the course of the proceeding. This restriction does not apply to letters exchanged by detainee with international courts and national parliamentary, judicial and executive authorities, as well as letters exchanged with defense counsel, except if an insight into the correspondence with the defense counsel did not prove to be justified. (Article 75, paragraph 4). Mailing of pleads, appeals or motions may never be prohibited.

(4) After raising the indictment and until the judgment becomes final, authorization pursuant to paragraph 1 to 3 of this Article shall be carried out by the President of the Chamber.

Disciplinary offences of detainees

Article 183

(1) Investigative Judge or President of the Chamber may, for disciplinary offences, impose disciplinary penalty of restricted visitation right. This restriction does not apply to communication with defense counsel. Detainee shall not be punished before he is informed of the disciplinary proceeding against him, nor before he was enabled to state his defense and before the Court has examined the case.

(2) Appeal may be taken from the ruling referred to paragraph 1 of this Article to the Chamber (Article 24, paragraph 6) of the court having jurisdiction within 24 hours from the hour when ruling was served on the detainee. Appeal does not stay the execution of the ruling. Trial Chamber shall decide on the appeal within eight days from the day when the appeal was filed.

Detailed regulation on detention

Article 184

Pursuant to the provisions of this Code a more detailed regulation of executing detention order shall be issued by the Minister in charge of the judiciary.

Chapter X

RENDERING AND PRONOUNCING DECISIONS

Types of decisions in criminal proceeding

Article 185

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

(2) Judgment shall only be rendered by a Court, while rulings and orders may also be rendered by other authorities taking part in the criminal proceedings.

Deliberation and voting

Article 186

(1) Trial Chamber shall render a decision after oral deliberation and voting. Decision shall be rendered by a majority vote.

(2) President of the Chamber shall chair the deliberation and voting, ensure that all of the issues have been examined thoroughly, and shall be the last one to vote.

(3) If certain issues receive the same amount of divided votes so that no majority is achieved, issues shall be divided and voting shall be repeated until it reaches majority. If the majority is still not reached, decision shall be rendered so that votes most unfavorable for a detainee will be added to the ones less unfavorable, until a required majority is reached.

(4) Members of the Trial Chamber may not abstain from voting on issues presented by the President of the Chamber, while the member of the Chamber who voted for acquittal or vacation of judgment and was outvoted shall not be obliged to vote on the penalty. If he fails to vote, it shall be deemed that he assented to the vote most favorable for the defendant.

Sequence of the voting issues

Article 187

(1) When deliberating, the court shall first vote on the issue of the court's jurisdiction, on the issue whether proceedings should be supplemented and on other preliminary issues. After deciding on the preliminary issues the court shall decide on the subject matter of the case.

(2) When deciding of the subject matter of the case, the court shall first vote to determine whether the defendant committed the offense that has the elements of the criminal offense and whether he is guilty, and thereafter it shall vote on punishment, other criminal sanctions, the costs of criminal proceedings, indemnification claims f and other issues on which a decision must be rendered.

(3) If the same person is charged with committing more than one criminal offense, the court shall vote on culpability and punishment for each offense and thereafter on an aggregate punishment for all the offenses.

Absence of the public during deliberation and voting

Article 188

(1) Deliberation and voting shall take place in a closed session.

(2) Only members of the Trial Chamber and the court reporter may be present in the premises where deliberation and voting is taking place.

Rendering and Serving Court decisions

Article 189

(1) If not prescribed otherwise, decisions shall be conveyed to persons with the legal interest by oral pronouncement, if they are present, or by service of certified copy if they are absent.

(2) If the decision has been pronounced orally, this shall be noted in the record or on file, while the person with a right to file an appeal shall confirm this with his signature. If the person waives his right to appeal, ratified signature of orally rendered decision shall not be served on him, unless prescribed otherwise by the present Code.

(3) Transcripts of the decisions subject to appeal shall be served with the instructions of the right to appeal. Appeal filed for the benefit of the defendant shall be deemed timely if it has been filed within the term mentioned in instruction on the right to appeal, provided that term proscribed in the instruction is longer than the legal term.

Chapter XI

SERVICE OF DOCUMENTS AND EXAMINATION OF FILES

Service trough official personnel or trough other instances

Article 190

(1) Documents shall be served trough an official person of the authority that brought the decision, i.e. that is in charge of the service, or directly trough that authority, and may also be served by mail, by other legal entity registered for process of service, local government authority or by letter rogatory of another government authority.

(2) Summons for trial the Court may be served orally to a person who is in court, with the instruction on consequences of failure to appear. Such summons shall be noted in the record that shall be signed by the person served, unless such service has been noted in the trial records. It shall be considered that by such an act summons was duly served.

Service in person

Article 191

When the present Code prescribes that the document shall be served in person, it shall be served directly to the person to be served. If the person to be served in person cannot be reached at the place where the service should be effected, the process server shall inform himself when and where the person can be found and leave the written notice directing the recipient of the document to be in his apartment or place of work on a specified date and hour for the purpose of being served with the document, with one of the persons referred to in Article 192, paragraph 1 of the present Code. If even after this, the process server cannot reach the person to be served, he shall act according to the provision of Article 192, paragraph 1 of the present Code and it shall be deemed that by such an act the document has been duly served.

Service trough a third party

Article 192

(1) Documents which under the present Code do not have to be served in person shall also be served in person, but if the recipient is not found in his apartment or place of work, these documents can be served on any of the adult members of the recipient's household who are bound to receive the document. If the said household members are not found in the apartment, the document shall be served on the janitor

or a neighbor if they are willing to receive it. If service is attempted at the recipient's place of work and he cannot be reached, delivery can be affected to the person authorized to receive mail who is bound to receive the document or to the recipient's co-employee if he is willing to receive it.

(2) If it is determined that the recipient is absent and that the persons referred to paragraph 1 of the present Article are unable to deliver the document to him in due time, the document shall be returned with a notice regarding the absentee's whereabouts.

Summoning and serving the defendant

Article 193

(1) The summons for the first interrogation in the preliminary proceedings and the summons for the trial shall be served on the defendant in person.

(2) An indictment, motion to indict or private charge, a judgment and other decisions for which the term for appeal begins to run when service is made, as well as an appeal by the adverse party which is served for reply, shall be served in person to the defendant who does not have a defense counsel. If the defendant requests that the summons and documents referred to in paragraph 1 are to be served on a person that he designates, the service shall be effected on this person and it shall be that such act constitutes service of the summons and the documents on the defendant.

(3) If the defendant who does not have a defense counsel should be served with a judgment imposing a sentence of imprisonment and this judgment cannot be served at his present address, the court shall *ex officio* assign a defense counsel to the defendant who shall perform this duty until the new address of the defendant is determined. The court shall grant to the appointed counsel a necessary term to familiarize himself with the files, after which the judgment shall be served on the appointed counsel and the proceedings resumed. If other decision, for which the term for appeal begins to run when service is made, or an appeal of adverse party which is served for reply, cannot be served on the defendant because the process server cannot inform himself on the new address of the defendant, the court shall post the decision or the appeal on the Court's public board and after the lapse of eight days from the day of posting it shall be deemed that it was duly served.

(4) If the defendant has a defense counsel, an indictment, motion to indict, private charge and all other decisions for which the term for appeal or objection begins to run when service is made as well as an appeal by the adverse party which is served for replay shall be served both to the defense counsel and to the defendant according to the provisions referred to in Article 192 of the present Code. In such a case, the term begins to run from the day the document is served on the defendant or the defense counsel. If a decision or an appeal cannot be served on the defendant

because he did not report a change of address, or on defense counsel who did not comply with his duty pursuant to Article 67, paragraphs 4 and 5 of the present Code, this document shall be posted on the Court's public board, as well as on the website of the Court when possible, and after the lapse of eight days from the day of posting it shall be deemed that it was duly served.

(5) If a document has to be served on a defense counsel, and the defendant has retained several defense counsels, it suffices to effect service on one of them.

Service of private prosecutor and injured person as subsidiary prosecutor

Article 194

(1) A summons for a submitting the private charge or an indictment, as well as the summons for the trial shall be served on a private prosecutor and subsidiary prosecutor or to their legal representative in person (Article 191), and to their proxies according to the Article 192 of the present Code. The decisions for which the term for appeal begins to run when service is made and the appeal by the adverse party which is served for reply shall be served in the same manner.

(2) If the service cannot be effected to the persons referred to in paragraph 1 of the present Article or the injured person at their present address, the Court shall post the summons, decision or appeal on the court's public board and after the lapse of eight days from the day of posting it shall be deemed that it was duly served.

(3) Court shall, in the case pursuant to section 2 of this Article, present the summon, that is, decision or appeal, when necessary technical condition allow it, on the web site of the Court.

(4) If the injured person, subsidiary prosecutor or private prosecutor is represented by a legal representative or proxy, service shall be made on the later, and in the case where there are several, the only one of them shall be served.

Proof of service

Article 195

(1) The documents shall be served in the sealed envelope.

(2) Proof of service (service receipt) shall be signed both by the recipient and the process server. The recipient shall himself make a note on the service receipt indicating the day of the service.

(3) If the recipient is illiterate or otherwise unable to sign the service receipt, the process server shall sign the recipient's name, indicate the day of receipt and note the reasons why he signed in place of the recipient.

(4) If the recipient refuses to sign the service receipt, the process server shall make a note thereof on the service receipt indicating the day of service and by this it shall be deemed that the service was duly made.

Refusal to be served

Article 196

When the recipient or an adult member of his household refuses to receive the served document, the process server shall note on the service receipt the day, hour and reason for the refusal and he shall leave the document in the recipient's apartment or at his place of work, and by this it shall be deemed that the service was duly made.

Serving persons under certain command, persons with immunity and nationals living abroad

Article 197

(1) Services of summons upon military personnel, penitentiary guards of the institutions where persons deprived of liberty are being placed and employees of ground, water and air traffic companies, shall be affected through their command, i.e. immediate supervisor and if necessary other documents may also be served on them in such a manner.

(2) Service upon persons deprived of liberty shall be made through the court or through the administration of the institution where they are placed.

(3) Service on persons enjoying immunity in Serbia and Montenegro shall be made through the ministry in charge of foreign affairs, except as otherwise provided by international treaties.

(4) Documents to nationals of Serbia and Montenegro who live abroad, if the proceeding prescribed by provisions of Article 509 and 510 of the present Code is not applicable, shall be served through the diplomatic or consular mission of Serbia and Montenegro in the foreign state, subject to the condition that the foreign state does not object to such a manner of service and with the consent of the recipient of the document. The authorized person of the diplomatic or consular mission shall sign the service receipt as the process server in the service was made in the mission, and in case the service was made by mail he shall confirm this on the service receipt.

Service of the Public Prosecutor

Article 198

(1) Service of decisions and other documents upon the Public Prosecutor is affected by delivery to the clerk's office of the Public Prosecutor.

(2) When delivering decisions for which the term begins to run when service is made, the day of the delivery of the document to the clerk’s office of the Public Prosecutor shall be deemed as the day when the service is made.

(3) Upon his request, the court shall deliver the criminal case to the Public Prosecutor for examination. If a term for filing a legal remedy is pending, or if other interests of the proceedings request so, the court may order a term in which the Public Prosecutor should return the case.

Application of rules of the civil proceeding

Article 199

In cases not prescribed by the present Code the service shall be made pursuant to the provisions of civil proceeding.

Summoning of participants in the proceeding and service trough other persons or certain technical manners

Article 200

(1) Summons and decisions which are issued up until the conclusion of the trial for persons participating in the proceedings, except for the defendant, may be handed over to the procedural participant who consents to deliver them to the person to whom they are addressed, if the authority conducting the proceedings holds that in this way their service is guaranteed.

(2) The persons referred to in paragraph 1 of the present Article may be informed about a summons for a trial or another summons as well as on a decision on the postponement of a trial or other scheduled actions by cable, telephone, electronic mail or another electronic transmitter, giving that it is possible to obtain feedback information that the person has received a summon or information, or if under the circumstances it can be assumed that the person to whom the information is addressed will in such a manner receive it.

(3) An official note in the file shall be made about the summons and service of a decision effected in the manner prescribed in paragraphs 1 and 2 of the present Article.

(4) Detrimental consequences prescribed for omission may take effect against the person who was informed according to paragraphs 1 or 2 of the present Article, or to whom the decision was addressed only if it is determined that he received in due time the summons or decision and that he was instructed of the consequences of omission.

Insight into tapes, transcripts or copies of tapes by third parties with justified interest

Article 201

(1) Anyone having a justified interest may be permitted to examine, transcribe, and copy particular criminal files, except the ones labeled as "official secrecy – top secret".

(2) When proceedings are pending, actions referred to in paragraph 1 of the present Article shall be permitted by the authority conducting the proceedings, and by the President of the Court or an official designated by him when proceedings are terminated. If the files are kept by the Public Prosecutor, the actions referred to in paragraph 1 of the present Article shall be permitted by him.

(3) If the public is excluded from the trial or if the right to privacy would be violated by permitting the actions referred to in paragraph 1 of the present Article, these actions may be denied or conditioned by a prohibition of making public the names of parties participating in the proceedings. Against a ruling on denying the actions an appeal may be filed which shall not stay the execution of the ruling.

(4) The provisions of Article 59, i.e. Article 74 of the present Code shall be applicable for actions referred to in paragraph 1 of the present Article if affected by a private prosecutor, subsidiary prosecutor, injured person and defense counsel.

(5) The defendant already interrogated, i.e. suspect, if interrogated according to the provisions on interrogation of the defendant, has the right to examine the files and observe the objects which serve as evidence in the presence of the official person in the clerk's office of the public prosecutor or the court who shall make a note thereof, as well as make the copies of the files, i.e. photograph the files or objects, except from the records from Article 147, paragraph 2 of the Code.

Chapter XII
BRIEFS AND RECORDS

Submission of charges, judicial remedies and other declarations and releases

Article 202

(1) Private charges, indictments and motions to indict of the subsidiary prosecutor, motions, judicial remedies and other declarations and releases shall be submitted in writing or shall be given orally and entered into the record.

(2) The briefs from paragraph 1 of the present Article must be comprehensive and contain all that is necessary to be acted upon.

(3) If the brief is not comprehensive or does not contain all matters that shall be necessary to proceed upon it, the court shall, unless otherwise prescribed by the present Code, invite the person submitting the brief to correct or supplement it, and if he fails to comply with the summons within a prescribed term, the court shall dismiss the brief.

(4) In the summons to correct or to supplement the brief the person submitting the brief shall be warned of the consequences of failing to act.

The submission of briefs in the adequate number of copies for the court and adverse party

Article 203

The briefs which according to the present Code are to be served on the adverse party shall be submitted to the court in a sufficient number of copies for the court and the other party. If such briefs are not submitted to the court in the sufficient number of copies, the court shall make the necessary copies at the expense of the person submitting the brief.

The protection of reputation of the court, parties and other participants in the proceeding

Article 204

(1) The court is bound to protect its honor and reputation of parties and other participants in the proceeding from an insult, threat and every other assault.

(2) Public Prosecutor conducting preliminary investigation and investigation is also obligated to act in accordance with the paragraph 1 of the present Article.

(3) The court shall impose a fine to an amount not exceeding 150.000 CSD on defense counsel, proxy, legal representative, injured person, private prosecutor or subsidiary prosecutor who in a brief or orally offends the court or a person participating in the proceedings. The ruling on a fine shall be rendered by the Investigative Judge or the chamber before which an offensive statement was given and, if it was made in the brief, the ruling shall be rendered by the court which is to decide on the brief. This ruling is subject to appeal. If the Public Prosecutor or the

person representing him offends another person, the court shall inform the competent Public Prosecutor thereof. The Counsel Bar Association shall be informed of the fine imposed on a counsel or counsel apprentice.

(4) When Public Prosecutor, who conducts preliminary investigation or investigation, or performs certain evidentiary activities during the preliminary investigation or investigation, assesses that defense counsel, proxy, legal representative of the injured person, or subsidiary prosecutor who in a brief or orally offends the court or a person participating in the proceedings, he shall submit a copy of the brief or a record to an Investigative Judge. The Investigative Judge may pass a ruling on fine as per paragraph 3 of the present Article.

(5) The punishment imposed according to the paragraphs 3 and 4 of the present Article shall have no effect on the prosecution or sentencing of the criminal offense committed by the offensive act.

Making the records

Article 205

(1) Every procedural action performed in the course of criminal proceedings shall be entered in the record as it is being performed, and if this is not possible, then immediately afterwards.

(2) A record shall be made by a court reporter. Only records of searches of dwellings, other premises or persons, or when actions are undertaken outside official premises may be made by the person undertaking the action if a court reporter cannot be provided.

(3) When the court reporter makes a record, the record shall be made in such a manner that the person performing the act dictates to the court reporter what should be entered into the record, or the person undertaking the action orders the court reporter to enter all the relevant elements of each undertaken action in the records by him self. The person undertaking the action shall always, when he considers it necessary dictate to the court reporter what should be entered into the record.

(4) The parties and defense counsel may suggest to the person undertaking the action to dictate to the court reporter what should be entered into the record.

(5) The interrogated person shall be permitted to dictate the answers directly on the record. In the case of abuse, this right may be denied to him.

Contents of the record

Article 206

(1) The record shall contain the name of the government authority before which the procedural action is performed, the place where it is undertaken, the day and hour when it is commenced and completed, the names and surnames of persons present as well as their role in the proceedings, and the file number of the criminal case in which the action is undertaken.

(2) The record should contain essential data on the course and the contents of the action performed. Only the essentials of statements and declarations given shall be put in narrative form in the record. Questions shall be entered in the record only if it is essential to the understanding of the answer. If necessary, or upon the request of the parties or defense counsel, the question and the answer to that question shall be entered in the record verbatim. In the case of abuse, this right may be denied to them. If objects or documents are seized while undertaking a procedural action, this shall be entered into the record and the seized objects shall either be attached to the record or the location of their safe keeping shall be stated.
(3) The course of the court proceedings may also be recorded by a stenographer. Stenographic notes shall be translated, examined, signed by a person who took them and attached to the files within a term of 48 hours.

(4) When undertaking procedural actions such as a crime scene investigation, search of dwellings, other premises or persons, or the identification of persons or objects (Article 111), data which are of importance regarding the significance of such a procedural action or for the determination of the identity of certain objects (description, measurements and size of objects or traces, labeling of objects, etc) shall also be entered into the record, and if sketches, drawings, blueprints, photographs, film or similar recording are made - this shall also be entered in the record and attached to the record.

The neatness, changes, corrections and additions to the record

Article 207

(1) The record shall be drawn up neatly. No parts shall be deleted and shall contain no additions or changes. Crossed out parts must remain legible.

(2) All changes, corrections and additions shall be entered at the end of the record and certified by the signatures of the persons who sign the record.

Viewing and signing of the record

Article 208

(1) The interrogated person, the persons whose presence is mandatory during the conduct of a procedural action, as well as parties, defense counsel and injured person if they are present shall have the right to read the record or to request that it

be read to them, i.e. they may be enabled to view the record. The person performing the procedural action shall inform them of this right and the record shall note whether this warning was given to them and whether the record was read. The record shall always be read if the court reporter was not present and it shall be noted in the record.

(2) The interrogated person shall sign the record. If the record contains several pages, the interrogated person shall sign each page. A refusal by the interrogated person to sign a record or leave a fingerprint on it shall be noted in the record as well as the reason for the refusal.

(3) The interpreter, if there is one, the witnesses whose presence during the undertaking of investigative actions is mandatory, and in the case of a search, the person who is being searched or whose dwelling is being searched shall put his signature at the end of the record. If the record is not being written by a court reporter (Article 205 paragraph 2), it shall be signed by the persons present while the action is being carried out. If there are no such persons or if they cannot understand the contents of the record, the record shall be signed by two witnesses except in cases when it is not possible to provide their presence.

(4) In lieu of his signature an illiterate person shall leave the print of the right hand index finger, and a court reporter shall note in writing his name and surname below the fingerprint. If the print of the right hand index finger cannot be taken, the print of some other finger shall be taken, and it shall be noted in the record which finger and which hand was the print taken from.

(5) If the interrogated person does not have both hands -he shall read the record and if he is illiterate-the record shall be read to him and this shall be noted in the record.

(6) If the procedural action cannot be carried out without interruption, it shall be noted in the record the date and hour of the interruption as well as the date and hour when the procedural action was resumed.

(7) If objections are raised regarding the contents of the record, they shall be noted in the record as well.

(8) The record shall be signed at the end by the person performing procedural action and the court reporter.

Excluded records

Article 209

(1) When it is envisaged by the present Code that the court decision cannot be based on the statement of the defendant, witness or expert witness, the Investigative Judge shall *ex officio* or upon the motion of parties render a ruling on the immediate

exclusion of the record on these statements from the file, and no later than until the conclusion of the investigation, i.e. raising a direct indictment. This ruling is subject to a special appeal.

(2) After the ruling becomes final, the excluded records shall be sealed in a separate cover, the Investigative Judge shall keep them apart from other files, and they may not be examined or used in the proceedings.

(3) After the conclusion of the investigation and after raising a direct indictment the Investigative Judge shall act in accordance with provisions of paragraphs 1 and 2 of the present Article, and also regarding all information which according to Article 273 paragraph 9 and Article 257 paragraph 1 of the present Code were given by citizens to the Public Prosecutor and to the police, except in regard with the record referred to in Article 260 paragraph 6 of the present Code. When the Public Prosecutor raises the indictment without conducting investigation (Article 285), he shall submit to the Investigative Judge files containing such information, and the Investigative Judge shall proceed according to the provisions of the present Article.

Audio and video recording of the evidentiary actions

Article 210

(1) All actions undertaken during the criminal proceeding shall be audio recorded as a rule. Public Prosecutor or Investigative Judge may order that evidentiary actions be recorded by video recording devices. Before the interrogation begins, the person being interrogated shall previously be informed and advised about his right to request for recording to be played back in order to for him inspect the given statements.

(2) If the trial was video recorded, for justifiable reasons the Trial Chamber may decide for certain parts of the trial not to be recorded.

(3) The recording shall contain information referred to in Article 206 paragraph 1 of the present Code, information necessary to determine the identity of the person whose statement is being recorded and information regarding the capacity in which that person is being interrogated. When statements from more persons are being recorded, it must be clearly recognizable from the recording who gave the statement in question.

(4) Upon the request of the interrogated person the recording shall be played back immediately and the corrections and explanations made by this person shall be recorded.

(5) The record on the evidentiary actions or the trial shall contain the information that a recording was made, who did the recording, that the interrogated person was previously informed that the recording would take place, that the recording was

reproduced and where the recording is kept if it is not attached to the files of the case.

(6) The Public Prosecutor, Investigative Judge or the President of the Chamber may order the recording to be fully or partially copied. In that case he shall examine the copy, certify it and attach it to the record on performing evidentiary actions.

(7) The recording shall be kept in the court as long as the criminal file is kept.

(8) The Public Prosecutor, Investigative Judge or the President of the Trial Chamber may allow persons participating in the proceedings who have a justifiable interest to record the evidentiary actions by audio recording device.

(9) The recordings referred to in previous paragraphs of the present Article may not be publicly presented without having a written permission of parties and participants of the recorded action.

Trial records

Article 211

The provisions of Articles 337 to 340 of the present Code shall also be applied to the trial record.

The record on deliberating and voting

Article 212

(1) A separate record shall be made concerning deliberation and voting.

(2) The record on deliberation and voting shall contain the course of the voting and the decision made.

(3) This record shall be signed by all members of the chamber and the court reporter. Separate opinions shall be attached to the record on deliberation and voting if they are not entered in the record.

(4) The record on deliberation and voting shall be sealed in a separate cover. This record may be examined only by a higher court when deciding on a judicial remedy, and in that case the court is bound again to reseal the record in a separate cover and make a note on the cover that the record was viewed.

Chapter XIII
TERMS

Terms for giving statements and submitting briefs

Article 213

(1) Terms prescribed by the present Code may not be extended except when explicitly provided for by the present Code. If the purpose of a term prescribed by the present Code is the protection of the right to defense and other procedural rights of a defendant, this term may be shortened if the defendant so requests in writing or orally on the record before the court.
(2) When a statement must be given within a prescribed time, it shall be deemed to be made in due time if delivered to authorized recipient before the lapse of the term.

(3) If a statement is delivered to the Post Office by registered mail or wired, the date of delivery to the Post Office shall be considered to be the date of delivery to the recipient. A delivery made to the Military Post Office in the places where the regular Post Office does not exist shall be deemed as a delivery to the Post Office by registered mail.

(4) A defendant who is in detention may make a statement limited by a term also orally on the record before the court conducting the proceedings or in writing to the prison administration, and a person serving a sentence or an inmate of an institution for the enforcement of security or educational measures may deliver such a statement to the administration of the institution where he is placed. The day on which such record is made or the day on which a written statement is delivered to the administration of an institution shall be deemed to be the day of delivery to the authority authorized to accept it. The administration of the prison or institution shall issue a receipt on delivery to the person deprived of liberty.

(5) If the brief which must be submitted within a term is, due to ignorance or an obvious mistake on the part of the sender, sent or delivered to a court lacking jurisdiction before the lapse of the term and therefore delivered to the court having jurisdiction after the lapse of the term, it shall be deemed that it was submitted in due time.

Counting of the terms

Article 214

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

(2) The hour or day when the delivery or release was effected, i.e. when the event occurred from which the duration of the terms is measured, it shall not be counted into the term but the next following hour or day shall mark the beginning of the term. One day shall be counted as 24 hours and a month shall be counted according to calendar time.

(3) The terms prescribed in months or years expire with the lapse of the day of the last month or year, which by its number corresponds to the day when the term began. If such a day does not exist in the last month, the term shall expire with the lapse of the last day of that month.

(4) If the last day of the term falls on a state holiday or on a Saturday or Sunday, or on some other day when the government authority is closed, the term shall expire with the lapse of the first following working day.

Reinstatement to the prior state of affairs due to defendant's failure to file an appeal within the prescribed term

Article 215

(1) The court shall grant the reinstatement to the prior state of affairs in order to file an appeal to the defendant who for justifiable reasons fails to file an appeal, within prescribed term, on a judgment or a ruling on implementation of security or educational measures or confiscation of pecuniary benefit, provided that the defendant submits the petition for reinstatement to the prior state of affairs within eight days following the removal of the cause of a failure to act within the term, and that in addition at the same time, with the petition, he files the appeal.

(2) After a lapse of three months from the day of failure, no petition for reinstatement to the prior state of affairs may be submitted.

A ruling on reinstatement to the prior state of affairs

Article 216

(1) The President of the Chamber which renders the judgment or ruling challenged by an appeal shall decide on reinstatement to the prior state of affairs.

(2) The ruling granting reinstatement to the prior state of affairs is not subject to appellate review.

(3) If the defendant files an appeal to the ruling denying the reinstatement to the prior state of affairs, the court is bound to forward this appeal together with the appeal on the judgment or the ruling on implementation of security or educational measures or confiscation of pecuniary benefit as well as the reply to the appeal and the entire file to the higher court for a decision.

The effect of the petition for the reinstatement to the prior state of affairs

Article 217

The petition for reinstatement to the prior state of affairs does not, as a rule, stay the execution of a judgment or a ruling on implementation of security or educational measures or on confiscation of pecuniary benefit, but the court having jurisdiction to decide on the petition may decide to stay execution until a decision on the petition is rendered.

Chapter XIV
ENFORCEMENT OF DECISIONS

Final judgments and their enforceability

Article 218

(1) The judgment shall become final after it can no longer be challenged by an appeal or when it is not subject to appellate review.

(2) The final judgment shall become enforceable after it is properly served provided that there are no legal obstacles to its enforcement. If an appeal is not filed or the parties waive their right to an appeal or they withdraw the appeal, the judgment shall be enforceable after the expiration of the term for the appeal or from the day when the parties waive their right to appeal or withdraw the appeal.

(3) If the first instance court, which rendered the judgment, lacks jurisdiction over its execution, it shall serve a certified copy of the judgment with an attestation of its enforceability to the court that has jurisdiction for enforcement.

(4) If a penalty is inflicted upon a reserve officer or noncommissioned officer, the court shall serve a certified copy of the final judgment to the authority competent for matters of defense where the military registry of the convicted person is kept.

The enforcement of judgments regarding the costs of criminal proceedings, confiscation of pecuniary benefit and claims for indemnification

Article 219

(1) The court having jurisdiction shall execute the judgment regarding the costs of criminal proceedings, confiscation of pecuniary benefit and claims for indemnification pursuant to the rules on enforcement proceedings.

(2) The court shall, *ex officio*, forcefully collect costs of criminal proceedings to the benefit of the judicial budget funds. The costs of the forceful collection shall be advanced from the budget funds.

(3) If the security measure of seizure of an object is ordered in the judgment, the President of the Chamber that rendered the judgment in the first instance shall

decide whether these objects shall be sold pursuant to the provisions on enforcement proceedings, or shall be given to a museum of crime, i.e. other institution or shall be destroyed. Proceeds of the sale shall be assigned to the judiciary budget.

(4) The provision of paragraph 3 of the present Article shall be applied accordingly when the decision on seizure of an object pursuant to Article 82 of the present Code is rendered.

(5) The final decision on seizure of object may be amended in civil proceedings if a conflict arises regarding the ownership of the seized objects, except in cases of reopening of criminal proceedings, i.e. in case of a request for the protection of legality.

Final rulings and their enforceability

Article 220

(1) Except as otherwise envisaged by the present Code, rulings shall be executed when they become final. Orders shall be executed immediately if the authority issuing them does not decide otherwise.

(2) A ruling becomes final after it cannot be challenged by an appeal or when it is not subject to appellate review.

(3) Rulings and orders, except when envisaged otherwise, shall be executed by the authorities which rendered them. If a court decides by a ruling on the costs of criminal proceedings, these costs shall be collected according to the provisions of Article 219 paragraphs 1 and 2 of the present Code.

Doubts regarding the permissibility of enforcement of a court's decision or regarding other issues concerning final judgment

Article 221

(1) If doubt arises regarding the permissibility of enforcement of a court's decision or computing a penalty, or if a final judgment fails to include the time spent in detention or served under an earlier sentence, or if these computations are erroneous, the President of the Chamber at first instance shall decide on these issues by a separate ruling. The appeal shall not stay the execution of the ruling, provided the court does not decide otherwise.

(2) If during the course of enforcement doubt arises regarding the interpretation of a court's decision, the President of the Chamber, which rendered the final decision, shall decide thereof.

Issuing the certificate on enforceability of the judgment to an injured person

Article 222

After the decision on a claim for indemnification becomes final, the injured person may request that the court, which rendered the decision in the first instance, issues him a certified copy of the decision with a note that the decision is enforceable.

Provisions on keeping criminal register
Article 223

The regulations on criminal register shall be passed by a minister having jurisdiction over internal affairs with the consent of a minister having jurisdiction over judiciary.

Chapter XV
COSTS OF CRIMINAL PROCEEDINGS

Concept and contents of costs of criminal proceedings

Article 224

(1) Costs of criminal proceeding are expenses incurred by reason of criminal proceeding from its instigation to its termination, including costs of evidentiary actions and of other official actions during preliminary investigation.

(2) Costs of criminal proceedings shall consist of:

1) Expenses for witnesses, expert witnesses, interpreters and experts and expenses of crime scene investigation;

2) Expenses of transportation of the defendant;

3) Expenses of bringing the defendant before the court;

4) Travel expenses for the officials;

5) Expenses of medical treatment of the defendant in detention as well as expenses of child delivery, except expenses which are collected from the medical insurance funds;

6) Expenses of technical examination of a vehicle, blood analysis, DNA analysis, urine analysis, other medical analysis, as well as transportation of corpse to the location of autopsy;

7) Remuneration and necessary expenses of defense counsels, necessary expenses of the private prosecutor and subsidiary prosecutor and their legal representatives, as well as remuneration and necessary expenses of proxy;

8) Necessary expenses of the injured person and his legal representative, as well as remuneration and necessary expenses of his proxy;

9) A lump sum for the expenses not mentioned in previous items.

(3) The lump sum shall be determined according to the duration and complexity of the proceedings and according to the financial situation of the person required to pay the sum.

(4) Expenses referred to in paragraph 2 lines 1 to 6 of the present Article, as well as the necessary expenses of the appointed defense counsel and appointed proxy of the subsidiary prosecutor (Article 65 paragraph 2 and Article 229) in proceedings for criminal offenses subject to *ex officio* prosecution shall be advanced from the budget of the authority conducting the criminal proceedings and shall be later collected from the persons required to reimburse the expenses according to the provisions of the present Code. The authority conducting criminal proceedings is bound to list all advanced expenses which are paid and to attach the list to the files.

(5) The expenses of translation shall not be collected from persons who are according to the provisions of the present Code required to pay the costs of criminal proceedings.

(6) The costs of preliminary investigation covering the remuneration and necessary expenses for the defense counsel who has been assigned by the Public Prosecutor or Police shall be paid by the competent authority that appointed defense counsel based on its own decision.

The decision on the costs of criminal proceedings

Article 225

(1) Every judgment and every ruling discontinuing criminal proceedings shall contain a decision on who will bear the costs of the proceedings and what is their amount.

(2) If data on the amount of costs is lacking, the Investigative Judge, Single Judge or President of the Chamber shall render a separate ruling on the amount of costs upon obtaining data in question. Data on the amount of costs and a request for their compensation may be submitted not later than one year from the day when the judgment or ruling on discontinuation of criminal proceedings becomes final.

(3) When a decision on the costs of criminal proceedings is made in a separate ruling, the chamber (Article 24 paragraph 6) shall decide on appeal against that ruling.

Persons obligated to bear costs caused due to their own culpability

Article 226

(1) The defendant, injured person, subsidiary prosecutor, private prosecutor, defense counsel, legal representative, proxy, witness, expert witness, interpreter and expert (Article 278 paragraph 10), regardless of the outcome of the criminal proceedings, shall bear expenses of their appearance, for postponing the undertaking of evidentiary actions or trial and other expenses in the proceedings for which they are culpable as well as a proportional amount of the lump sum.

(2) A separate ruling shall be rendered on expenses referred to in paragraph 1 of the present Article, except when expenses which are born by a private prosecutor and defendant are decided upon in a decision on the subject matter of the case.

(3) The chamber referred to in Article 24 paragraph 6 of the present Code shall decide on an appeal against the separate ruling referred to in paragraph 2 of the present Article.

The decision on costs in a convicting judgment

Article 227

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

(2) A person charged with several criminal offenses shall not bear the costs regarding the offenses for which he was acquitted if these costs can be separated from the overall costs.

(3) In a judgment pronouncing several defendants guilty, the court shall order what proportion of the costs each of the defendants shall bear, and if this is not possible, the court shall order that the defendants be jointly liable for the costs. The payment of the lump sum shall be determined separately for each defendant.

(4) The court may as an exception, in a decision on costs, decide that the defendant shall not pay the entire or partial amount of costs of the criminal proceedings referred to in Article 224 paragraph 2 items 1 to 6 and 9 of the present Code if payment of these costs would imperil the support of the defendant or the persons defendant is obligated to support. If these circumstances are determined after the decision on costs is rendered, the President of the Chamber may, in a separate ruling, relieve the defendant from the duty to bear costs of criminal proceedings.

The decision on costs in a ruling on discontinuation of the criminal proceedings, in case of judgment of acquittal or judgment denying the charge

Article 228

(1) When the criminal proceeding is discontinued or when a judgment of acquittal or a judgment denying the charge is rendered for the criminal offense prosecuted *ex officio*, the court shall state in its ruling or in its judgment that the costs of the criminal proceedings referred to in Article 224 paragraph 2 items 1 to 6 of the present Code as well as the necessary expenses of the defendant and the necessary expenses and remuneration of the defense counsel shall be paid from budget funds of the Public Prosecutor, except in cases referred to in the following paragraphs.

(2) A separate ruling shall be issued against a person who is by the final judgment sentenced for the criminal offense of false reporting, in which it shall be determined that he shall bear the costs of the criminal proceedings he caused. The chamber referred to in Article 24 paragraph 6 of the present Code shall render this ruling upon a motion of the Public Prosecutor.

(3) When a ruling on discontinuation of the proceeding or a judgment on denying the charges are rendered because defendant was acquitted due to the acts of amnesty or an official pardon, defendant shall bear the costs of criminal proceedings.

(4) The private prosecutor, i.e. subsidiary prosecutor shall pay the costs of the criminal proceedings referred to in Article 224 paragraph 2 items 1 to 6 and 8 of the present Code, the necessary expenses of the defendant and the necessary expenses and remuneration of his defense counsel, if the proceeding is terminated by a judgment of acquittal or a judgment denying the charges or a ruling on discontinuation the proceeding, except if the proceeding was discontinued, i.e. a judgment denying the charge is rendered due to the death of the defendant or because the period of the statutory limitation of the prosecution has expired due to delay of proceedings which cannot be blamed on the private prosecutor, i.e. subsidiary prosecutor. If the proceedings are discontinued because the prosecutor withdrew the charges, defendant and the private prosecutor, i.e. subsidiary prosecutor, may reach a settlement on their mutual expenses. If there is more than one private prosecutor, i.e. subsidiary prosecutors, they shall be jointly liable for costs.

(5) The injured person who withdraws the motion for prosecution shall bear the costs of the criminal proceedings unless the defendant has declared that he would do so.

(6) When the court denies a charge due to the lack of jurisdiction, the decision on costs shall be brought by the court having jurisdiction.

(7) If the request for compensation of necessary expenses and remuneration referred to in paragraph 1 of the present Article is not satisfied, or if the court does not decide thereon within a term of six months from the day the request was submitted, the defendant and defense counsel are entitled to assess their claims in a civil proceedings instituted against the Republic of Serbia.

The costs of proxy and defense counsels

Article 229

(1) Remuneration and necessary expenses of defense counsel and proxy of the private prosecutor or the injured person shall be paid by the defended person, i.e. represented person regardless of who, according to the judicial decision, shall bear the costs of the criminal proceedings, except when according to the provisions of the present Code the remuneration and necessary expenses of the defense counsel shall be paid from the budget funds. If the defense counsel was appointed for defendant, and if the payment of remuneration and necessary expenses would imperil the support of the defendant or the persons defendant is obligated to support, the remuneration and necessary expenses of defense counsel shall be paid from the budget funds. This shall also apply when a proxy was appointed to the injured party as a subsidiary prosecutor.

(2) A proxy who is not an counsel at law does not have the right to remuneration but only to the recovery of necessary expenses.

The costs emerging in the proceeding before the higher court

Article 230

The higher court shall decide on who shall bear the costs of proceedings held before that court according to the provisions of Articles 224 to 228 of the present Code.

Issuing of more detailed regulations regarding costs of criminal proceedings

Article 231

The Ministry in charge of judiciary shall issue more detailed regulations regarding the payment of the costs of criminal proceedings and the amount of a lump sum upon obtaining the prior opinion from the Supreme Court of Serbia.

Chapter XVI
CLAIMS FOR INDEMNIFICATION

Consideration of a claim for indemnification in criminal proceedings and its subject

Article 232

(1) A claim for indemnification arising out of the commission of a criminal offense shall be considered in criminal proceedings upon the motion of authorized persons, provided that this does not considerably delay the proceedings.

(2) The claim for indemnification may consist of a demand for the compensation of damages, recovery of an object or the annulment of a certain legal transaction.

The person authorized to submit a motion to assert a claim for indemnification

Article 233

(1) A motion to assert a claim for indemnification in criminal proceedings may be made by a person who is entitled to litigate an issue in a civil action.

(2) If a damage arising out of the commission of a criminal offense is made to a state or social property, the authority entitled by law to protect such a property may participate in criminal proceedings according with the powers provided by that law.

Submitting of the motion to assert a claim for indemnification

Article 234

(1) A motion to assert the claim for indemnification in criminal proceedings shall be submitted to the authority entrusted with receiving a criminal offense report or to the court conducting the proceedings.

(2) The motion may be submitted prior to the conclusion of the trial before the court at the first instance, at the latest.

(3) The person entitled to submit a motion must specify his claim and offer supporting evidence.

(4) If the authorized person fails to submit a motion for indemnification in criminal proceedings until the indictment is raised, he shall be informed of his right to make the motion until the conclusion of the trial. If a damage arising out of the commission of a criminal offense is made to a state or social property and a motion is not submitted, the court shall inform the authority referred to in Article 233 paragraph 2 of the present Code thereof.

Withdrawal of the motion submitted to assert the claim for indemnification and transferring of the claim to another person

Article 235

(1) Persons entitled to assert a claim for indemnification (Article 233) may withdraw their motion until the conclusion of the trial and submit it as a civil action. In the case that the motion has been withdrawn it cannot be submitted again.

(2) If, after the motion has been submitted and prior to the conclusion of the trial, the right contained in the claim is transferred to another person under the provisions of civil law, this person shall be invited to declare whether he is willing to continue pursuit of the claim. If a duly served person fails to appear it shall be deemed that he has withdrawn the motion.

Examining the claim for indemnification

Article 236

(1) The court conducting the proceedings shall examine the defendant with respect to the facts set out in the motion and explore the circumstances which are of importance for the decision on the claim for indemnification. Even before such a motion is submitted, the court is bound to collect evidence and carry out inquires into circumstances necessary for the adjudication of the claim.

(2) If an inquiry into a claim for indemnification would considerably delay criminal proceedings, the court shall collect only that information which discovery would be impossible or considerably impeded later on.

Decisions on claim for indemnification

Article 237

(1) The court shall have jurisdiction to decide on claims for indemnification.

(2) The court may in a convicting judgment satisfy the claim of the authorized person fully, or it may satisfy it partially while directing the authorized person to assert the rest of the claim in a civil action. If data established in criminal proceedings furnish no reliable basis for either full or partial adjudication, the court shall direct the authorized person to assert his claim in its entirety in a civil action.

(3) When rendering a judgment of acquittal, a judgment denying the charge, or a ruling discontinuing criminal proceedings, the court shall direct the authorized person to assert his claim for indemnification in a civil action.

(4) When the court declares itself incompetent to conduct criminal proceedings, it shall instruct the authorized person that he may assert his claim for indemnification in criminal proceedings which shall be instituted or continued by a court having jurisdiction.

(5) During criminal proceeding or upon its termination the court may regardless of the decision, advise injured person, i.e. a person that submitted claim for indemnification and defendant to try to settle their dispute through mediation proceeding in accordance with the Code on Mediation.

Delivery of the objects to the injured person

Article 238

When the claim for indemnification is a claim to recover an object, the court shall order in its judgment that the objects be delivered to the injured person if it established that the object belongs to the injured person and that it is in the possession of the defendant, or some of the accomplices or a person to whom they entrusted the object.

The annulment of a legal transaction

Article 239

When the claim for indemnification concerns the annulment of a particular legal transaction and the court finds it justified, it shall adjudicate the full or partial annulment of that legal transaction, with all the consequences deriving there from, without effecting the rights of third parties.

Altering the final judgment which decided on a claim for indemnification

Article 240

(1) In criminal proceedings the court may alter a final judgment which decided on a claim for indemnification, only upon a request for the reopening of criminal proceedings or for the protection of legality of the final judgment.

(2) Except for the case referred to in paragraph 1 of the present Article, a final criminal case judgment which decided on a claim for indemnification may be revised only in civil proceedings at the request of the convicted person, i.e. his heirs, provided that grounds exist for reopening of the proceedings under rules on civil proceedings.

Temporary measures of securing a claim of indemnification

Article 241

(1) Provisional measures securing a claim for indemnification arising out of the perpetration of a criminal offense may be ordered upon the motion of authorized persons (Article 233) and according to the rules of enforcement proceedings.

(2) In the course of the investigation, the ruling from paragraph 1 of the present Article shall be rendered by the Investigative Judge. After the indictment was raised, the ruling shall be rendered outside the trial by the President of the Chamber, and at the trial by the chamber.
(3) A ruling rendered by the chamber on provisional measures securing the claim is not subject to appellate review. In other cases, the chamber referred to in Article 24 paragraph 6 shall decide on an appeal. An appeal shall not stay the execution of the ruling.

Return of objects

Article 242

(1) If the objects involved undoubtedly belong to the injured person and they do not serve as evidence in criminal proceedings, these objects shall be handed over to the injured person even prior to the termination of proceedings.

(2) If several injured persons claim ownership of an object, they shall be directed to institute a civil action and the court shall in criminal proceedings order only safekeeping of the objects as a provisional measure securing the claim.

(3) Objects serving as evidence shall be seized temporarily from the owner and returned to him after the termination of proceedings. If such an object is indispensable to the owner it may be returned to him even before the termination of proceedings but he shall be obligated to bring it upon request.

Temporary securing measures towards third party

Article 243

(1) If the injured person has a claim against a third party because he is in the possession of objects acquired by the commission of a criminal offense, or because a third party acquired pecuniary benefit as a result of the criminal offense, the court may in criminal proceedings upon the motion of authorized persons (Article 233) order, according to the rules on enforcement proceedings, a provisional measure securing the claim against that third party as well. In this case, the provisions of Article 242 paragraphs 2 and 3 of the present Code shall also apply.

(2) In a judgment of conviction the court shall either vacate the measures referred to in paragraph 1 of the present Article if these have not already been vacated, or instruct the injured person to institute civil proceedings, with the proviso that these measures shall be vacated if the civil proceedings are not instituted within a term set by the court.

Chapter XVII
PREJUDICIAL ISSUES AND OTHER PROVISIONS

Resolving of prejudicial issues

Article 244

(1) If the application of criminal law depends on a prior decision concerning a legal issue which falls within the jurisdiction of a court in some other proceedings or within the jurisdiction of some other government authority, the criminal court may decide on this question as well, by applying the provisions which regulate the process of proof in criminal proceedings. The decision on this legal issue rendered by a criminal court shall affect only the criminal case which is being tried before this court.

(2) If such prior issue has already been decided on by a court in some other proceedings or by other government authority, such a decision shall not be binding on the criminal court in deciding on whether a criminal offense has been committed.

The approval for criminal prosecution

Article 245

(1) Where law provides that prosecution of certain persons and for certain criminal offenses requires the previous approval of a competent government authority, the Public Prosecutor may not issue an Ruling on instigating the investigation nor raise an indictment, i.e. motion to indict unless such approval has previously been obtained.

(2) When prosecution is based upon a private charge or upon a request of subsidiary prosecutor, the approval shall be obtained by the court.

(3) A person enjoying immunity may refer to immunity until the opening session of the trial. If an indictee becomes entitled to immunity after the opening session of the trial, he may immediately refer to immunity or until the conclusion of the trial at the latest.

(4) The authorities referred to in paragraph 1 and 2 of the present Article may request the approval for prosecution from a competent government authority even before a person who enjoys immunity refers to it.

Motion for criminal prosecution by the injured person

Article 246

When prosecution for a criminal offense is contingent upon the motion for prosecution of the injured person, the Public Prosecutor may not request the opening of the investigation or raise an indictment without investigation or motion to indict as long as such a motion has not be made by the injured person.

Informing the authorities or employer of the defendant

Article 247

The court shall inform the defendant's employer within a term of three days that defendant was placed in detention, that indictment is final, i.e. judgment of conviction for a criminal offense subject to prosecution upon the motion to indict is rendered.

Discontinuation of the criminal proceedings due to death of the defendant

Article 248

When in the course of criminal proceedings it is determined that the defendant has died, the Investigative Judge, Single Judge or the President of the Chamber shall discontinue criminal proceedings by a ruling.

Sanctioning for the delay of the criminal proceedings

Article 249

(1) In the course of proceedings, the court may impose a fine not exceeding 150,000 CSD upon the defense counsel, proxy or legal representative, the injured person, subsidiary prosecutor or private prosecutor if their actions are clearly aimed at delaying the criminal proceedings.

(2) If the Public Prosecutor assesses that during preliminary investigation or investigation which he conducts or in which he presents evidence, some of the persons referred to in paragraph 1 of the present Article, are obviously delaying the criminal proceedings, Public Prosecutor shall a record of the matter and will submit it along with the copy of the criminal case to the Investigative Judge who can impose a fine stipulated in paragraph 1 of the present Article on such a person.

(3) The Counsel Bar Association shall be notified of the fine imposed on an counsel or counsel apprentice.

(4) The President of the Counsel Bar Association is obligated to inform the court within two months upon the receipt of the information referred to in paragraph 3 of the present Article about the measures undertaken against the defense counsel referred to in the paragraph 1 of the present Article, and if he fails to do so he may be fined as per paragraph 1 of the present Article.

(5) If Public Prosecutor does not submit motions in due time to the court or if he undertakes other actions in the proceedings with major delay and therewith causes the delay of the proceedings, the court shall notify the higher Public Prosecutor thereof.

The international legal immunity

Article 250

(1) The rules of international law shall apply regarding the exemptions of aliens enjoying immunity in Serbia and Montenegro from the criminal prosecution.

(2) In case of doubt of the identity of the persons concerned, the authority conducting the proceeding shall ask for clarification from the Ministry in charge of foreign affairs.

The obligation of other government authorities

Article 251

All government authorities are bound to render necessary assistance to the courts and other authorities participating in criminal proceedings, especially in the matter of discovering criminal offenses, acquiring evidence and perpetrators.

Dealing with suspicious objects

Article 252

(1) If an object belonging to someone else is found in the possession of the suspect or defendant, and it is unknown whose object this is, the authority conducting the proceedings shall describe this object and post a notice containing a description on the public board of the municipal assembly both within the territory where they live and within the territory where the criminal offense was committed. Along with the description of the object the photograph shall be attached as always when it is suitable. In the notice the owner shall be called to appear within one year from the posting date, with the notice that otherwise the object shall be sold. The proceeds obtained by the sale shall be put into the judiciary budget funds.

(2) If objects of considerable value are involved, posting may be effected through a daily newspaper, radio, TV or through an add, or through appropriate notice posted on the internet.

(3) If the object is perishable or its keeping involves considerable costs, it shall be sold according to the rules of enforcement proceedings, and the proceeds obtained shall be deposited in a court deposit.

(4) When the object belongs to the fugitive or to the unknown perpetrator, the provision referred to in paragraph 3 of the present Article shall also be applied.

Part II
THE COURSE OF PROCEEDINGS

A. CRIMINAL OFFENSE REPORT, PRELIMINARY INVESTIGATION AND NOTIFICATION OF CRIMINAL OFFENCE

Chapter XVIII

CRIMINAL OFFENSE REPORT

Obligation to submit a criminal offense report

Article 253

(1) All government authorities, territorial autonomy and local government authorities, public companies and institutions are obligated to report criminal offenses subject to *ex officio* public prosecution about which they have been informed or have learned about in a different way.

(2) The obligation set forth in paragraph 1 of the present Article refers also to all physical persons as well as to all legal entities, which pursuant to law have certain public authority or are professionally engaged in the business of protection and security of persons and property, treatment and health protection of persons, i.e. in the business of caring for, upbringing and educating minors, in cases when they have found out about the criminal offense in relations to their profession.

(3) Those submitting criminal offense reports referred to in paragraphs 1 and 2 of the present Article shall indicate evidence known to them and undertake measures to preserve traces of the criminal offense, the objects on which or by means of which the criminal offense was committed, objects created by the commission of criminal offence as well as other evidence.

(4) Everyone shall report and has the right to report the criminal offense subject to *ex officio* public prosecution. Cases in which a failure to report a criminal offense represents a criminal offense are prescribed by the Criminal Code.

(5) Everyone has an obligation to report a criminal offense subject to *ex officio* public prosecution, by commission of which injured party is a minor.

(6) When the court in the course of criminal proceedings determines that there is a reasonable suspicion that a certain person failed to act pursuant to his obligation set forth in paragraph 5 of the present Article and that from such failure to act reasonable suspicion arises that this failure constituted a criminal offense pursuant to Article 193 of the Criminal Code, it shall notify of this the competent Public Prosecutor.

The method for submission of criminal offense report and proceedings of the authorities to which it was submitted

Article 254

(1) The criminal offense report shall be submitted to the competent Public Prosecutor in writing or orally, by telephone, electronic mail or by the use of other technical means and methods.

(2) If the criminal offense report is submitted orally, the person who submitted it shall be warned about the consequences of a false reporting, and the report and the warning shall be entered into the record. On submission of an oral criminal offense report that was conveyed by telephone or by other technical means and methods an official note shall be made, and if the report was filed electronically it shall be saved in an appropriate data carrier and printed.

(3) If the criminal offense report was submitted to the court, the police authority, other government authority or a Public Prosecutor lacking jurisdiction, they shall receive it and immediately forward it to the Public Prosecutor having jurisdiction, along with all of its attachments if they have been submitted.

(4) When a criminal offense report is submitted to the police authority, which believes that grounds for suspicion exist that a criminal offense subject to *ex officio* public prosecution was committed, it shall without delay, conduct necessary preliminary investigation within its competency or which it is authorized to conduct pursuant to the present Code, of which it shall immediately notify the competent Public Prosecutor.

(5) If Public Prosecutor fails to act pursuant to Article 273 of the present Code within the period of three months from the day of receiving the criminal offense report, he is obligated to immediately inform directly superior Public Prosecutor who shall undertake the necessary measures.

Chapter XIX

PRELIMINARY INVESTIGATION AND SUBMISSION OF NOTIFICATION ON CRIMINAL OFFENCE

The activities of the police authority during preliminary investigation

Article 255

(1) If there are grounds for suspicion that a criminal offense subject to *ex officio* public prosecution was committed, the police authorities shall be obligated to take necessary measures aimed at identifying, locating and capturing the perpetrator of the criminal offense, preventing the perpetrator or accessory after the fact from going into hiding or fleeing, discovering and securing traces of the criminal offense and objects which may serve as evidence as well as gathering all information which could be useful for successfully conducting criminal proceedings.

(2) In order to fulfill the duties referred to in paragraph 1 of the present Article, the police authorities may conduct the following preliminary investigation activities: seek information from citizens; carry out the necessary inspection of the means of transportation, passengers and luggage; restrict movement of people and vehicles in a certain territory for a necessary period of time, no longer than for six hours; undertake necessary measures regarding the establishment of the identities of persons or objects; issue a wanted notice for a person or warrant for objects searched for; carry out in the presence of the authorized person an inspection of objects and premises of government authorities, enterprises, firms and other legal entities; review their documentation and seize it temporarily if necessary, as well as undertake other necessary measures and actions.

(3) A record or an official note shall be made about the facts and circumstances determined in the course of conducting particular activities from the paragraph 2 of the present Article, which may be of importance for criminal proceedings, as well as about the discovered or seized objects. The police authorities may record, using audio and video recording equipment, certain activities from the paragraph 2 of the present Article, and video – audio recordings shall be attached to the file record, i.e. to the official note.

(4) When conducting a crime scene investigation for the criminal offense against traffic safety in cases where reasonable suspicion exists that it has caused grave consequences or has been committed with the criminal intent, the police authorities may temporarily and for up to three days, seize the driving license from the suspect.

(5) When it is necessary to determine the identicalness, or in other cases of interest for the successful conducting of preliminary investigation, the police authority may with the previous approval of the Public Prosecutor, and in the cases when the danger of delay exists even without said approval, photograph the suspect, take his fingerprints, order the DNA analysis, and undertake other activities necessary to establish his identity. Only with a written and explained decision of the Investigative Judge may the police authority publicize the photograph of a suspect.

(6) If it is necessary to determine who the finger prints and palm prints on certain objects come from, the police authority may, with the previous approval of the Public Prosecutor, i.e. in cases when the danger of delay exists even without said approval, take the finger prints and palm prints from persons for whom the possibility exits that they may have come in the contact with those objects.

(7) The person against whom some of the activities or measures from paragraphs 2, 4, 5, and 6 of the present Article have been implemented, and who is of the opinion that this resulted in the violation of some of his rights, may submit a complaint to the Public Prosecutor within three days from the day said action or measure was taken, which does not preclude him from submitting a criminal offense report, or achieving legal protection in any other way.

(8) The police authority may temporarily seize objects during the preliminary investigation pursuant to the provisions of the Article 82 of the present Code and in cases of existence of danger from delay, also search the apartment, other premises and persons under conditions set forth in Article 81 of the present Code.

(9) The police authorities are obligated to return the temporarily seized objects immediately to the owner or occupant if the criminal proceeding is not instigated, i.e. within three months if they fail to submit to the competent Public Prosecutor a notification of a committed criminal offence.

(10) The police authority may conduct the crime scene investigation alone if the Public Prosecutor is not able to immediately come to the crime scene and may order necessary expertise that may not be delayed. If a Public Prosecutor arrives to the crime scene during the crime scene investigation he may take over its conduct.

(11) The police authority shall without delay notify the Public Prosecutor of the conducted activities from paragraph 8 to 10 of the present Article.

The submission of the notification of criminal offence to the Public Prosecutor

Article 256

(1) The police authority shall without delay and no later than within 24 hours, notify the Public Prosecutor about grounds for suspicion that a criminal offense subject to *ex officio* public prosecution was committed and for which a penalty of five years in prison was stipulated or a more severe sentence, i.e. no later then 48 hours for a criminal offense for which a lenient sentence is stipulated.

(2) Along with notification from the paragraph 1 of the present Article, the police shall submit to Public Prosecutor official records and all other original material evidence or its copies on the activities conducted until that moment in the preliminary investigation.

(3) During the course of entire preliminary investigation, police authority shall without delay and no later than within 24 hours, when a criminal offense was committed for which a penalty of five years of imprisonment or a more severe penalty is stipulated, i.e. no later then 48 hours for a criminal offense for which a more lenient sentence is stipulated, inform the Public Prosecutor about all activities undertaken and shall submit records, official notes and originals or copies of all other evidence material.

(4) When police authority determines that grounds for suspicion exist that a certain person committed a criminal offense subject to *ex officio* public prosecution it shall submit notification without delay to the competent Public Prosecutor, and along that notification provide the Public Prosecutor with records, official notes and all other original evidence materials or its copies.

(5) If Public Prosecutor fails to act pursuant to Article 273 of the present Code, within the period of three months from the day of receiving the criminal offense report from paragraph 1 of the present Article, he is obligated to immediately inform directly superior Public Prosecutor who shall undertake necessary measures.

Gathering evidence from citizens in preliminary investigation

Article 257

(1) In order to collect information about criminal offense and a perpetrator and other relevant circumstances pertaining to the criminal offense, the police authorities may also summon citizens. The reason for the summoning and a capacity in which a citizen is summoned must be noted in the summons. A person who fails to appear may be brought in by force only if he was warned of it in the summons.

(2) In the course of application of the provisions of the present Article the police authorities may not interrogate citizens in the capacity of a defendant or witness, except in the case referred to in Articles 258, 260 and 261 of the present Code.

(3) Collecting information from the same person may last as long as it is necessary to obtain the necessary information, but not longer than four hours.

(4) Information from citizens must not be collected by the use of force, nor by means of deception or exhaustion, and the police authority must respect the personality and dignity of each citizen. If the citizen refuses to provide information he may not be detained and in this case the rule about the time limitation from the paragraph 3 of the present Article is not applicable.

(5) If summoned citizen comes with his counsel to the police premises, the police shall allow the counsel to be present while information is being given by the citizen.

(6) An official note or a record made on given information shall be read to the person who provided the information. This person may raise objections and the police authorities are obligated to note them in the official note or the record. A copy of the official note or record on given information shall be issued to the citizen upon his request.
(7) The citizen may be summoned again for collecting information on circumstances related to other criminal offense or perpetrator, but in cases of collecting information related to the same criminal offense the citizen may exceptionally be summoned only one more time for very important reasons.

The interrogation of a witness in the preliminary investigation

Article 258

(1) If the police authority in the course of collecting information assesses that a summoned citizen should be interrogated as a witness, it is obligated to immediately inform of it the Public Prosecutor, who may interrogate the person in accordance with the Article 109 of the present Code.

(2) The Public Prosecutor may entrust police authority to conduct interrogation of a witness, and may be present during this interrogation.

(3) If during the course of undertaking the activity referred to in paragraph 1 of the present Article, the identity of a suspect for the criminal offense regarding which the citizen is being interrogated as a witness is known, it shall be made possible for a suspect and his defense counsel, save for cases when the danger of delay exists or when it is not possible due to other important reasons, to be present during interrogation, throughout which they question a witness ions and state their own remarks.

(4) The interrogation of a citizen as a witness must commence before the expiration of the time limitation set forth in the Article 257, paragraph 3 of the present Code, but that deadline may be extended upon the consent of the citizen.

(5) The official record shall be made on the interrogation of a witness interrogated by the Public Prosecutor or police authority and said record shall be signed by the interrogated witness. The entire course of the interrogation shall be recorded by the video and audio recording device. Audio-video recording shall be attached to the official record on the interrogation of a witness.

(6) If there is a danger that it will not be possible to interrogate a citizen in case of a trial, due to his old age, illness or other important reasons, or when the Public Prosecutor deems that it is necessary for other important reasons that an Investigative Judge conducts this activity, he shall recommend to the Investigative Judge to interrogate a citizen as a witness in accordance with Article 109 of the present Code.

(7) If the Investigative Judge fails to consent to the recommendation from Paragraph 5 of the present Article, the chamber as per Article 24 paragraph 6 of the present Code shall decide on the issue.
(8) The official record of interrogation of a witness during preliminary investigation as well as the recordings from the paragraph 5 of the present Article shall not be excluded from the record and may be used as evidence during criminal proceedings.

Gathering of information from persons in detention during the preliminary investigation

Article 259

(1) With the permission of Investigative Judge, Single Judge, i.e. the President of the Chamber, the Public Prosecutor or exceptionally police authorities in cases of duty delegated by Public Prosecutor, may collect information from persons in detention, if this is necessary for discovering or clarifying other criminal offenses and perpetrators.

(2) Information from paragraph 1 of the present Article shall be collected in the institution in which the defendant is detained at the time ordered by the Investigative Judge, Single Judge or the President of the Chamber and in his presence or the presence of a judge designated by him. Upon the request of a detainee, his defense counsel is entitled to be present during the course of this collection of information.

(3) Gathering of information shall be postponed until the defense counsel arrives, but no longer than for four hours and if within that time frame, defense counsel does not arrive, information may be collected even without the presence of the defense counsel.

Interrogation of a suspect in preliminary investigation

Article 260

(1) If the police authority in the course of collecting information assesses that a summoned citizen may be deemed as a suspect, it is obligated immediately to inform him that he is considered a suspect, of a criminal offence he is charged with and the grounds for suspicion, that he does have the right to remain silent and not provide answers to the questions asked, as well as that anything he says may be used as evidence against him in the criminal proceeding. The suspect is informed of his right to retain a defense counsel who shall be present in the course of his further interrogation, that if he had retained defense counsel or in cases of mandatory professional defense he is not obligated to provide answers to questions asked without presence of the defense counsel, and shall in case of confinement (Article

264) be notified of the rights referred to in Article 5 of the present Code and be allowed to invoke the rights referred to in Article 263 paragraph 1 of the present Code.
(2) It will be made possible for the citizen who in the course of collecting information became a suspect to establish a contact with the defense counsel by telephone, or other electronic message transmitter, either directly or with a help of his family members or third person whose identity must be known, and the police authority or Public Prosecutor may assist the suspect to retain a defense counsel.

(3) Public Prosecutor or police authorities may also summon the suspect, and the summons shall contain a warning from the paragraph 1 of the present Article.

(4) In the case referred to in paragraph 1 of the present Article, the police authorities shall immediately notify the Public Prosecutor. Public Prosecutor shall request from the police authorities to postpone interrogating the suspect until his arrival and to provide him with the opportunity to interrogate the suspect, but can also delegate this interrogation to the police authority alone, and the Public Prosecutor may be present during such interrogation.

(5) If the suspect is dumb, deaf or incapable of defending himself successfully, as well as in cases he is charged with the criminal offense with the stipulated penalty of more than 5 years and does not retain a defense counsel, and the defense counsel does not appear within four hours after the suspect established a contact with him as per paragraph 2 of the present Article, Public Prosecutor or Police shall appoint a defense counsel to the suspect *ex officio* from the list of counsels compiled by the Public Prosecutor at the suggestion of the Attorney Bar Association.

(6) The provisions of the present Code on the interrogation of a defendant shall be applied in cases of interrogation of a suspect by the Public Prosecutor or Police.

(7) The official record shall be made on the interrogation of a suspect interrogated by the Public Prosecutor or police authority and said record shall be read to the suspect and signed by him, and all the objections made by the suspect shall also be entered into the record. The entire course of the interrogation conducted by the Police and without the presence of Public Prosecutor shall be recorded by video and audio recording device. Audio-video recording must contain the entire course of the interrogation while faces of all persons present during the interrogation must be clearly visible. The audio-video recording shall be attached to the official record on the interrogation of a suspect, and the official record of this interrogation shall not be excluded from the record and may be used as evidence during criminal proceedings.

(8) If the interrogation of a suspect was conducted by the Public Prosecutor who determined that reasonable suspicion exists that the suspect committed the criminal offense charged with, he may issue an Ruling on instigating the investigation pursuant to Article 273, paragraph 3 of the present Code.

(9) The Public Prosecutor may upon issuing a decision from the paragraph 8 of the present Article and determining that the conditions set forth in Article 264, paragraph 1 of the present Code are met, also issue an Order on temporary confinement, in which case the Public Prosecutor shall pursuant to Article 265, paragraph 1 recommend detention to the Investigative Judge. Investigative judge shall act pursuant to the provisions of Article 274 of the present Code.

(10) The provisions from Article 275 shall be accordingly applied on an Ruling on instigating the investigation issued by the Public Prosecutor pursuant to paragraph 8 of the present Article.

The interrogation of a suspect by using the device for registering physiological reactions of the interrogated person

Article 261

(1) Authorized police official may at the request or with the consent of the person that became a suspect during the collection of information pursuant to Article 260, paragraph 1 of the present Code, i.e. who was summoned pursuant to Article 260, paragraph 3 of the present Code to be interrogated as a suspect, conduct his interrogation with the use of a device for registering physiological reactions.

(2) Prior to interrogation from paragraph 1 of the present Code the suspect must be read his rights from Article 260 of the present Code, and authorized police official shall explain the method of operation of this device for registering physiological reactions and the suspect shall give his written consent to be interrogated with the use of this device prior to commencement of interrogation.

(3) If the suspect during the course of interrogation declares that he withdraws his consent the authorized police official shall stop the interrogation with the use of device for registering physiological reactions.

(4) The interrogation with the use of device for registering physiological reactions cannot be applied towards the suspect who:

1) is under the influence of alcohol or under the influence of other psychoactive substances
2) suffers from serious heart condition or severe respiratory problems
3) is under an extremely great stress
4) takes sedatives
5) shows visible signs of mental illness, permanent or temporary mental disturbance or is in another condition of illness that prevents interrogation
6) is significantly mentally incompetent
7) suffers severe physical pain

8) is pregnant or recently gave birth

(5) The interrogation with the use of device for registering physiological reactions may not be applied towards a person that has not reached the age of 16, while older minor may be interrogated only with the consent of a parent or a legal guardian, and by an expert specially trained to work with minors.

(6) After the completed interrogation referred to in paragraph 1 of the present Article, the authorized police official or Public Prosecutor may conduct interrogation from the Article 260 of the present Code.

(7) Defense counsel of the suspect, i.e. counsel of the persons subject to collection of information from Article 260, paragraph 1 of the present Code and the Public Prosecutor may be present during the interrogation referred to in paragraph 1 of the present Article, and may observe the interrogation but have no right to ask questions during the interrogation and influence its course, and as a rule they shall be in a different room that shall be connected via video link to the room where the interrogation with the use of the device for registering physiological reactions is being conducted.

(8) The whole course of interrogation from paragraph 1 of the present Article may be recorded by the video and audio recording device and in cases of such audio-video recording these recordings shall be attached to the expert report of an expert for interrogation with the use of device for registering physiological reactions.

(9) The record shall not be made on the statement given during the interrogation referred to in paragraph 1 of the present Article, as it represents integral part of the expert report of an expert for interrogation with the use of device for registering physiological reactions that cannot be used as evidence in the criminal proceeding, but has a significance as an appropriate basis for caution about the possible link of a suspect, i.e. a person subject to collection of information from Article 260, paragraph 1 of the present Code, to the criminal offense being investigated in the preliminary investigation.

Deprivation of liberty of a suspect by Police

Article 262

(1) Authorized police officials may deprive a person of liberty if any of the grounds for ordering a detention referred to in Article 174, paragraph 1 of the present Code exist, and shall be obligated to bring such a person before the Investigative Judge having jurisdiction without delay, except in the case referred to in Article 264, paragraph 1 of the present Code. When the person deprived of liberty is brought before the Investigative Judge, the authorized police official shall inform the Investigative Judge on the reasons and on the time of the deprivation of liberty.

(2) Person deprived of liberty must be instructed in a manner provided in Article 7 of the present Code.
(3) If bringing the person deprived of liberty takes longer than eight hours due to unavoidable obstacles, the authorized police official is obligated to give a special justification to the Investigative Judge and the Investigative Judge shall make a note or record thereof. The Investigative Judge shall enter into the record a statement of the person deprived of liberty on the time and place of his deprivation of liberty.

Interrogation of a suspect brought before the Investigative Judge

Article 263

(1) Investigative judge is obligated to immediately inform the suspect brought before him that he may retain a defense counsel, to make possible for the suspect to notify the defense counsel in his presence, by telephone or other means of electronic message transmitter, either directly or with a help of his family members or third person whose identity must be known, and if it is necessary the Investigative Judge shall assist the suspect to retain a defense counsel.

(2) If the person deprived of liberty fails to secure the presence of a defense counsel within 24 hours from the moment this was made available to him in accordance with paragraph 1 of the present Article, or declares that he does not want to retain a defense counsel, the Investigative Judge is obligated to immediately interrogate him.

(3) If in the case of mandatory defense (Article 71 paragraph 1) the person deprived of liberty fails to retain a defense counsel within 24 hours from the moment he was instructed on this right, or explicitly declares that he shall not retain a defense counsel, a defense counsel shall be appointed to him *ex officio*.

(4) Immediately after interrogation, the Investigative Judge shall decide whether to release a person deprived of liberty or to order a detention against him.

(5) Public Prosecutor must be present during the interrogation of a suspect deprived of liberty, who has the right to ask the suspect questions, make remarks and proposals, and may submit a Request for conducting the proceedings in front of Investigative Judge, in accordance with the Article 469 of the present Code in cases when the suspect brought before the judge has been captured in the course of committing a criminal offense. If a Public Prosecutor in the course of interrogation did not issue an Ruling on instigating the investigation, nor does he do so within 48 hours from the moment the detention was ordered, the Investigative Judge shall release a detainee.

(6) The provisions of Article 275 of the present Code shall accordingly be applied on an Ruling on instigating the investigation that was issued by the Public Prosecutor pursuant to paragraph 5 of the present Article.

(7) When a person deprived of liberty is brought before the Investigative Judge, he or his defense counsel, his family member, blood relative in the direct line, brother or sister, spouse of person he lives in a permanent common law marriage, as well as Public Prosecutor, may request from the Investigative Judge to order a medical examination and order that the suspect be photographed or his appearance and physical condition be recorded via the video recording device. Upon such request Investigative Judge shall issue an order appointing a physician who shall perform said examination, and if the judge deems it necessary he shall order photographing, i.e. video recording of a suspect. This decision, the record on interrogation of the physician, photographs or video materials in cases photographing i.e. video recording of a suspect was ordered, shall be attached by the Investigative Judge to the criminal case file.

Temporary confinement of a suspect by the Public Prosecutor or Police in preliminary investigation

Article 264

(1) Public Prosecutor or police authority may exceptionally, and no longer than for 48 hours from the moment of deprivation of liberty, i.e. answering a summons, temporarily confine a suspect deprived of liberty pursuant to Article 262, paragraph 1, as well as the suspect from Article 260, paragraphs 1 and 3, if they determine that some of the reasons from Article 174, paragraph 1 of the present Code exist.

(2) The Public Prosecutor or police authority shall immediately, and no longer than within 2 hours, issue a written ruling with explanation on confinement and serve it on the confined person. The ruling shall contain a criminal offense the suspect is charged with, grounds for suspicion, reason for confinement, day and hour of deprivation of liberty or appearance upon summons, as well as the time of the beginning of confinement.

(3) The suspect and defense counsel have the right to appeal the ruling on confinement, which shall immediately be submitted to the Investigative Judge. The Investigative Judge is obligated to decide on the appeal within a term of four hours from the receipt of the appeal. The appeal shall not stay the execution of the ruling.

(4) Public Prosecutor or the police authority, are obligated immediately to inform the Investigative Judge on confinement. The Investigative Judge may request the confined person be immediately brought before him.

(5) The suspect is entitled to the rights referred to in Article 260 of the present Code.

(6) The suspect must have a defense counsel as soon as the Public Prosecutor or police authority render a ruling on provisional confinement. Public Prosecutor or police authority are obligated to inform the suspect immediately of his right to retain a defense counsel, to make possible for the suspect to notify the defense counsel in his presence, by telephone or other means of electronic message transmitter, either directly or with a help of his family members or a third person whose identity must be known, and if it necessary the suspect shall be assisted in retaining a defense counsel.

(7) If the suspect does not retain a defense counsel by himself, Public Prosecutor or the police authority shall make one available to him *ex officio*, from the list submitted by a respective Counsel Bar Association. The interrogation of the suspect shall be prolonged until defense counsel appears, but not longer than for six hours. If the presence of defense counsel is not secured even by that time, the Public Prosecutor or Police shall release the suspect or bring him before the competent Investigative Judge without delay.

(8) The interrogation of a suspect that has been confined is being conducted pursuant to the Article 260 of the present Code.

Ordering detention in the preliminary investigation

Article 265

(1) Public Prosecutor shall upon having previously issued an Order of confinement (Article 264, paragraph 1) issue an Ruling on instigating the investigation without any delay, which shall be submitted immediately, along with the Motion that the defendant be placed in detention to the Investigative Judge, who shall act pursuant to Article 274, paragraph 2 of the present Code, in which case the provisions from Article 274, paragraphs 3-5 of the present Code shall be applied.

(2) If the Order of Confinement was issued by the Police, it shall notify of it the Public Prosecutor, who may act pursuant to the provisions of paragraph 1 of the present Article.

(3) If the Public Prosecutor within the time frame set forth in Article 264, paragraph 1 of the present Code, does not suggest setting of detention, the suspect shall be released without delay.

Finding a person in the act of committing a criminal offense (Civil arrest)

Article 266

(1) Everyone may deprive of liberty a person who is in the act of committing a criminal offense subject to *ex officio* public prosecution.

(2) The person found during the commission of a criminal offense is:

1) Person found in the actual act of committing a criminal offense

2) Person captured by another person who was an eye witness to the commission of a criminal offense, as a perpetrator or an accomplice of the criminal offense

3) Person found immediately after the commission of a criminal offense with a weapon or an object connected with the criminal offense, or another object that directly appoints to participation in the criminal offense committed

4) Person on whom there are obvious traces of participation in the recently committed criminal offense

(3) The person deprived of liberty must be immediately brought before the Investigative Judge or police authority and if this is not possible, one of these authorities must be immediately informed thereof. The police authority shall immediately notify Public Prosecutor and proceed pursuant to Article 262 of the present Code.

(4) When the person deprived of liberty was transferred to the Investigative Judge, or was brought before him by the police authority, Investigative Judge shall immediately notify the Public Prosecutor, if the police authority has not already done so, therefore interrogate person deprived of liberty in the capacity of a suspect in the presence of the Public Prosecutor, pursuant to Article 263 of the present Code.

(5) Public Prosecutor may immediately after the interrogation of a suspect, or after the interrogation of a person from paragraph 6 of the present Article, submit a Request for conducting proceedings before the Investigative Judge pursuant to Article 469 of the present Code.

(6) Investigative judge shall interrogate a person who handed over person deprived of liberty during the commission of the criminal offense in the capacity of a witness pursuant to the Article 109 of the present Code. If the citizen handed over the person found in the act of commission of a criminal offense to the police authority, it shall secure that the citizen who consents to it be brought before the Investigative Judge, without delay and with the respect for his personality and dignity for the purpose of being interrogated as a witness.

Police authority acts upon finding a person at the site of commission of crime

Article 267

(1) The authorized police officials are entitled to send persons found at the site of the commission of a criminal offense to the Public Prosecutor or to hold them there until his arrival, if these persons may reveal information important for the criminal proceedings and if it appears likely that their examination at a later point might be impossible or might entail considerable delay or other difficulties. Such persons shall not be held at the site of the commission of a criminal offense longer than 6 hours.

(2) Persons from paragraph 1 of the present Article can be interrogated by Public Prosecutor pursuant to the Article 258 of the present Code.

Dismissal of criminal offence report against a suspect who fulfilled certain obligations

Article 268

(1) Public Prosecutor may postpone criminal prosecution for criminal offense with stipulated pecuniary fine or imprisonment for up to 3 years, if the suspect accepts one or more of the following measures:

1) To remove the consequence of the criminal offense or compensate the damages caused by the commission of the criminal offense;

2) To fulfill out his supporting obligations that are ripe for collection ;

3) To undergo alcohol or drug treatment rehabilitation;

4) To undergo psycho-sociological therapy;

5) To become employed in a working position that is available and that fits his working capabilities and qualifications,

6) To pay a certain financial amount for the benefit of a generally renowned humanitarian organization, center for protection of rights of the victims of criminal offenses, i.e. other generally renowned humanitarian fund or public institution which deals exclusively or predominately with humanitarian work;

7) To perform specific community or humanitarian service.

(2) Republic Public Prosecutor shall prepare a list and priority ranking of the organizations, centers and public institutions from paragraph 1, item 5 of the present Article, i.e. the list and priority listing of possible methods of community or humanitarian service.

(3) Public Prosecutor may in addition to all the obligations from paragraph 1 of the present Article, also order a separate condition to be met by the suspect:

1) Suspect must satisfy the indemnification claim of the injured party;
2) Suspect must personally apologize to the injured party.

(4) The suspect is obligated to satisfy the accepted obligation within a term not longer than 6 months.

(5) If a suspect performs his obligation from paragraph 1, items 1 to 5 of the present Article, or with the consent of the victim, obligation from paragraph 1, items 6-7 of the present Article within the time frame from the previous paragraph of this article, Public Prosecutor shall dismiss the notification of criminal offense, i.e. criminal offense report, and provision from Article 60 of the present Code shall not be applied.

Futility of criminal prosecution due to repentance of the suspect

Article 269

(1) In cases of criminal offenses with stipulated monetary fine or imprisonment of up to 3 years, Public Prosecutor may dismiss notification of criminal offense, i.e. criminal offense report, if the suspect, due to his sincere repentance prevented the consequences of the criminal offense, or prevent damages caused by the commission of criminal offense, i.e. when the suspect has compensated the damages in full, and Public Prosecutor having in mind the personality of the suspect and the circumstances under which the criminal offense has been committed, determines that criminal prosecution of the suspect and imposing of a criminal sanction would not be purposeful, nor in the interest of justice.

(2) In cases from paragraph 1 of the present Article, provisions from Article 60 of the present Code shall not be applied.

B. PRELIMINARY PROCEEDINGS

Chapter XX

INVESTIGATION

The purpose of the investigation and subject in charge

Article 270

(1) An investigation shall be instituted against a designated person when reasonable suspicion exists that he has committed a criminal offense, in order to gather

evidence and information that are necessary for the authorized prosecutor to bring a decision on whether to raise an indictment or to discontinue proceedings.
(2) The investigation shall be conducted by the Public Prosecutor having jurisdiction, and upon his request, or request of other authorized prosecutors, as well as defendant, i.e. defense counsel, certain evidentiary actions in investigation may be undertaken by the Investigative Judge, in accordance with the present Code, if specific circumstances manifestly indicate that these actions could not be repeated at the trial, or the presentation of the evidence at the trial would be impossible or very difficult.

(3) If the Investigative Judge disagrees with the request referred to in the paragraph 2 of the present Article, the chamber referred to in Article 24 paragraph 6 of the present Code will render the decision on this issue within the term of 24 hours.

(4) In the course of investigation, the Public Prosecutor is obliged to collect both incriminating and exculpatory evidence.

(5) The law may determine a particular Public Prosecutor's office where the investigation is to be conducted within the jurisdictional territory of several other Public Prosecutor's offices (the investigating center), or may determine one court whose Investigative Judge shall be in charge of conducting evidentiary actions and deciding about the measures referred to in the chapter IX of the present Code in the course of the investigation conducted within the jurisdictional territory of several courts.

Entrusting the activities of evidentiary actions in the course of investigation

Article 271

(1) In the course of investigation, the Public Prosecutor may entrust the carrying out of particular evidentiary actions to the Public Prosecutor within whose jurisdictional territory these actions should be undertaken, and in the case a particular Public Prosecutor's office is designated to conduct investigation within the jurisdictional territory of several Public Prosecutor's offices, than to that Public Prosecutor's office.

(2) The Public Prosecutor may propose to the Investigative Judge to issue an order for a search of a dwelling, other premises or a person or an order for the temporary seizure of objects, execution of which may be entrusted to the police in the manner prescribed by the present Code.

(3) When he considers it necessary, the Investigative Judge may personally execute the order from paragraph 2 of the present Article, and such search or temporary seizure of objects has to be performed in the mandatory presence of the Public Prosecutor having jurisdiction or the Public Prosecutor within whose jurisdictional territory such evidentiary action need to be undertaken.

(4) Upon the request or approval of the Public Prosecutor, Police may take a photograph or fingerprints of the defendant, or a saliva sample for a DNA analysis, if this is necessary for the purposes of the criminal proceedings.

(5) The Public Prosecutor entrusted with undertaking certain evidentiary actions shall, if necessary, present other evidence related to or deriving from evidentiary actions entrusted to him.

(6) If the Public Prosecutor entrusted with conducting certain evidentiary actions has no jurisdiction over its performance, he shall submit the case to the Public Prosecutor having jurisdiction and inform thereof the Public Prosecutor who submitted the case to him.

Evidentiary actions in investigation which may be ordered exclusively by an authorized Investigative Judge

Article 272

(1) An order for a search of a dwelling, other premises or a person, as well as an order for the temporary seizure of objects, shall be issued by the Investigative Judge, upon the Public Prosecutor's motion.

(2) Upon the request of the Public Prosecutor, the Investigative Judge shall issue an order for the exhumation of a corps.

(3) If the Investigative Judge disagrees with the motion referred to in the paragraph 1 of the present Article, or with the request referred to in the paragraph 2 of the present Article, the chamber referred to in the Article 24 paragraph 6 of the present Code shall decide on this matter within the term of 24 hours.

Conduct of Public Prosecutor upon the receipt of criminal offense report or notification by the police authorities – dismissal of the criminal offense report or issuing an Ruling on instigating the investigation

Article 273

(1) Upon receiving the criminal offense report or the police notification about committed criminal offense (Article 256), the Public Prosecutor shall examine the allegations from the criminal offense report or the notification, and shall interrogate the suspect before deciding on the report or the notification, except in the case when he had personally interrogated the suspect in a preliminary investigation in accordance with the Article 260 of the present Code, or if there is a significant danger in delay, or if he, by reviewing the interrogation report prepared by the police and the tape or other audio\video recording about it (Article 260 paragraph 7 of the present Code), finds that there is no need of interrogating suspect who had been interrogated in a preliminary investigation by the police.

(2) Exceptionally, before deciding on the criminal offense report or on the notification, the Public Prosecutor may interrogate the suspect whom he had already interrogated in the preliminary investigation, if particular circumstances of the case so request, or the repeated interrogation is necessary for gathering exculpatory evidence.

(3) The Public Prosecutor shall issue a Ruling on instigating the investigation when he finds that reasonable suspicion exists that the suspect committed criminal offense charged with in the criminal offense report or in the police notification.

(4) The ruling on instigating the investigation shall contain: the personal data of the defendant, the description of those factual aspects of the act which constitute the elements of the legal definition of the criminal offense, the statutory Chapter of the criminal offense and the evidence from which the reasonable suspicion derives.

(5) The ruling on instigating the investigation may contain a motion for the Investigative Judge of the court having jurisdiction to order the detention of the defendant, or that his presence, as well as the conditions necessary for an unobstructed course of criminal proceedings, be provided by other measures prescribed by the present Code.

(6) The Public Prosecutor shall dismiss the criminal offense report or the notification if the following derives from the report or the notification:

1) that the offense implied in the report or in the police notification is not a criminal offense or it is not a criminal offense subject to the *ex officio* prosecution;

2) that the period of statutory limitation for the institution of the prosecution has expired;

3) that the offense is included in the act of amnesty or official pardon or if other circumstances exist permanently barring prosecution;

4) that there is a manifest lack of evidence indicating the probability that the accounts of criminal offense report are accurate.

(7) The Public Prosecutor shall, within the term of eight days, notify the person who submitted criminal offense report and the injured person about the dismissal of the criminal offense report, instructing the injured person that he may undertake criminal prosecution by raising an indictment with the court within a term of fifteen days from the day the ruling referred to in paragraph 6 of the present Article was served, and warning him that a failure to do so within this term will result in the loss of the right to undertake criminal prosecution. The Public Prosecutor shall, within the term of eight days, notify the police about the dismissal of the notification about the criminal offense.

(8) If the Public Prosecutor finds that a consent or a proposal of the injured person for the criminal prosecution is missing, he shall within the term of three days, request a consent from the authority in charge, i.e. proposal from the injured person, and if he does not receive a consent, i.e. proposal of the injured person within a term of one month from the day that such request was filed, the Public Prosecutor shall render the ruling referred to in the paragraph 6 of the present Article.

(9) If the Public Prosecutor cannot assess from the criminal offense report or police notification whether the charges contained therein are probable, or if the data from the criminal offense report or police notification does not provide sufficient grounds for neither issuing a Ruling on instigating of the investigation, nor for the ruling on the dismissal of the criminal offense report or the notification, and especially if the criminal offense report is submitted against unknown perpetrator, the Public Prosecutor shall, on his own, or through other government authorities, collect the necessary information. The Public Prosecutor may summon the citizens under terms referred to in the Article 257 of the present Code, and may undertake all necessary evidentiary actions, except those falling exclusively within the jurisdiction of the Investigative Judge, or those that may be ordered only by the Investigative Judge (Article 272, paragraphs 1 and 2). If the Public Prosecutor cannot undertake the necessary actions on his own, he shall request the police to undertake them, with the obligation to inform the Public Prosecutor about any such activity without delay.

(10) If even after undertaking the actions referred to in the paragraph 9 of the present Article some circumstances referred to in the paragraph 6 of the present Article still derive, or if there is no reasonable suspicion that the suspect committed criminal offense, the Public Prosecutor shall dismiss criminal offense report and the notification on committed criminal offense by a ruling, and shall act in accordance with the paragraph 7 of the present Article.

(11) If the Public Prosecutor dismissed criminal offense report for the reasons stipulated in paragraph 6 item 4 of the present Article, he may, if he receives new facts and new evidence, act in accordance with paragraphs 1 to 5 of the present Article as well as in accordance with paragraphs 8 to 10 of the present Article.

Ordering detention during investigation

Article 274

(1) When the Public Prosecutor proposed, in accordance with the Article 273 paragraph 5 of the present Code, the defendant to be placed in detention, because he found that no other measure stipulated in the Chapter IX of the present Code may secure the presence of the defendant, i. e. the conditions necessary for the unobstructed conduct of the proceedings, the Public Prosecutor shall render a ruling on temporary confinement of the defendant, pursuant to the Article 264 paragraph 1 of the present Code, in the case of which the provisions set forth in the Article 264 paragraphs 2 to 7 of the present Code shall be applied.

(2) The Investigative Judge shall interrogate the defendant within the term of 36 hours from the inception of confinement about the circumstances relating to the existence of the reasons stipulated in the Article 174 paragraph 1 of the present Code, after which he shall render the Ruling on detention, or if he disagrees with the motion of the Public Prosecutor, he shall ask the chamber referred to in the Article 24 paragraph 6 of the present Code to decide on this issue. The chamber referred to in the Article 24 paragraph 6 of the present Code shall, within the term stipulated in the Article 264 paragraph 1 of the present Code, render the Ruling on detention or the Ruling on dismissing Public Prosecutor's motion to place the defendant in detention.

(3) If the Investigative Judge or the chamber referred to in the Article 24 paragraph 6 of the present Code, in the case referred to in the paragraph 2 of the present Article, does not render the Ruling on detention within a term stipulated in the Article 264 paragraph 1 of the present Code, the defendant shall immediately be released.

(4) The Ruling on detention shall be served on the defendant in the moment of his deprivation of liberty, and not later than 24 hours from the moment he was deprived of liberty. The files must contain both the day and the hour of the deprivation of liberty and the day the ruling on detention was served. The defendant and his defense counsel may file an appeal against the ruling on detention within a term of 24 hours from the moment the ruling was served. The chamber referred to in the Article 24 paragraph 6 shall, within the term of 48 hours, decide on an appeal from the Investigative Judge's Ruling on detention, and the decision on an appeal from the ruling of the chamber referred to in the Article 24 paragraph 6 (paragraph 2 of the present Article) will be brought within the term of 48 hours by the chamber of the first higher instance court. An appeal, the Ruling on detention and other files shall be immediately submitted to the chamber. An appeal against the ruling does not stay its execution.

(5) The Private Prosecutor may appeal a ruling of the chamber (Article 24 paragraph 6 of the present Code) that dismissed his motion to place the defendant in detention, within the term of 24 hours from the moment the ruling was served. An appeal against this ruling does not stay its execution, and the chamber (Article 24 paragraph 6) of the court of higher instance shall rule on it within the term of 48 hours.

An appeal on the ruling on the conducting of the investigation

Article 275

(1) The suspect and his defense counsel may take an appeal to the Investigative Judge on the Ruling on the conducting of the investigation within a term of three days from the day of the receipt of the ruling, which does not stay the execution of the ruling on the conducting of the investigation.

(2) The Investigative Judge is bound to render the ruling on the appeal referred to in paragraph 1 of the present Article within the term of 48 hours.

(3) The Investigative Judge shall discontinue an investigation by a ruling in the following cases:

1) If the offense the defendant is charged with is not a criminal offense;

2) If the period of limitation for the institution of prosecution has expired or the offense is amnestied or pardoned, or

3) if other circumstances exist permanently barring prosecution;

(4) The Investigative Judge shall by a ruling dismiss the Public Prosecutor's Ruling on instigating the investigation, if he finds that there is no ground for conducting an investigation because no evidence exist for reasonable suspicion to arise that the defendant committed the criminal offense.

(5) When the Investigative Judge renders the ruling 3 and 4 of the present Code, he shall render the ruling on releasing defendant from detention, if the defendant is in custody, i.e. he shall render the ruling on dismissal of temporary confinement if the defendant was placed in temporary confinement and he hasn't been released so far.

(6) When the Investigative Judge finds that some of the grounds stated in paragraph 3 and 4 of the present Article do not exist, he shall render the ruling of denying an appeal on Ruling on instigating the investigation as unfounded, which shall therefore uphold the disputed ruling.

(7) If the Investigative Judge finds that only temporary circumstances preventing the prosecution of the defendant exist (Article 283 paragraph 1 point 4), he shall discontinue the investigation by a ruling, and the Public Prosecutor shall continue an investigation when reasons leading to the discontinuation cease to exist.

(8) Decision referred to in the paragraph 7 of the present Article may not be appealed.

(9) An appeal may be taken by the prosecutor and the injured person, from the ruling referred to in the paragraphs 3 and 4 of the present Article within the term of three days from the day of the receipt of the ruling.

(10) The chamber referred to in the Article 24 paragraph 6 of the present Code shall render the ruling on an appeal referred to in the paragraph 9 of the present Article within the term of 48 hours, by which ruling it may deny the appeal as unfounded therefore upholding the Investigative Judge's disputed ruling on the recess of the investigation, i. e. the ruling on denying the Ruling on instigating the investigation,

or may uphold the appeal which was founded and render the Ruling on instigating the investigation, which is not subject to appeal.

(11) If only the injured person files an appeal to the ruling stipulated in the paragraphs 3 and 4 of the present Article, and if this appeal is upheld, it shall be deemed that he assumed the prosecution by taking the appeal.

(12) In the ruling referred to in the paragraph 11 of the present Article, the injured person shall be informed that he may file an indictment with the court within a term of fifteen days, and that if he fails to do so, it shall be deemed that he has desisted from the prosecution.

Limitations of the investigation and its expanding

Article 276

(1) The investigation shall only be conducted in respect to the criminal offense and the defendant specified in the Ruling on instigating the investigation.

(2) If in the course of the investigation it appears that the investigation should be expanded to other criminal offense or person, the Public Prosecutor shall render the Ruling on the expansion of the investigation, to which the provisions of the Article 273 paragraphs 3 to 5 and the Article 275 of the present Code shall be applied.

Evidentiary motions of the defendant, defense counsel, the injured person and the injured person's proxy in the investigation

Article 277

(1) In the course of the investigation, the defendant, defense counsel, the injured person and the proxy of injured person may file the motions to the Public Prosecutor to undertake certain actions.

(2) The Public Prosecutor shall especially warn the defense counsel, the injured person and the proxy of injured person on their obligation to propose the gathering and the presentation of the evidence as soon as they become aware of it and that they may be fined according to the provisions referred to in the paragraph 3 of the present Article, if they fail to do so.

(3) If the Public Prosecutor finds that the person referred to in the paragraph 2 of the present Article violates its obligation stipulated in this paragraph, he shall propose to the Investigative Judge to impose a fine to that person. The Investigative Judge may uphold the motion of the Public Prosecutor and may impose to a person referred to in the paragraph 2 of the present Article a fine up to 150.000 CSD. An appeal may be taken against Investigative Judge's ruling, which does not stay its

execution, and on which the chamber referred to in the Article 24 paragraph 6 of the present Code shall decide.

(4) The defendant, defense counsel, the injured person and the proxy of injured person may submit the motions referred to in the paragraph 1 of the present Code also to the Public Prosecutor entrusted with the performance of certain evidentiary actions. If the Public Prosecutor disagrees with the motion, he shall notify the person who submitted the motion thereof and this person may submit the motion to the Public Prosecutor having jurisdiction.

(5) The Public Prosecutor shall, as soon as he obtains certain evidence in the investigation i.e. immediately upon becoming aware of certain evidence, within the term of three days, inform the defendant and defense counsel about it, as well as the injured person, i.e. his proxy when needed, and shall inform them that they may review the objects and the documents pertaining to this evidence and propose the presentation of new evidence.

(6) If the Public Prosecutor denies by a decision containing an explanation the defendant's or defense counsel's motion to undertake certain evidentiary action or fails to undertake this action within the term of eight days from the day he received the evidentiary motion, the defendant i.e. his counsel may request the Investigative Judge to review the Public Prosecutor's rejection. The Investigative Judge shall, by a non-appealable decision, either concur with the Public Prosecutor's rejection, or order the Public Prosecutor to undertake the proposed evidentiary action, and may undertake the proposed evidentiary action himself, should he assess that there is probability that the presentation of the evidence to which the action pertains at the main trial would be impossible or very difficult.

Presence of certain persons in the course of evidentiary actions in the investigation

Article 278

(1) The Public Prosecutor must be present during each evidentiary action in investigation upon his request by the Investigative Judge.

(2) The injured person, the proxy of the injured person and the defense counsel may be present at the interrogation of the suspect or the defendant. In the case of mandatory legal representation stipulated in the Article 71 paragraph 1 of the present Code, the defense counsel must be present at the interrogation of a suspect or the defendant.

(3) The injured person, the proxy of the injured person, defendant and the defense counsel may attend the crime scene investigation and the interrogation of an expert witness.

(4) The defense counsel, the injured person, and the proxy of the injured person may attend the search of a dwelling and other places.

(5) The defendant, the defense counsel, the injured person and the proxy of the injured person may be present at the interrogation of the witness.

(6) The Public Prosecutor shall be obligated to notify in appropriate and timely manner the defense counsel, the injured person, the proxy of the injured person and the defendant about the time and place of evidentiary actions they are entitled to attend, unless a risk in delay exists. If the defendant has a defense counsel, the Public Prosecutor shall, as a rule, notify only the defense counsel. If the defendant is in detention and the evidentiary action is to be performed outside the seat of the court, the Public Prosecutor shall decide whether the presence of the defendant is needed.

(7) The Investigative Judge undertaking certain evidentiary action at the Public Prosecutor's request, shall as a matter of obligation, notify in a timely manner both the Public Prosecutor as well as the persons referred to in the paragraph 6 of the present Article about the time and place of the evidentiary action. The Investigative Judge shall act in the same manner also when he undertakes certain evidentiary action at the request of the injured person as the prosecutor before this person files his indictment.

(8) If the person informed about the evidentiary action fails to appear, the evidentiary action may be performed in this person's absence.

(9) Persons attending the evidentiary actions may suggest to the Public Prosecutor or to the Investigative Judge to ask certain questions to the defendant, witness or expert witness for the purpose of clarification of issues, and may ask these questions directly with the permission of the authority undertaking evidentiary action. These persons are entitled to request their comments to the performance of certain actions to be entered in the records and may propose the examination of certain evidence.

(10) In order to clarify certain technical or other expert issues which arise in relation to collected evidence or at the interrogation of the defendant or in the course of undertaking other evidentiary actions, the Investigative Judge or the Public Prosecutor may ask an expert of appropriate profession to provide necessary explanations in respect of these issues. If the parties are present when the explanation is given, they may request that the expert gives a more detailed explanation. When necessary, the Public Prosecutor or the Investigative Judge may request an explanation from appropriate specialized institution.

(11) The provisions of paragraphs 1 to 10 of the present Article shall also be applied if the evidentiary action is undertaken before the Ruling on instigating the investigation is rendered.

The assistance of other government institutions in conducting the investigation

Article 279

(1) If the Public Prosecutor or the Investigative Judge needs assistance of the police (the techniques of police science and etc.) or of the other government authorities, related to the investigation, these authorities are bound to provide this assistance upon his request.

(2) An enterprise or other legal entity is bound to provide assistance in performing urgent evidentiary actions at the request of the Public Prosecutor or the Investigative Judge.

Confidentiality in the investigation

Article 280

(1) If it is in the interest of the proceedings, in the interest of confidentiality, in the interest of public order, morality considerations or in the interest of the protection of private or family life of the injured person or the defendant, the official person who is undertaking an evidentiary action shall order the persons who are being interrogated or who are present while the evidentiary actions are being carried out or who review the files of the investigation, to keep certain facts or information they have learned in these proceedings confidential and shall instruct them that the disclosure of the secret is a criminal offense.

(2) An order from the paragraph 1 of the present Article shall be entered into the record on the evidentiary action or shall be noted in the files reviewed, along with the signature of the person instructed on the duty of confidentiality.

Disturbing order during investigation

Article 281

(1) The Public Prosecutor or the Investigative Judge may impose a fine to an amount not exceeding 150,000 CSD, on any person who in the course of evidentiary action, after being warned, continues to disturb the order. If the participation of such a person is not necessary, he may be removed from the place where the evidentiary action is performed.

(2) The defendant may be removed from the place where the evidentiary action is performed, but may not be fined by the ruling of the Public Prosecutor.

(3) If the Public Prosecutor disturbs the order in the course of the evidentiary action undertaken by the Investigative Judge, the Investigative Judge shall proceed pursuant to the provision of the Article 323 paragraph 12 of the present Code.

Complaint in the investigation

Article 282

(1) The defendant, the defense counsel and the injured person may at any time submit a complaint to the first higher instance Public Prosecutor regarding the delay of the proceedings and other irregularities in the investigation for which they hold the Public Prosecutor responsible.

(2) When the defendant, defense counsel and the injured party hold the Investigative Judge conducting certain evidentiary actions upon request of the Public Prosecutor or the injured person responsible for the delay of the proceedings and other irregularities in the course of the investigation, they shall file a complaint with the President of the Court.

(3) The first higher instance Public Prosecutor in the case referred to in the paragraph 1 of the present Article, i.e. the President of the Court in the case referred to in the paragraph 2 of the present Article shall examine the allegations in the complaint, and if the person submitting the complaint so requested, shall inform him of any action taken in this regard.

Recess of the investigation

Article 283

(1) The Public Prosecutor shall render the Ruling of recessing an investigation in the following cases:

1) If the residence of the defendant is unknown;

2) If the defendant is at large or is otherwise not available to government authorities;

3) If the defendant after the perpetration of the criminal offense falls ill from a mental illness or mental disorder, or some other serious illness which prevents him to participate in the proceedings;

4) If in respect of the defendant the circumstances occur temporarily barring a prosecution.

(2) Before recessing an investigation, all evidence which can be obtained in relation to the criminal offense shall be collected.

(3) There may be no appeal against the decision referred to in the paragraph 1 of the present Article.

(4) The Public Prosecutor shall continue an investigation when obstacles leading to recess cease to exist.

The indictment of the injured person as a prosecutor upon assuming criminal prosecution before the investigation or during the investigation

Article 284

(1) When the injured person in accordance with the Article 60 of this code assumes criminal prosecution, as well as when the injured person assumes criminal prosecution after the Public Prosecutor dismissed criminal offense report or the notification about committed criminal offence, the injured person shall have no right to conduct the investigation, but can directly submit the indictment.

(2) Before submitting the indictment, the injured person may request the Investigative Judge to conduct certain evidentiary actions.

(3) If the Investigative Judge does not agree with the injured person's request from the paragraph 2 of this article, the chamber from the Article 24 paragraph 6 of this code shall bring the decision in 3 days, in which it can agree with the Investigative Judge's decision, or order the Investigative Judge to conduct the evidentiary actions requested by the injured person.

(4) The appeal against the decision from the paragraph 3 of this article is not permitted.

Submitting a direct indictment

Article 285

The Public Prosecutor shall not conduct an investigation if the obtained information referring to the criminal offence and the defendant, who has been priorly interrogated, provides sufficient grounds to raise an indictment.

The information obtained before the conclusion of the investigation

Article 286

(1) Before the conclusion of the investigation the Public Prosecutor shall obtain information about the defendant stated in the article 95 paragraph 1 of the present Code, if it is missing or should be verified, as well as information about defendant's previous convictions, and if he is still serving a sentence or other criminal sanction

that is connected to deprivation of liberty – the information about his behavior while serving the sentence or other criminal sanction.

(2) Upon the need, the Public Prosecutor shall obtain information about defendant's previous life and about the circumstances under which he lives, as well as about other circumstances concerning his personality. The Public Prosecutor may order a medical or psychological examination of the defendant when there is a need to supplement the information about the defendant's personality.

(3) If it is possible to impose an aggregate sentence comprising of the sentences from previous judgments as well, the prosecutor shall require the case files of the cases in which these sentences where imposed or certified copies of the final judgments.

The conclusion of the investigation

Article 287

(1) The Public Prosecutor shall conclude the investigation when he finds that the case has been sufficiently clarified in the investigation, which he confirms by an official note.

(2) If the investigation is not concluded within a term of six months, the Public Prosecutor is bound to immediately notify the first higher instance Public Prosecutor of the reasons on account of which the investigation was not concluded. The first higher instance Public Prosecutor shall undertake the measures needed to conclude the investigation.

(3) If the Public Prosecutor, after undertaking all necessary evidentiary actions in the course of the investigation, finds no evidence indicating a reasonable suspicion that the defendant committed a criminal offense, he shall render a ruling on withdrawal of the Ruling on instigating investigation.

(4) The Public Prosecutor shall, upon undertaking all necessary actions in the course of the investigation, render a decision on discontinuation of the investigation if he finds:

1) that the offense the defendant is charged with is not a criminal offense;

2) that the period of limitation for the institution of prosecution has expired or the offense is amnestied or pardoned, or

3) that other circumstances exist permanently barring prosecution.

(5) The decision referred to in the paragraphs 3 and 4 of the present Article shall be served on the injured party within the term of eight days, along with the instruction

that he may undertake criminal prosecution within the term of eight days from the moment the decision was served on him, by filing a direct indictment.

Chapter XXI

INDICTMENT AND THE EXAMINATION OF INDICTMENT

Raising the indictment

Article 288

After the investigation is completed, or when according to this code an indictment without investigation may be raised (Article 285), the proceedings before the court may be conducted only on the basis of the indictment raised by the authorized prosecutor.

Contents of the indictment

Article 289

(1) The indictment shall contain:

1) The name and surname of the defendant with his personal data (Article 95, paragraph 1) as well as data about whether and since when he has been in detention or whether he is at large, and if he was released before the indictment was raised how long he had been detained;

2) A description of the factual aspects of the act from which the elements of the legal definition of the criminal offense are derived, the time and the place of the commission of the criminal offense, the object upon which and instrument by means of which the criminal offense was committed as well as other circumstances needed for the most accurate description of the criminal offence that the defendant is charged with;

3) The statutory Chapter of the criminal offence together with the provisions of the statute which according to the prosecutor's motion are to be applied;

4) An indication of the court before which the trial shall be held;

5) The motion on the evidence to be examined at the trial, stating the names and the addresses of witnesses and expert witnesses, files which need to be read and all other objects which serve as evidence;

6) A statement of reasons describing the state of the matter according to the available information, indicating the evidence necessary to determine the decisive facts, presenting the defendant's defense and the prosecutor's stance on the accounts of defense.

(2) If the defendant is at large, the indictment may contain a motion to order detention, or to require a security bond to be provided by the defendant, as well as to impose the limitations stipulated in the Article 168 paragraphs 1 to 3 of the present Code. If the defendant is in detention, the indictment may contain a motion to release him, with or without provision of a security bond, as well as a motion to order the measures stipulated in the Article 168 paragraph 1 to 3 of the present Code, i.e. the extension of the detention, when the prosecutor has to show that no other measure can achieve the goals which are the reasons for proposing the extension of detention.

(3) Several criminal offences or several defendants may be joined in one indictment only if, according to the provisions of Article 32 of the present Code, a joint proceeding is possible and a single judgment may be rendered.

Submitting the indictment

Article 290

(1) The indictment shall be submitted to the court having jurisdiction in as many copies as there are defendants and defense counsels (Article 68 paragraph 2) with one copy for the court.

(2) Immediately upon receiving the indictment, the President of the Chamber before which the trial shall be held shall examine whether the indictment is properly drawn up (Article 289), and if he finds that it is not, he shall return it to the prosecutor to correct the errors within a term of three days. For justified reasons, upon the prosecutor's motion, the chamber may extend this term. If the injured person as a prosecutor fails to comply within mentioned term, it shall be deemed that he desists from prosecution and the proceedings shall be discontinued.

(3) If the Public Prosecutor submitted an improperly drawn up indictment, the President of the Chamber shall inform the higher prosecutor about it.

Motion to order detention against the defendant or to release the detained defendant from detention

Article 291

(1) If an indictment contains a motion to order detention against the defendant or a motion to release him, the chamber (Article 24 paragraph 6) shall immediately decide on it or within 48 hours at the latest.

(2) If the defendant is in detention and the indictment does not contain the motion to release him, the chamber referred to in paragraph 1 of the present Article shall, *ex officio* and within a term of three days from the day of the receipt of the indictment, examine whether the grounds for detention still exist and render a ruling by which a detention shall be prolonged or vacated. An appeal against this ruling does not stay its execution.

Serving an indictment to a defendant

Article 292

(1) An indictment shall be served without delay on a defendant who is not in detention, and to a defendant who is in detention within a term of 24 hours from receipt.

(2) If detention is ordered against a defendant by a ruling of the chamber (Article 291), the indictment shall be served on the defendant at the moment of his deprivation of liberty, together with the Ruling ordering detention.

(3) If a defendant who is deprived of liberty is not in prison of the court before which the trial is to be held, the President of the Chamber shall order the immediate transfer of the defendant to that prison, where the indictment shall be served on him.

Submitting an objection to an indictment

Article 293

(1) A defendant is entitled to submit an objection to an indictment within a term of eight days from the day it was served, and at the time the indictment was served, the defendant shall be instructed of such a right, as well as of the right to propose to the court, also prior to the trial, in an objection, or in a separate submission, certain evidentiary actions.

(2) An objection to an indictment may be submitted by a defense counsel without the defendant's special authorization, but not against his will.

(3) The defendant may waive the right to submit an objection to an indictment.

Dismissing an objection and summoning the parties and defense counsels

Article 294

(1) A belated objection and an objection submitted by an unauthorized person shall be dismissed by a ruling of the President of the Chamber before which the trial is to be held. The chamber (Article 24 paragraph 6) shall decide on the appeal from this ruling, and may by its ruling deny the appeal as unfounded or may adopt it, when it shall commence the examination of the indictment.

(2) If the objection referred to in the paragraph 1 of the present Article contains also certain evidentiary motions, the President of the Chamber shall consider them *ex officio*, regardless of the fact that he rendered the ruling referred to in the paragraph 1 of the present Article.

(3) If the President of the Chamber does not dismiss the objection pursuant to the provision of paragraph 1 of the present Article, he shall refer it with the files to the chamber (Article 24 paragraph 6), which shall decide on the objection in the session.

(4) The chamber shall summon the parties and defense counsel to the chamber session in order to give their declarations orally and their presence is not mandatory, except in the case referred to in the Article 306, paragraph 5 of the present Code.

Examination of the indictment against which the objection was submitted

Article 295

(1) If the chamber does not dismiss the objection as belated or impermissible, it shall assume an examination of the indictment, in the course of which it shall not be bound by the legal qualification of the offence stated by the prosecutor in the indictment.

(2) When, upon an objection, the chamber determines that there are errors or flows in the indictment (Article 289) or in the prior proceedings themselves or that a better clarification of the facts of the case is necessary in order to examine the grounds for the indictment, it shall return the indictment ordering the observed errors to be removed or that the investigation be supplemented or carried out. The prosecutor is bound, within a term of three days from the day the decision of the chamber was conveyed to him, to submit a corrected indictment or to submit a request to supplement or to conduct an investigation. For justified reasons, upon a prosecutor’s request, the chamber may prolong this term. If the injured person as a prosecutor fails to comply with the term for correcting the flows in the indictment it shall be deemed that he desists from prosecution and the proceedings shall be discontinued. If the Public Prosecutor fails to comply with this term, he is bound to notify the first higher instance Public Prosecutor of the reasons of the failure.

(3) If the Public Prosecutor submitted improperly drafted indictment, the President of the Chamber referred to in Article 24 paragraph 6 of this code shall inform the first higher instance Public Prosecutor about it.

(4) If the chamber determines that some other court has jurisdiction over the criminal offense that is subject of the charges, it shall declare that the court to which the indictment was submitted lacks jurisdiction and after the ruling becomes final it shall refer the case to the court having jurisdiction.

(5) If the chamber determines that the files contain records or information referred to in Article 209 of the present Code, it shall render a ruling on their exclusion from the files. A special appeal may be filed against this ruling, which shall be examined by the chamber of the first higher instance court. After the ruling becomes final and before he refers the case to the President of the Chamber in order to schedule the trial, trial, the President of the Chamber referred to in Article 24 paragraph 6 of this code shall ensure that the excluded records and information be sealed in a separate cover and be handed over to the Investigative Judge for the purpose of keeping them apart from other files. The excluded records and information may be neither viewed nor used in the proceedings.

Discontinuance of criminal proceedings and dismissal of the indictment

Article 296

(1) When deciding on an objection to an indictment, the chamber shall decide by a ruling to discontinue the proceedings if it finds that:

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

2) The period of limitation for the institution of prosecution has expired or the offense is amnestied or pardoned;

3) The final ruling on discontinuation of the proceedings, or the final judgment or the decision on sentencing referring to the criminal offence that is the subject of the charges is already rendered, or if other circumstances permanently barring prosecution exist;

(2) The chamber deciding on the objection to an indictment shall dismiss the indictment by a ruling if it finds that:

1) The request or the motion of the authorized prosecutor or the approval for prosecution is lacking,

2) No evidence exists generating reasonable suspicion that the defendant committed the offence he is charged with;

3) Other circumstances exist that temporary prevent criminal prosecution.

Denying an objection

Article 297

If there is no reason for dismissing the indictment (Article 296 paragraph 2), or for discontinuance of the criminal proceedings (Article 296 paragraph 1), the chamber shall deny the objection as unfounded and by the same ruling the chamber shall also decide on motions for a joinder or severance of the proceedings.

The privilege of joinder in submitting an objection

Article 298

If only some of several defendants or defense counsels submit an objection to an indictment and if the reasons on which the court determined that the charge is unfounded are beneficial to some of the defendants who failed to submit the objection, the chamber shall proceed as if they also submitted such an objection.

Prohibition of prejudice

Article 299

All the decisions of the chamber rendered regarding an objection to an indictment must be substantiated, but in such a manner as not to prejudice the decision on issues which shall be decided before the trial court.

Appeal against the decisions on the objection

Article 300

(1) An appeal may be taken from a chamber decision referred to in Article 295 paragraph 4 of the present Code, and an appeal may be taken by the prosecutor and the injured person from the decisions referred to in Articles 296 of the present Code. Other decisions of a chamber concerning an objection to an indictment are not subject to an appeal.

(2) The chamber of the first higher instance court shall decide on the appeals referred to in paragraph 1 of this article.

(3) If only the injured person files an appeal to the ruling of the chamber and if this appeal is granted, it shall be deemed that he assumed prosecution by the virtue of filing the appeal.

Request of the President of the Chamber to examine the indictment

Article 301

(1) If an objection to an indictment is not submitted or if it is dismissed, or an objection is submitted but its content does not allow for proper examination of the indictment, the President of the Chamber before which the trial is to be held shall mandatory examine the indictment and by an official note state whether he found any reason for rendering a ruling referred to in the article 296 of this code or he assessed that there is no such a reason.

(2) If the President of the Chamber finds that there is a reason for rendering a ruling referred to in the Article 296 of the present Code, he shall request the chamber referred to in the Article 24 paragraph 6 of the present Code to examine the indictment.

(3) The President of the Chamber may make the request referred to in paragraph 2 of the present Article up until the trial is scheduled.

(4) The provisions of Article 294 paragraph 2 and Articles 295 to 297, 279 and Article 299 of the present Code shall be accordingly applied when deciding on the request referred to in paragraph 2 of the present Article.

Term for deciding upon an objection to the indictment or upon the request of the President of the Chamber

Article 302

The chamber referred to in the article 24 paragraph 6 of the present Code shall decide on the objection to an indictment or upon the request of the President of the Chamber referred to in the Article 301 of the present Code within the term of 15 days from the day when the objection or the request of the President of the Chamber was submitted to the chamber.

Entering into the force of the indictment

Article 303

An indictment shall become final when an objection is denied, and if an objection was not submitted or was dismissed, on the day when the chamber, deciding on the request by the President of the Chamber (Article 301), concurs with the indictment, and if such a request did not exist - on the day when the President of the Chamber schedules the trial.

Chapter XXII

PLEA BARGAINING

Conclusion of a plea agreement

Article 304

(1) In the case of criminal proceedings for a criminal offense or concurrence of criminal offenses for which a prison sentence of up to ten years is envisaged, the Public Prosecutor may offer to the defendant and his defense counsel the conclusion of a plea agreement, i.e. the defendant and his defense counsel may suggest the conclusion of such an agreement to the Public Prosecutor.

(2) When a proposal referred to in paragraph 1 of the present Article is made, the parties and the defense counsels negotiate the conditions for the admission of guilt for a criminal offense or criminal offenses defendant is charged with.

(3) The plea agreement must be made in writing and the latest date for its submission shall be the date of the first opening session of the trial.

(4) If an indictment has still not been raised the plea agreement shall be submitted to the President of the Chamber referred to in Article 24 paragraph 6 of the present Code, and upon raising the indictment the plea agreement shall be submitted to the President of the Chamber, or presented to him at the first opening session of the trial.

(5) The defendant and his defense counsel may refer to the concluded plea agreement in their objection to the indictment.

Contents of the plea agreement

Article 305

(1) In a plea agreement, the defendant shall confess the entire criminal offense he has been charged with, i.e. confess one or several concurrent criminal offenses which constitute the subject matter of the indictment, and the defendant and the Public Prosecutor shall agree upon the following:

1) on the length of the sentence and on other criminal sanctions against the defendant;

2) that the Public Prosecutor shall waive the prosecution of criminal offenses that have not been included in the plea agreement;

3) on the costs of the criminal proceedings and indemnification claim;

4) on the waiver by the parties and defense counsels of the right to appeal to the court ruling rendered based on the plea agreement, when the court has fully accepted the agreement.

(2) In the plea agreement, the Public Prosecutor and the defendant may agree on a sentence that, as a rule, cannot be lower than the legally defined minimum sentence for the criminal offense defendant was charged with.

(3) Exceptionally, when this is evidently justified by the importance of the defendant's confession for the solution of the criminal offense he was charged with, which would be impossible or very difficult to prove without such a confession, or for preventing, detecting or proving other criminal offenses, or when there exist specially extenuating circumstances referred to in Article 54. paragraph 2 of the Criminal Code, the Public Prosecutor and the defendant may agree on a more lenient sentence for the defendant within the limits envisaged under Article 57. of the Criminal Code.

(4) Under the plea agreement, the defendant may undertake fulfillment of obligations referred to in Article 268. paragraph 1 of the present Code on condition that the defendant may fulfill them by the date when the plea agreement is submitted to the court due to the nature of these obligations, i.e. that he starts fulfilling his obligations by the date when the plea agreement is submitted to the court.

(5) In the plea agreement, the defendant may undertake the obligation to return the proceeds of criminal offense, or the object of the criminal offense within a set term.

Ruling on the plea agreement

Article 306

(1) The court shall rule on the plea agreement, and it may dismiss it, accept it or deny it with its ruling.

(2) When a plea agreement has been submitted before an indictment has been raised, it shall be decided upon by the President of the Chamber referred to in Article 24 paragraph 6 of the present Code.

(3) When a plea agreement has been submitted after the indictment has been raised, i.e. the defendant or his defense counsel refer to such an agreement in the objection to the indictment, a decision on the agreement shall be made by the President of the Chamber.

(4) The President of the Chamber shall dismiss the plea agreement if it has been filed after the completion of the first opening session of the trial. This ruling is not subject to appeal.

(5) The court shall decide on the plea agreement at a hearing attended by the Public Prosecutor, defendant and defense counsel, while the injured party and his proxy representative shall be notified of the hearing.

(6) The hearing referred to in paragraph 5 of the present Article shall be open to the public (Article 316), and the public may be excluded from the entire course of the hearing or from its part only due to the reasons set forth in Article 317 paragraph 1 of the present Code, with the according implementation of the provisions of Article 317 paragraph 2 and Article 318 of the present Code.

(7) The court shall decide to dismiss the plea agreement if the duly summoned defendant has not appeared at the hearing. The ruling to dismiss the plea agreement cannot be appealed. The hearing referred to in paragraph 5 of the present Article may be held without the presence of the duly summoned Public Prosecutor, on which the court shall inform the directly superior Public Prosecutor.

(8) The court shall accept the plea agreement in a reasoned ruling and pass a decision that corresponds to the contents of the agreement if it determines:

1) that the defendant has knowingly and voluntarily admitted the criminal offense or criminal offenses that constitute the subject matter of the

indictment, and that the possibility that the defendant has been misled when he confessed has been ruled out;

2) that the agreement has been concluded pursuant to Article 305 paragraphs 2 and 3 of the present Code;

3) that the defendant is fully aware of all the consequences of the agreement (Article 305, paragraph 1), and especially that he fully understands that in the plea agreement he has waived the right to a trial and to an appeal on the decision of the court rendered based on the agreement;

4) that there is other evidence corroborating the defendant's admission of guilt;

5) that the plea agreement has not violated any of the defendant's right, or that it is not in contradiction with the Article 1, paragraph 1 of the present Code.

(9) When one or several conditions referred to in paragraph 8 of the present Article have not been met, the court shall adopt a reasoned ruling denying the plea agreement and the defendant's confession from the agreement shall not be used as evidence in the criminal proceeding.

(10) Once the ruling referred to in paragraph 9 of the present Article becomes final, the agreement and all related documents shall be destroyed before the court, on which an official note shall be made.

(11) The Public Prosecutor, defendant, lawyer, injured party and his proxy shall be served with the court on the plea agreement.

Appeal against the decision of the court on the plea agreement

Article 307

(1) The Public Prosecutor, defendant and his defense counsel may appeal the court ruling denying the plea agreement within eight days after the date when they have been served with the ruling.

(2) The injured party and his proxy may appeal the ruling of the court to accept the plea agreement within the term referred to in paragraph 1 of the present Article.

(3) The chamber referred to in Article 24, paragraph 6 of the present Code shall decide on the appeals referred to in paragraphs 1 and 2 of the present Article if the ruling to deny or accept the plea agreement has been made by the Presidnet of tbe Chamber referred to in Article 24. paragraph 6. of the present Code, or if the ruling to deny or accept the plea agreement has been made by the President of the Chamber.

(4) The Chamber that is in charge of deciding on an appeal against the ruling on the plea agreement may dismiss the appeal if it has been filed after the expiry of the term referred to in paragraph 1 of the present Article, accept it or deny it as unfounded.

(5) No appeals may be made against the ruling referred to in paragraph 3 of the present Article.

Judgment rendered on the basis of a plea agreement

Article 308

(1) Once the ruling to accept a plea agreement has become final, it shall be regarded as an integral part of the indictment if one has already been raised, i.e. the Public Prosecutor shall draw up the indictment within three days in which the plea agreement shall be included, if the indictment has not been previously raised, and the President of the Chamber shall without delay render a judgment finding the defendant guilty, impose a sentence or some other criminal sanction against him, and decide on other issues envisaged in the plea agreement (Article 305).

(2) In addition to the contents of the plea agreement (Article 305.), the judgment referred to in paragraph 1 of the present Article shall also contain the data referred to in Article 380. of the present Code.

(3) Persons referred to in Article 384, paragraphs 6 to 8. of the present Code shall be served with the judgment referred to in paragraph 1 of the present Article along with the instruction that no appeal shall be permitted against it.

(4) If the plea agreement envisages that the Public Prosecutor may waive the prosecution of criminal offenses which are not included in the plea agreement (Article 305, paragraph 1. item 2.), the court shall rendered a judgment referred to in Article 378 of the present Code for these criminal offenses and the injured party shall not have the right referred to in Article 60 of the present Code.

C. TRIAL AND JUDGMENT

Chapter XXIII

PREPARATIONS FOR THE TRIAL

Scheduling of the trial and holding of pre-trial hearing

Article 309

(1) The President of the Trial Chamber shall by order set the day, hour and venue of the trial.

(2) The President of the Trial Chamber shall schedule the trial within 15 days after the expiry of the term to file an objection to the indictment if the objection has not been filed, or from the day the objection was denied or dismissed, or from the day when, following a request of the President of the Trial Chamber, the chamber specified under Article 24, paragraph 6 hereof agreed with the indictment.

(3) If the President of the Trial Chamber does not schedule the trial within the term set forth in paragraph 2 of the present Article, he shall notify the President of the Court of the reasons for which the trial has not been scheduled. The President of the Court shall undertake measures necessary to schedule the trial.

(4) If the President of the Trial Chamber determines that the files contain records or notifications referred to in Article 209 of the present Code, he shall render a ruling on their exclusion, and prior to scheduling the trial and after the ruling becomes final he shall place them under separate cover and deliver them to the Investigative Judge for safekeeping separately from other files.

(5) President of the Trial Chamber shall, if he deems necessary by reason of determining the future course of the trial and planning which evidence, in what manner and within which timeframe shall be presented at the trial, summon to the pre-trial hearing the parties, defense counsel, injured party, proxy of the injured and, when necessary, an expert witness and other persons, within the term specified in paragraph 2 of the present Article.

(6) At the hearing referred to in paragraph 5 of the present Article, which is closed to the public and of which a record is made and signed by the parties and other persons present, the President of the Trial Chamber shall inform the persons present with the planned. i.e. future course of the trial and shall request them to declare themselves thereupon, and to state their evidentiary proposals, and particularly, to declare whether they are able to respond to the court summons to attend the trial on set dates and at set time, as planned by the President of the Trial Chamber.

(7) At the hearing specified in paragraph 5 of the present Article the parties are particularly warned that all evidentiary proposals have to be presented, as a rule, at the pre-trial hearing , and that they shall be required if presenting new evidence at the trial, to explain in detail why these were not presented at the pre-trial hearing, and that the court shall deny such proposals if the parties fail to make it credible that they were unaware or could not have been aware at the time of the pre-trial hearing of certain evidence or facts that are necessary to be proved.

(8) Persons referred in paragraph 5 of the present Article may be verbally informed at the pre-trial hearing of the scheduled time for one or more planned hearings of the trial, which shall be entered on record when considered that these persons were duly summoned to the trial.

(9) If a pre-trial hearing was held, the term set forth in paragraph 2 of the present Article, commences to run after conclusion of the pre-trial hearing.

Venue of the Trial

Article 310

(1) The trial shall be held in the seat of the court and in the courthouse.

(2) If in certain cases the premises of the courthouse are considered inappropriate for the trial, the President of the Court may order the trial to be held in another building located on the territory of the court having jurisdiction.

(3) The trial may also be held in another location within the territory of the court having jurisdiction, provided that the president of the directly higher court gives his approval following a substantiated motion from the President of the Court.

(4) The President of the Supreme Court of Serbia may, following a substantiated motion of the President of the Court having jurisdiction, determine that the trial be held outside the territory of the court having jurisdiction.

Summons of parties and other persons to trial

Article 311

(1) The defendant and his defense counsel, the prosecutor and the injured persons and their legal representatives as proxy, as well as the interpreter shall be summoned to appear at the trial. The proposed witnesses and expert witnesses shall also be summoned to the trial, except those who, in the opinion of the President of the Trial Chamber, need not to be examined at the trial.

(2) The contents of the summons for the defendant and the witnesses shall be governed by Articles 108 and 166 of the present Code. Where defense is not mandatory, the defendant shall be advised in the summons of his right to retain a defense counsel, but the trial shall not be adjourned if the defense counsel fails to appear at the trial or if the defendant retains a defense counsel only after the opening of the trial.

(3) The summons shall be served on the defendant in a manner which allows enough time between the day of service and the day of the trial for preparing of defense, and not less than eight days. For criminal offences with a stipulated penalty of 10 or more years, the time for preparation of defense shall be at least 15 days. Upon the request of the defendant or the prosecutor, and with the consent of the defendant, these terms may be shortened.

(4) The injured party who is not summoned to appear as a witness shall be notified by the court in the summons that the trial shall be held in his absence, and that his statement on a claim for indemnification shall be read. The injured person shall be warned that his failure to appear shall be considered as unwillingness to assume prosecution in the case if Public Prosecutor withdraws the charges.

(5) The subsidiary prosecutor and the private prosecutor shall be warned in the summons that if they fail to appear at the trial, or fail to send their proxies, they shall be deemed to have dropped the charges.

(6) The defendant, witness and expert witness shall be warned in the summons about the consequences of failure to appear at the trial (Articles 327 and 331).

Obtaining other evidence

Article 312

(1) The parties and the injured person may propose even after the scheduling of the trial that new witnesses or expert witnesses be summoned to the trial or that other new evidence be collected. The parties must state in their substantiated motion which facts are to be proven and by which proposed evidence.

(2) The President of the Trial Chamber may order collecting of new evidence for the trial even if there is no motion by the parties, and shall so notify the parties prior to commencement of the trial.

Examination of witnesses outside the trial

Article 313

(1) A witness not yet examined who is unable to appear at the trial due to old age, long-term illness or for other reasons may be examined at his current location.

(2) The witness referred to in paragraph 1 of the present Article shall be examined by the President of the Trial Chamber or a judge-member of the Trial Chamber, or by the Investigative Judge of the court on whose territory the witness is located.

(3) The witness referred to in paragraph 1 of the present Article may also be examined in the manner referred to in Article 117, paragraph 3, item 7 hereof.

(4) The parties and the injured person shall be notified of the time and place of the examination if this is possible regarding the urgency of the proceedings. If the defendant is in detention, the President of the Trial Chamber shall decide on the need for his presence at the examination. When the parties and the injured person are present at the examination, they shall be entitled to the rights specified in Article 278 paragraph 9 hereof.

Adjournment of commencement of trial

Article 314

The President of the Trial Chamber may, at the motion of the parties and defense counsel or *ex officio*, when so justified by important reasons, order adjournment of the trial for no longer than 15 days. All summoned parties shall be notified of the continuance without delay.

Dismissal of charges by the prosecutor prior to commencement of the trial

Article 315

(1) If the Public Prosecutor drops charges prior to commencement of the trial, the President of the Trial Chamber shall accordingly notify all persons who were summoned to the trial, and shall particularly instruct the injured person of his right to assume the prosecution (Articles 60 and 62).

(2) If the injured person fails to assume prosecution, the President of the Trial Chamber shall discontinue the criminal proceedings by a ruling and shall forward the decision to the parties, the injured person and the defense counsel.

(3) If the injured party as subsidiary prosecutor abandoned prosecution prior to commencement of the trial, the President of the Trial Chamber shall discontinue the proceedings by a ruling and forward the ruling to the parties, the injured party and the defense counsel.

Chapter XXIV

THE TRIAL

1. Public nature of the trial

The right to attend the trial

Article 316

(1) The trial is public and may be attended by persons of legal age, and by leave of the President of the Trial Chamber also by juveniles over 16 years of age.

(2) Persons attending the trial may not carry arms or dangerous implements, except for the defendant’s guards and court security officers who may be armed.

Excluding the public from the trial

Article 317

(1) The Trial Chamber may *ex officio* or at the motion of the parties but always after hearing their statements, exclude the public from the whole or part of the trial, if this is necessary:

1) to maintain confidentiality;

2) to maintain public order;

3) for the protection of moral;

4) for the protection of the interests of a minor;

5) for the protection of the personal or family life of the defendant or injured party, i.e. for the reason of justified protection of privacy of other persons;

6) to deter serious threat to life or body of the parties, the victim, defense counsel, witness or other persons.

(2) The Trial Chamber excludes the public by substantiated decision that is read aloud and that is not subject to a special appeal.

Persons exempt from exclusion of the public and the caution to maintain confidentiality

Article 318

(1) Exclusion of the public does not relate to the parties, injured person, their representatives, proxies and the defense counsel.

(2) The Trial Chamber may grant the permission to the court and prosecution trainees, professional associates as well as certain officials and scholars engaged in research of criminality and who have justified interest, and upon the defendant's request, may allow his spouse, close relatives or person with whom the defendant is cohabiting in a common law marriage, to attend the trial closed to the public (*in camera trial*).

(3) The President of the Trial Chamber shall instruct the persons attending a *in camera* trial that they are bound to keep confidential the information learned at the trial, and that failure to do so constitutes a criminal offense.

2. Conducting the trial

Persons whose attendance at the trial is mandatory

Article 319

The President of the Trial Chamber, members of the Trial Chamber and the court reporter shall sit continuously at the trial.

Primary duties of the President of the Trial Chamber and of the chamber at the trial

Article 320

(1) The President of the Trial Chamber shall be required to determine whether the Trial Chamber is composed pursuant to the present Code and whether reasons exist for the disqualification of members of the Trial Chamber and the court reporter (Article 39 items 1 through 6).

(2) The President of the Trial Chamber shall conduct the trial, examine the defendant, witnesses and expert witnesses and recognize members of the Trial Chamber, the parties, the injured person, the legal representatives, proxies, defense counsel and the expert witnesses.

(3) The President of the Trial Chamber shall be obligated to provide the case to be is thoroughly examined, that the truth is established and to eliminate all that procrastinates the proceedings and is not contributing to the clarification of the criminal matter.

(4) The President of the Trial Chamber shall rule on the motions of the parties if the Trial Chamber does not decide on them.

(5) The Trial Chamber shall decide on a motion on which the parties disagree, on concurring motions of the parties not sustained by the President of the Trial Chamber, and on objections to measures undertaken by the President of the Trial Chamber relating to conduct of the trial.

(6) The Trial Chamber's rulings shall always be read and entered in the trial record along with a short statement of reasons.

Course of the trial

Article 321

The trial shall be conducted in the order set forth in the present Code, but the Trial Chamber may decide to depart from its regular course if so justified by specific circumstances, and particularly due to the number of defendants, the number of criminal offenses and the scope of evidence.

Protection of the dignity of the court and maintaining order in the courtroom

Article 322

(1) The President of the Trial Chamber shall be obligated to protect the dignity of the court, prevent insult, threat and any other assault on the court, the parties and other participants in the proceedings.

(2) The President of the Trial Chamber shall maintain order in the courtroom. He may verbally order the court guard and other officials to search persons attending the trial, and immediately after the opening of the session or during the course of the trial he may, when appropriate, caution the persons present to behave properly and not to disturb the work of the court.

(3) The Trial Chamber may order for all persons attending the trial based on provisions of the present Code referring to the public nature of the trial and that are not participants in the proceedings, to be removed from the courtroom if the measures for maintaining order provided under the present Code cannot ensure undisturbed holding of the trial.

Measures for maintaining order in the courtroom

Article 323

(1) If the defendant, defense counsel, the injured person, legal representative, proxy, witness, expert witness, interpreter or other person attending the trial disturbs order, violates the dignity of the court or fails to comply with orders of the President of the Trial Chamber on maintenance of order, the President of the Trial Chamber shall warn him and shall enter the warning into the record of the trial.

(2) If the warning specified in paragraph 1 of the present Article is unsuccessful, the President of the Trial Chamber may order the person specified in paragraph 1 of the present Article to be removed from the courtroom, and may also discipline such person with a fine not exceeding 150,000 CSD.

(3) If the person specified in paragraph 1 of the present Article continues to disturb the order and fails to respect the ruling of the President of the Trial Chamber even after the fine was pronounced, the Trial Chamber may decide to pronounce another fine up to 300,000 CSD.

(4) If the person specified in paragraph 1 of the present Article, with the exception of the defendant and after pronouncing of the fine specified in paragraph 3 of the present Article continues to disturb the order and disobey the instructions of the President of the Trial Chamber regarding maintenance of order, and by doing so displays serious contempt of the court and seriously frustrates conducting of the trial, the President of the Trial Chamber shall make a separate record which shall include the statements of such person and description of his behavior, and shall submit this record together with the record of the trial and, when necessary, with a copy of other documents, to the President of the Court. The President of the Court may within 8 days issue a decision on fine amounting up to 450,000 CSD or imprisonment up to 7 days, i.e. may pronounce both penalties to the person specified in paragraph 3 of the present Article.

(5) An appeal may be filed against the ruling on sanctioning specified in paragraphs 2 to 4 of the present Article to the chamber specified in Article 24, paragraph 6 of the present Code. The appeal shall not stay enforcement of the decision nor shall it represent grounds for suspension or adjournment of the trial. The President of the Trial Chamber, i.e. the President of the Court shall submit to the chamber ruling on the appeal, a copy of the trial record and, if necessary, a copy of other files.

(6) Exceptionally, the ruling on sentencing specified in paragraph 2 of the present Article may be revoked if the sanctioned person apologizes to the court and promises not to disturb the order in the courtroom any more.

(7) Other rulings related to maintenance of order and conduct of the trial shall not be a subject to appeal.

(8) Penalty set forth in paragraphs 2 and 3 of the present Article does not preclude criminal prosecution of the fined person if his action concurrently constitutes a criminal offence, in which case action shall be undertaken pursuant to Article 324, paragraphs 1 and 2 hereof.

(9) If the defendant is removed from the courtroom, the President of the Trial Chamber shall order that he be returned to the courtroom immediately following conclusion of the action during which he was removed. If the defendant continues to disturb the order in the courtroom, the Trial Chamber may remove him again from the courtroom for a certain period of time, and if the defendant has already been questioned at the trial, then for the duration of the evidentiary proceedings. Prior to conclusion of evidentiary proceedings the President of the Trial Chamber shall ensure the presence of the defendant, inform him of the course of the trial, inform him about the statements of previously questioned co-defendants, i.e. enable him to read the record of these statements if he so wishes, and shall ask him to plead in respect of the charges, if he has not done so before. If the defendant continues to disturb the order and insults the dignity of the court, the Trial Chamber may again remove him from the hearing, in which case the trial shall be concluded in the absence of the defendant, and the verdict shall be communicated to him by the President of the Trial Chamber or by a judge- member of the Trial Chamber in the presence of the court reporter.

(10) The Trial Chamber may deny further defense or representation at the trial to a defense counsel or proxy who after being penalized continues to disturb order, and in such a case the party shall be called to retain another defense counsel i.e. proxy. If the defendant who has not been questioned is unable to do so, or if in case of mandatory defense the court cannot assign a new defense counsel without prejudicing the defense, the trial shall be suspended or adjourned and the defense counsel shall be ordered to bear the costs of such suspension or adjournment. If the private prosecutor or subsidiary prosecutor do not retain another counsel, the Trial Chamber may decide to continue the trial in the absence of proxy, if it finds that his absence would not prejudice the interests of the represented person, and if the trial is suspended or adjourned when continuing of the trial is impossible without a proxy, the proxy shall be obligated to bear the cost of such suspension or adjournment. A ruling thereupon shall be entered into the record along with the statement of reasons. This ruling is not subject to special appeal.

(11) If the Trial Chamber removes from the courtroom the subsidiary prosecutor or the private prosecutor or their legal representative from the courtroom, the trial shall continue in their absence.

(12) If the Public Prosecutor or person deputizing for him disturbs order, violates the dignity of the court or fails to comply with the orders of the President of the Trial Chamber regarding order, the President of the Trial Chamber shall warn such person, enter the warning in the record of the trial and accordingly notify the relevant Public Prosecutor and the directly higher ranking Public Prosecutor. The President of the Trial Chamber may suspend the trial and request the competent Public Prosecutor to appoint another person to represent the prosecution.

(13) If the President of the Trial Chamber or the Trial Chamber sanctions a defense counsel or attorney apprentice who disturbs order, violates the dignity of the court or does not comply with instructions of the President of the Trial Chamber regarding maintenance of order, the President of the Court shall accordingly notify the relevant Attorney Bar Association, which shall inform the President of the Trial Chamber and the President of the Court of the measures undertaken within two months from the moment it received the notice.

Criminal offence committed at the trial

Article 324

(1) If the defendant commits a criminal offense at the trial, the court shall proceed according to the provision of Article 366 of the present Code.

(2) If someone else commits a criminal offense while the trial court is in session, the Trial Chamber may suspend the trial and upon prosecutor's oral charge proceed to try this criminal offense immediately, or it may try this offense after the conclusion of the pending trial.

(3) If grounds for suspicion exist that a witness or expert witness has given a false testimony at the trial, he shall not be immediately tried for that offense. In such a case, the President of the Trial Chamber may order a separate record to be drawn up on the statement of the witness or expert witness which shall be delivered to the Public Prosecutor. This record shall also contain remarks of the examined witness i.e. expert witness who shall sign such record, and if they refuse to do so the President of the Trial Chamber shall make an official note on it in the record.

(4) The Public Prosecutor to whom the record referred to in paragraph 4 of the present Article was delivered shall, within 15 days from the day of receiving the record, notify the President of the Trial Chamber of the undertaken measures. When the Public Prosecutor instigated criminal prosecution of a witness i.e. expert witness referred to in paragraph 3 of the present Article, or when he determines that no

grounds exist for criminal prosecution, he shall accordingly notify the President of the Trial Chamber within 8 days.

(5) If it is not possible to try the perpetrator of a criminal offense subject to *ex officio* prosecution immediately, or if a higher court has jurisdiction over the case, the Public Prosecutor having jurisdiction shall be notified thereof for further action.

3. Prerequisites for holding a trial

Opening of the trial

Article 325

The President of the Trial Chamber shall open the session and announce the case that is the subject of the trial and the composition of the Trial Chamber. Thereafter, he shall determine whether all summoned persons have appeared, and if not, he shall check whether the summons were duly served and whether those absent have justified their absence.

Non-appearance of the prosecutor at the trial

Article 326

(1) If the Public Prosecutor or his deputy does not appear at a trial scheduled upon an indictment from the Public Prosecutor, the court shall order a continuance. The President of the Trial Chamber shall accordingly notify the competent Public Prosecutor if the deputy prosecutor fails to appear, i.e. the directly higher ranking Public Prosecutor if the relevant Public Prosecutor fails to appear at the trial.

(2) If a subsidiary prosecutor or a private prosecutor does not appear at the trial although duly summoned, and their counsel also fails to appear, the Trial Chamber shall discontinue the proceedings by a ruling.

Failure of the defendant to appear at the trial

Article 327

If a duly summoned defendant fails to appear at a trial without justifying his absence, the Trial Chamber shall order for him to be brought to the court by force. If the bringing cannot be effected immediately, the Trial Chamber shall decide not to hold the trial and shall order bringing of the defendant to the court by force for the next hearing. If the defendant justifies his absence before being brought to the court, the President of the Trial Chamber shall revoke the order to bring.

Trial in absence of the defendant

Article 328

(1) The defendant may be exceptionally tried in his absence only if he is at large or is otherwise not accessible to government authorities, provided that particularly important reasons exist to try him in absentia.

(2) Upon the motion by prosecutor, the Trial Chamber shall render a ruling on holding the trial in absentia.

(3) The ruling specified in paragraph 2 of the present Article may be subject to appeal which shall be deliberated by the Court Chamber specified in Article 24, paragraph 6 hereof, and if this chamber has rendered the ruling on holding the trial in absentia, then by the chamber of directly higher court. The appeal shall not stay enforcement of the ruling.

Non-appearance of defense counsel at the trial

Article 329

(1) If a duly summoned defense counsel fails to appear at the trial without informing the court of the justified reason for his absence as soon as he learns about this reason, or if the defense counsel leaves the session without permission of the court, the trial shall be adjourned at the motion of the defendant, or may be continued without the presence of defense counsel if defense is not mandatory.

(2) If a duly summoned defense counsel does not appear at the trial where defense is mandatory, and does not notify of the reason for his absence as soon as he learns about this reason, or if the defense counsel leaves the session without permission of the court, the trial shall be adjourned only if there is no possibility for the defendant to immediately retain another defense counsel i.e. for the court to appoint such counsel without prejudice to the defense.

(3) The Trial Chamber shall fine with up to 300, 000 CSD a duly summoned defense counsel whose failure to appear causes a continuance of the trial and shall order him to bear the costs incurred by the continuance of the trial. The decision on the above with a brief explanation shall be entered in the record of the trial.

Holding of trial in absence of the defendant i.e. defense counsel in case of rendering expected formal rulings

Article 330

If pursuant to provisions of Articles 323, 327 and 329 of the present Code conditions for a continuance exist due to the absence of the defendant or defense counsel, the Trial Chamber may nevertheless decide to hold the trial if, according to the evidence in the file, it is obvious that a judgment denying the charge or a ruling referred to in Article 373 of the present Code shall be rendered.

Non-appearance of witness or expert witness at the trial

Article 331

(1) If a duly summoned witness or expert witness fails to appear without justified reason, the Trial Chamber may issue an order to bring him immediately to the court by force.

(2) The trial may commence even in the absence of a summoned witness or expert witness, and the Trial Chamber may decide in the course of the trial whether the trial should be recessed or adjourned due to the absence of the witness or expert witness.

(3) The Trial Chamber may fine with up to 150,000 duly summoned witness or expert witness who fails to justify his absence and it may order that he be brought by force to the new hearing. The Trial Chamber may revoke its decision on fine for a justifiable reason.

(4) If due to unjustified absence of a duly summoned witness or expert witness the trial had to be recessed or adjourned, the chamber shall render a decision whereby the witness or expert witness shall bear the costs of such recess or adjournment.

4. Adjournment and recess of the trial

Grounds for adjournment of the trial

Article 332

(1) Except for cases specified in the present Code, the trial shall be adjourned by a ruling of the Trial Chamber if exceptionally longer time is required to obtain new evidence or if the court determines in the course of the trial that the defendant after committing the criminal offense incurred a mental illness or mental disorder or if other serious obstacles for holding of the trial exist.

(2) The trial is adjourned only while obstacles are in force i.e. the reasons that led to continuance and the Presiding of the Chamber shall inform the President of the

Court every month whether the grounds for adjournment still exist. The President of the Court shall undertake necessary measures to expedite the proceedings.

(3) A ruling on adjournment of a trial shall, as a rule, define the place, date and hour of the resumption of the trial. In the same ruling the Trial Chamber may order evidence to be obtained which could cease to exist over a lapse of time.

(4) The ruling from paragraph 3 of the present Article is not subject to appellate review.

Re-opening of the trial

Article 333

(1) When a trial is adjourned it must recommence anew if the composition of the Trial Chamber has changed, but after hearing the parties the Trial Chamber may decide in such case not to re-examine the witnesses or expert witnesses and not to conduct new crime scene investigation, but to read the statements of witnesses and expert witnesses given at the previous trial or to read the record on the crime scene investigation.

(2) If the trial which was adjourned is held before the same Trial Chamber, it shall be resumed and the President of the Trial Chamber shall summarize the course of the previous trial.

(3) If the adjournment lasted for more than four months, or if trial is being held before another president of the Trial Chamber, the trial shall recommence and all evidence shall be presented again, except when proceeding pursuant to paragraph 4 and 5 of the present Article.

(4) If the trial is adjourned for more than four months, the Trial Chamber may, even without consent from the parties i.e. defense counsel, but after their questioning, decide not to re-examine particular witnesses and expert witnesses and not to conduct new crime scene investigation, but to read the record on examination of these witnesses at the previous trial i.e. read the record of the crime scene investigation, if repeating of evidentiary actions would be pointless due to elapse of time or other significant reasons, or would result in significant procrastination of criminal proceedings.

(5) In the event of change of the president of the Trial Chamber, the new Presiding Judge of the Trial Chamber may request the Presiding of the chamber specified in Article 24, paragraph 6 hereof to allow by his decision derogation from provision of paragraph 3 of the present Article. The chamber specified in Article 24, paragraph 6 of the present Code shall by a ruling allow that particular witnesses and expert witnesses are not to be reexamined and that new crime scene investigation shall not

be conducted, but that records of examination of such witnesses and expert witnesses from the previous trial be read, i.e. the record of the crime scene investigation be read, if repeating of such evidentiary actions would be evidently pointless due to passage of time or other important reasons, or would lead to considerable procrastination of criminal proceedings and would be contrary to reasons of fairness or reasons of protection of witnesses and other participants in criminal proceedings.

(6) The decision of the President of the Court specified in paragraph 5 of the present Article is not subject to appellate review.

Recess of the trial

Article 334

(1) If the trial lasts for more than one day it shall be held, as a rule, continuously every working day until conclusion, unless this is not possible due to important reasons.

(2) Except for cases particularly provided by the present Code, the President of the Trial Chamber may order a recess of the trial for maximum 10 days to obtain certain evidence within of short period of time, for additional preparation of the prosecution or defense due to transpiring of new, significant circumstances which could not have been foreseen by the parties or defense counsel i.e. if due to other justifiable reasons the trial cannot be concluded successfully.

(3) If so necessary in exceptional cases and for particularly justifiable reasons the Trial Chamber may extend duration of the recess of the trial for a maximum another 10 days, and the President of the Trial Chamber shall notify the President of the Court of the reasons for such extension to whom he shall submit a substantiated decision on extension of the recess.

(4) If the trial is recessed for more than three times, the President of the Trial Chamber shall so notify the President of the Court promptly who is required to undertake necessary measures to expedite the proceedings.

(5) The decision to recess the trial shall define the place, date and time of resumption of the trial.

(6) The decision recessing the trial is not subject to appellate review.

(7) A recessed trial shall always continue before the same Trial Chamber.

(8) If the trial may not be resumed before the same Trial Chamber, or if a recess exceeds deadlines specified in paragraphs 2 and 3 of the present Article, procedure provided under Article 333 of the present Code shall apply.

Breaks during the trial

Article 335

(1) Shorter working hours shall not represent the reason for a break during the trial and the court is required to continue with the trial without delay.

(2) During the trial the President of the Trial Chamber may order a break for the court, the parties or other participants in the proceedings, due to considerable exceeding of the working hours or for other significant reasons.

(3) The break referred to in paragraph 2 of the present Article may last for a maximum 2 hours during the same day, or until the next working day.

(4) If the deadline specified in paragraph 1 of the present Article is exceeded, the President of the Trial Chamber shall notify the President of the Court of the reasons, and if the break exceeds 24 hours it shall be deemed that a decision to recess the trial has been brought and provisions of Article 334 hereof shall be accordingly applied.

Augmenting of the trial chamber during the trial

Article 336

(1) If in the course of a trial held before a Trial Chamber composed of one judge and two lay judges, the facts upon which the charge is founded indicate that a criminal offense is involved for which a Trial Chamber composed of two judges and three lay judges has jurisdiction, the Trial Chamber shall be augmented at once.

(2) After reading of the record on examination of witnesses and expert witnesses at the trial before a chamber comprising one judge and two lay judges, i.e. reading of the crime scene investigation record, the trial shall continue before a Trial Chamber comprising two judges and three lay judges.

5. Record of the trial

Manner of recording the trial

Article 337

(1) A record shall be made of the trial that shall contain an essential summary of the statements given at the trial and the entire course of the trial. The record shall contain the questions asked and answers given thereto.

(2) When the Presiding Judge deems appropriate, and the issue is a criminal offence subject to sentence of ten years of imprisonment or more serious penalty, or if justifiable due to important reasons in proceedings for a criminal offence with more lenient penalty envisaged, an audio or audio and video record shall be made of the whole trial or shall be recorded in stenographical manner.

(3) A transcript of the audio i.e. transcript of stenographic notes referred to in paragraph 2 of the present Article shall be made within 72 hours from the moment when recording ended, i.e. taking of stenographic notes and shall as such be attached to the record of the day to which the transcript refers.

(4) The President of the Trial Chamber may, upon a motion of the party i.e. defense counsel or *ex officio*, order that statements he considers particularly important be entered in the record verbatim.

(5) If necessary, and especially if a statement is entered in the record verbatim, the Presiding Judge may order that this part of the record be read aloud immediately, and it shall always be read if the party, defense counsel or the person whose statement is entered in the record so requires.

Concluding and correcting the record

Article 338

(1) The record shall be completed with the closing of the session. The record shall be signed by the President of the Trial Chamber and the court reporter.

(2) The parties and defense counsel shall be entitled to review the completed record and its appendixes, to make remarks regarding the contents and to request corrections of the record. After the closing of the session, the parties shall be entitled to get a copy of the record, if they request so.

(3) A copy of the record referred to in paragraph 2 of the present Article shall be given to the parties and defense counsel in hard copy or electronic format, and may be delivered to them by e-mail within 24 hours.

(4) If a recording or stenographic note-taking referred to in Article 337 paragraph 2 of the present Code was made, the parties and defense counsel shall be entitled to immediately or exceptionally within 3 days from the day the recording i.e. note-taking was made, receive copies of the recording i.e. transcript of the notes in hard copy or electronic format.

(5) Corrections of incorrectly written names, numbers and other obvious errors in writing may be ordered by the President of the Trial Chamber upon a motion of the

parties or the person examined, or *ex officio*. Other corrections and supplements of the record may be ordered only by the Trial Chamber.

(6) Objections and motions of the parties regarding the record, as well as corrections and supplements made to the record, shall be noted in the supplement to the completed record. The reasons for not sustaining certain motions and objections shall also be noted in the supplement to the record. The Presiding Judge and the court reporter shall also sign the supplement to the record.

Contents of the record

Article 339

(1) The introduction of the record shall indicate the court before which the trial is held, the time and place of the session, the full names of the President of the Trial Chamber, members of the Trial Chamber, court reporter, prosecutor, defendant and defense counsel, injured person and his legal representative or proxy, court interpreter, the criminal offense under consideration, and whether the trial is a public or *in camera*.

(2) The record shall in particular contain data on the indictment which was read or orally presented at the trail and on whether the prosecutor amended or extended the charge, what motions were filed by the parties, and what decisions were rendered by the President of the Trial Chamber or the Trial Chamber, which evidence was examined, whether records or other briefs were read, whether audio or other recordings were reproduced and what remarks the parties made regarding the record or briefs read or the recordings reproduced. If the trial was *in camera*, the record must state that the President of the Trial Chamber reminded those present of the consequences of unauthorized disclosure of the confidential information they learned at the trial.

(3) The statements of the defendant, witness and expert witness shall be entered in the record in such a manner as to present their essential content. These statements shall be entered in the record only if they contain changes or supplements to their previous statements. Upon a motion of a party, the President of the Trial Chamber shall order the record of a previous statement to be read in part or in whole.

(4) Upon a motion of a party, the court shall enter in the record a question i.e. answer which the Trial Chamber denied as impermissible.

Entering the ordering part of the judgment in the record

Article 340

(1) The record shall state the entire ordering part of the judgment (Article 385 paragraphs 3 to 5), along with a note on whether the judgment was read in public. The ordering part entered in the record of the trial shall be considered the original document.

(2) If the court renders a ruling on detention (Article 382), that also shall be entered in the record.

6. Commencement of the trial and interrogation of defendant

The entrance of the judge i.e. the trial chamber into the courtroom

Article 341

(1) Then called upon by the authorized officer all present in the courtroom shall rise while Presiding Judge or a Trial Chamber is entering or leaving the courtroom.

(2) The parties and other participants in the proceedings shall be obligated to rise when addressing the court, except if this is not possible for justifiable reasons or if the examination is differently arranged.

Establishing presence of the summoned persons

Article 342

When the President of the Trial Chamber determines that all summoned persons have appeared, or when the Trial Chamber decides to hold the trial in the absence of some of the summoned persons or when the Trial Chamber decides to postpone a decision on such issues, the President of the Trial Chamber shall call on the defendant to give his personal data (Article 95 paragraph 1) in order to establish his identity.

Procedures with witnesses and injured parties

Article 343

(1) After the identity of the defendant is established, the President of the Trial Chamber shall remove the witnesses and the expert witnesses from the courtroom and instruct them to designated place where they shall wait until called upon to testify. If necessary, the President of the Trial Chamber may allow the expert witnesses to remain in the courtroom to follow the course of the trial.

(2) If the injured person is present and has not yet submitted his claim for indemnification, the President of the Trial Chamber shall inform him that he may submit a motion for the realization of such a claim in the criminal proceedings and shall instruct him of the rights specified in Article 59 of the present Code.

(3) If the subsidiary prosecutor or private prosecutor has to testify as a witness they shall not be removed from the courtroom and shall be examined immediately after examination of the defendant.

(4) The President of the Trial Chamber may undertake measures necessary to prevent collusion between the witnesses, expert witnesses and the parties.

Warning and instructing the defendant and defense counsel

Article 344

(1) The President of the Trial Chamber shall warn the defendant to follow the trial carefully and shall instruct him that he may present the facts and propose evidence in his defense, ask questions to co-defendants, witnesses and expert witnesses, make remarks and give explanations regarding their statements.

(2) The President of the Trial Chamber shall caution the defendant and defense counsel that they are obliged to submit their motions regarding presentation of particular evidence immediately, i.e. in the shortest possible time upon learning that presentation thereof is required, and shall particularly caution them in respect of provision of Article 405, paragraph 2 hereof.

(3) The President of the Trial Chamber shall warn the defense counsel that in the event of his violation of obligation specified in paragraph 2 of the present Article, he may be fined up to 300,000 CSD and banned from the further course of criminal proceedings.

Presentation of the indictment or private charges

Article 345

(1) The trial begins with the reading of the indictment (Article 289 paragraph 1 items 1 to 3) or private charge.

(2) As a rule, the prosecutor shall read the indictment or the private charge, but the President of the Trial Chamber may, with agreement of the prosecutor, orally present its contents. The prosecutor shall be allowed to add his statement to the presentation by the president of the Trial Chamber.

(3) If the injured person is present, he may give reasons for his claim for indemnification and if he is absent, his motion to realize the claim in criminal proceedings shall be read by the president of the Trial Chamber.

Pleading of the defendant to the indictment

Article 346

(1) After presentation of the indictment or the private charges the President of the Trial Chamber shall ask the defendant if he understands the charges. If the President of the Trial Chamber is convinced that the defendant has not understood the charges, he shall present its contents to him in a manner most easily understandable to the defendant.

(2) Thereafter, the President of the Trial Chamber shall call on the defendant to enter his plea on each count of the charges and to state whether he admits that he has committed the act he is charged with and whether he pleads guilty.

(3) The President of the Trial Chamber shall invite the defendant who pleads guilty of the charges to present the necessary explanation, and the defendant who denies the charges shall be invited by the President of the Trial Chamber to present his defense.

(4) The defendant is not bound to enter his plea or to present his defense.

(5) Co-defendants who are not as yet examined may not be present during questioning of the defendant, except when the President of the Trial Chamber decides *ex officio* or at the motion of the parties i.e. the defense counsel, that they may attend examination of the defendant if their presence would be beneficial in terms of clarifying the criminal matter and would not prejudice the statement of the defendant.

Full confession of the defendant

Article 347

(1) If the defendant pleads guilty to all counts of the indictment the Trial Chamber may decide, upon hearing the prosecutor and after the defendant and defense counsel give their statements thereupon, not to present evidence relating to the criminal offence which is the subject of the indictment and to the culpability of the defendant (criminal offence), but only such evidence as relevant for the decision on criminal sanction, if it finds:

1) that the admission of guilt is clear and complete and that the defendant has unequivocally explained all decisive facts relating to the act and culpability;

2) that the admission of guilt is given knowingly and voluntarily, and that the defendant fully understands all possible consequences of his admission of guilt, including such consequences as relate to the decision on property claim and costs of criminal proceedings;

3) that the admission of guilt is congruent with evidence contained in the indictment and there is no evidence supporting possible false confession.

Examination of the defendant at the trial

Article 348

(1) With regard to the examination of the defendant at the trial, the general provisions on examination of the defendant (Articles 95 to 101) shall apply accordingly.

(2) If the defendant does not answer the questions at all or does not want to answer particular questions, a record of his previous statement or a part thereof shall be read, i.e. the President of the Trial Chamber may summarize the content of the previous examination.

(3) If the defendant has stated facts at the previous examination that he no longer remembers or if he departs from his previous statement, his previous statement shall be presented to him i.e. the inconsistency shall be pointed out and he shall be asked why his current statement is different and, when appropriate, the record of his previous statement shall be read or part thereof, or the audio i.e. audio/visual recording of that earlier statement shall be reproduced.

(4) After the examination is completed, the President of the Trial Chamber shall be required to ask the defendant whether he has anything else to add in his defense.

Questioning of the defendant

Article 349

(1) When the President of the Trial Chamber completes the examination of the defendant, the members of the Trial Chamber, the prosecutor, defense counsel, injured person, legal representative, proxy and co-defendants may question the defendant directly.

(2) An expert witness may directly question the defendant only with permission of the President of the Trial Chamber, and the President of the Trial Chamber may allow the expert witness to question the defendant directly.

(3) The President of the Trial Chamber shall, if he deems it appropriate, and particularly if he has on several occasions denied a question from one of the persons referred to in paragraph 1 of the present Article, or if the questions of these persons are evidently directed at procrastinating the criminal proceedings, i.e. do not serve to clarify the decisive facts, rule that persons specified in paragraph 1 of the present Article, except members of the Trial Chamber, may direct questions to the defendant only through the President of the Trial Chamber.

(4) The President of the Trial Chamber shall forbid a question or an answer to a question already asked if it is considered impermissible (Article 96) or does not relate to the case. If the President of the Trial Chamber forbids asking or answering a particular question, the parties i.e. defense counsel may request the Trial Chamber to rule thereupon.

(5) After the defendant answers the questions asked by persons referred to in paragraph 1 of the present Article, the President of the Trial Chamber shall proceed in accordance with Article 348, paragraph 4 of the present Code.

Questioning of co-defendants

Article 350

(1) If several persons are charged, after questioning of the first defendant is completed, the other defendant shall be questioned in order. After questioning of each defendant, the President of the Trial Chamber shall inform the questioned person of the statements given by the previously questioned co-defendants, if in accordance with Article 346 paragraph 5 hereof he has not been present during questioning of the defendant, and ask him whether he has anything to remark. The defendant who was previously questioned shall be asked by the President of the Trial Chamber whether he has any remarks regarding the statements of the defendant subsequently questioned. Each defendant is entitled to ask questions to other already questioned co-defendants.

(2) If the statements of certain co-defendants differ regarding the same circumstances, the President of the Trial Chamber may confront the co-defendants.

Temporary removal of the defendant from the courtroom

Article 351

The Trial Chamber may, exceptionally, decide to remove the defendant temporarily from the courtroom if the co-defendant or witness refuses to give a statement in his presence or if the circumstances indicate that they would not tell the truth in the presence of the defendant. Upon the return of the defendant to the courtroom, the statement of the co-defendant i.e. witness shall be read to him. The defendant has the right to ask the questions to the co-defendant or witness and the President of the Trial Chamber shall ask him whether he has any objections to these statements. If necessary, confrontation may be ordered.

Conferring of the defendant with defense counsel

Article 352

The defendant may in the course of the trial confer with his defense counsel, but he may not consult with his defense counsel or any other person on how to respond to already asked question.

7. Rules of evidence

Presentation of Evidence

Article 353

(1) After the examination of the defendant, evidence shall be presented on all facts considered by the court to be relevant for lawful and proper adjudication.

(2) The evidence shall be presented in the order determined by the President of the Trial Chamber. If the injured person who is present should testify as a witness, his examination shall be carried out immediately after the examination of the defendant.

(3) Until the conclusion of the trial the parties, defense counsel, the injured person and his proxy may propose that new facts be investigated, new evidence be obtained or presented, and they may repeat motions already denied by the President of the Trial Chamber or the Trial Chamber, if they make it credible that new grounds exist that justify repeating of evidentiary motions.

(4) If a pre-trial hearing was held (Article 309), the parties and other persons filing motions specified in paragraph 3 of the present Article must proceed in accordance with Article 309, paragraph 7 of the present Code, and if the requirements from that provision are not met, the President of the Trial Chamber shall deny presentation of proposed evidence.

(5) In the case specified in paragraph 4 of the present Article, the defense counsel may be fined with up to 150,000 CSD if, according to court’s estimation, he willfully failed to propose presentation of evidence at the pre-trial hearing or

otherwise attempted to grossly abuse his right to propose presentation of new evidence, and if this was done by the Public Prosecutor, the President of the Trial Chamber shall accordingly notify the higher ranking Public Prosecutor.

(6) The ruling on the fine referred to in paragraph 5 of the present Article may be appealed and shall be deliberated by the Court Chamber specified in Article 24, paragraph 6 hereof. The appeal shall not stay enforcement of the ruling.

(7) The Trial Chamber may decide to examine evidence that is not proposed by a motion or if such a motion was withdrawn.

Confession of the defendant after questioning

Article 354

The confession of the defendant at the trial after having been questioned and after other evidence had already been presented or are about to be presented, shall releave the court from its duty to examine other evidence, if the confession of the defendant was in accordance with Article 347 of the present Code, in which case the court shall only examine evidence relevant for the decision on the criminal sanction.

General rules on questioning of witness and expert witness at the trial

Article 355

(1) During examination of witnesses and expert witnesses at the trial, the general provisions on their examination shall apply *mutatis mutandis*.

(2) A witness, who has not yet testified, shall not, as a rule, be present when other evidence is examined.

(3) Before a witness testifies, the President of the Trial Chamber shall remind him of the duty to testify truthfully and completely and shall warn him that perjury is a criminal offense, and shall then call on the witness to take an oath if he has not been sworn in during investigation, and if he has already taken such an oath in the investigation, the President of the Trial Chamber shall remind him of this oath.

(4) Before an expert witness testifies, the President of the Trial Chamber shall remind the expert witness to give his expert findings and opinion according to rules of the profession and field of expertise and to the best of his knowledge and warn him that giving false expert findings and opinion is a criminal offense, and shall call on the expert witness to swear before his expert testimony if he was not already sworn in, and if he has already taken such an oath, the President of the Trial Chamber shall remind him of the taken oath.

(5) The expert witness shall present his expert findings and opinion orally at the trial, and if the expert witness has prepared his expert findings and opinion in writing before the trial, the President of the Trial Chamber may allow him to read it out loud, in which case his written report shall be attached to the record.

(6) In exceptional cases the Trial Chamber may decide, instead of summoning the expert witness assigned to provide expert testimony, to only read the findings and opinion if, because of the nature of testimony a more complete elaboration of the written findings and opinion is not likely to be given, or if due to other important reasons questioning of the expert witness is not possible or appropriate. If it deems that this is necessary because of other presented evidence and objections of the parties i.e. defense counsel (Article 363), the Trial Chamber may subsequently decide to directly examine the expert witness.

(7) If a person under fourteen years of age is examined as a witness, the Trial Chamber may decide to close the hearing to the public during his examination.

(8) If a minor is present at the trial as a witness or injured person, he shall be removed from the courtroom as soon as his presence is no longer required.

Directing questions to a witness or expert witness

Article 356

(1) After the President of the Trial Chamber completes the examination of a particular witness or expert witness, the members of the Trial Chamber, prosecutor, defendant, defense counsel, injured party, legal representative and proxy may ask the questions directly to the witness i.e. expert witness.

(2) An expert witness may directly question a witness or other expert witness only by permission of the President of the Trial Chamber, and the President of the Trial Chamber may allow the expert witness to question the defendant directly.

(3) The President of the Trial Chamber shall, if he deems appropriate, and particularly if he has on several occasions denied a question from one of the persons referred to in paragraph 1 of the present Article, or if the questions of these persons are evidently directed at procrastinating the criminal proceedings, i.e. do not serve to clarify the decisive facts, rule that persons specified in paragraph 1 of the present Article, except members of the Trial Chamber, may direct questions to the witness i.e. expert witness only through the President of the Trial Chamber.

(4) The President of the Trial Chamber shall deny a question or an answer to a question already asked if it is considered impermissible (Article 96) or if it is not related to the case. If the President of the Trial Chamber forbids that a certain question be asked or an answer be given, the parties i.e. defense counsel may request the Trial Chamber to decide thereupon.

Reminding the witness or expert witness of previous statement

Article 357

If at a previous hearing the witness or expert witness stated the facts which he no longer recalls, or if he changes his statement, the previous statement shall be presented to him or the variance shall be pointed out and he shall be asked to explain why he is now testifying differently and if necessary, his previous statement or part of it shall be read.

Procedure with witnesses and expert witnesses who already testified

Article 358

(1) Witnesses or expert witnesses who have testified shall remain in the courtroom unless the President of the Trial Chamber, upon questioning the parties i.e. the defense counsel, releases them or order their temporary removal from the courtroom.

(2) Upon a motion of the parties i.e. defense counsel or *ex officio*, the President of the Trial Chamber may order that the witnesses or expert witnesses who have testified to be removed from the courtroom and be recalled later to testify again in the presence or absence of other witnesses or expert witnesses.

Undertaking evidentiary actions outside of the trial

Article 359

(1) If it was learned at the trial that a witness is unable to appear before the court or that his appearance involves considerable difficulties, the Trial Chamber may, if it deems his statement to be of particular importance, order his examination out-of-trial by the President of the Trial Chamber or judge of the Trial Chamber, or examination to be conducted by an Investigative Judge of the court on whose territory the witness is located.

(2) If it is necessary to carry out a crime scene investigation or reconstruction out-of-trial, it shall be carried out by the Presiding Judge or a Judge -member of the Trial Chamber designated by the President of the Trial Chamber.

(3) The parties, defense counsel and the injured person shall always be informed of the place and time of examination of a witness i.e. conducting of crime scene investigation or reconstruction, along with a warning that they may attend these actions. If the defendant is in detention, the Trial Chamber shall decide on the need for his presence at these actions. If the parties, defense counsel and the injured

person are present at these actions, they shall be entitled to the rights provided under the Article 278 paragraph 9 of the present Code.

Evidentiary actions undertaken by the investigative judge out of trial

Article 360

In the course of the trial and after the examination of the parties i.e. defense counsel, the Trial Chamber may decide to request an Investigative Judge to perform certain evidentiary actions necessary to clarify important facts, if undertaking such actions at the trial would involve considerable delay of the proceedings or other considerable difficulties. When the Investigative Judge proceeds upon such a request of the Trial Chamber, the provisions related to undertaking evidentiary actions shall apply.

Reading of the record on evidentiary actions undertaken outside of the trial and inspection of documents and objects serving as evidence

Article 361

(1) The records of an out-of- trial crime scene investigation, search of a dwelling and other premises, and of person and on seizure of objects, as well as documents, books, files and other briefs of evidentiary value shall be read at the trial in order to establish their contents, and if so decided by the Trial Chamber, their contents may be orally summarized. If possible, documents of evidentiary value shall be submitted in their original form.

(2) Objects which may serve to clarify the subject matter shall be shown to the defendant in the course of the trial and, if necessary, to the witnesses and expert witnesses. If this presentation has significance of identification, procedure under Article 111 of the present Code shall be applied.

Reading of the record and reproducing of recordings from previous examination

Article 362

(1) Except in cases specified in the present Code, records containing the statements of witnesses, the co-defendants or already convicted participants in the criminal offense, as well as records and other documents regarding expert witness findings and opinions may be read pursuant to ruling of the Trial Chamber only in the following cases:

1) if the persons who gave the statements have died, become afflicted with mental illness or cannot be found, or if their appearance before the court is impossible or involves considerable difficulties due to old age, illness or other important reasons;

2) if the witnesses or expert witnesses refuse to testify at the trial without legal cause;

3) if the co-defendants, in respect of whom criminal proceeding was severed, i.e. already convicted, refuse to give statements at the trial or state otherwise than at the severed criminal proceedings, i.e. in criminal proceedings in which they were convicted.

(2) In cases referred to in paragraph 1 of the present Article, as well as in other cases specifically stipulated herein, an audio i.e. audio/video recording shall always be reproduced if the statement was recorded in such manner.

(3) Records of the previous testimony given by persons exempt from duty to testify (Article 104) may not be read if those persons have not been summoned to the trial at all or if they have stated at the trial, prior to initial examination that they refuse to testify. After conclusion of presentation of evidence, the Trial Chamber shall rule to exclude such records from the case file and safeguard them separately (Article 209). The Trial Chamber shall proceed in the same way with respect to other records and information referred to in Article 209 of the present Code if a decision on their exclusion has not been rendered previously. An interlocutory appeal may be filed against the ruling on the exclusion of the record. After the ruling becomes final, the excluded records and information shall be sealed in a separate cover and handed over to the Investigative Judge to keep them apart from other files and they may not be examined or used in the proceedings. The exclusion of records and notifications must be performed before the file is submitted to the higher court on appeal against the judgment.

(4) The reasons for reading the record shall be stated in the record of the trial, and in the course of reading, it shall be stated whether the witness or expert witness had taken an oath.

Comments of the parties, defense counsel and injured party to conducted examinations

Article 363

After completing examination of each of the witnesses or expert witnesses and after having read each of the records or other documents, i.e. after reproducing audio or video recording, the President of the Trial Chamber shall ask the parties, defense counsel and the injured person if they have any comments to make.

Conclusion of presentation of evidence

Article 364

(1) After presentation of all evidence, the President of the Trial Chamber shall ask the parties and the injured person whether they have any motions to supplement the evidentiary proceedings.

(2) If nobody makes a motion to supplement evidentiary proceedings or if the motion is denied and the Trial Chamber finds that presentation of new evidence is not required, the President of the Trial Chamber shall announce that the presentation of evidence is completed.

8. Amendment and augmentation of indictment and other criminal offence of the defendant

Amendment and augmentation of indictment

Article 365

(1) If in the course of the trial the prosecutor finds that the evidence examined indicates that it is necessary to amend the factual description of the criminal offence, its legal elements or its statutory title in the indictment, he may at the trial orally amend the indictment or may propose a recess or adjournment of the trial for the purpose of preparation of the new indictment.

(2) In the case of the submission of a new indictment, the court shall be bound to ensure to the defendant and defense counsel enough time for the preparation of defense, and at their request, if necessary, in the case of amending of the indictment.

(3) If the Trial Chamber allows a recess of the trial for preparation of a new indictment it shall set a deadline for the prosecutor to raise a new indictment. A copy of the new indictment shall be served on the defendant, but no objection against this indictment is allowed. If the prosecutor fails to submit the indictment within the set term, the Trial Chamber shall continue the trial on the grounds of the previous one.

Other criminal offence of the defendant

Article 366

(1) If the defendant commits a criminal offense while the trial is in progress or if in the course of the trial a previously committed criminal offense by the defendant is discovered, the Trial Chamber shall upon the charges of the authorized prosecutor, which may be orally presented, augment the proceedings to that offense as well, or rule to hold separate trial for that offence. No objection is allowed against this indictment.

(2) If the Trial Chamber accepts an extension of the charges it shall adjourn the trial and ensure enough time for the preparation of a defense.

(3) If a higher court has adjudicating jurisdiction over the offense referred to in paragraph 1 of the present Article, the Trial Chamber shall decide whether to refer the case presently being tried to the competent higher court as well.

9. Closing arguments

Order of presentation

Article 367

After conclusion of presentation of evidence, the President of the Trial Chamber shall call on parties, the injured person and defense counsel to present their closing arguments. The prosecutor presents his arguments first, and then the injured person and his proxy, if any, the defense counsel and than the defendant.

Closing argument of the prosecutor

Article 368

(1) The prosecutor shall present in his closing argument his assessment of the presented evidence and thereafter shall present his conclusions about the facts relevant for the decision and his substantiated motion regarding the culpability of the defendant, the provisions of the Criminal Code and other statutes which should be applied, as well as aggravating and mitigating circumstances which should be taken into account in sentencing.

(2) The prosecutor is obligated to propose in his closing argument the type and length of penalty, and may propose that the court orders a judicial admonition or security measure in accordance with the Criminal Code.

Closing argument of the injured party and his proxy

Article 369

The injured person or his proxy may in his closing argument give a statement of reasons to support a claim for indemnification and point out the evidence regarding the culpability of the defendant.

Closing argument of the defense counsel and defendant and rebuttal by the prosecutor, the injured party and his proxy

Article 370

(1) The defense counsel or the defendant himself shall in their closing argument present the defense and may comment on the statements made by the prosecutor, the injured person and his proxy.

(2) The defendant shall be entitled, after his defense counsel, to present his arguments, to state whether he approves of the defense presented by his defense counsel and to supplement it.

(3) The prosecutor and the injured person and his proxy shall be entitled to rebut the allegations of the defense counsel or the defendant, and the defense counsel i.e. defendant are entitled to comment on these responses.

(4) The defendant shall always be the last to present closing argument.

Basic rules for closing arguments

Article 371

(1) The duration of the closing arguments of the parties, the defense counsel, the injured person and his proxy may not be limited, but the President of the Trial Chamber may determine that closing arguments shall be of approximately same duration.

(2) The President of the Trial Chamber may, after a previous warning, interrupt a person who in his closing argument offends public order and morals, or insults another person, repeats himself, or expatiates on obviously irrelevant matters, i.e. exceeds the limitations for duration of the closing argument specified in paragraph 1 of the present Article. The interruption of the closing argument and the reasons thereof shall be entered on record of the trial.

(3) When more than one person represents the prosecution or when the injured party has more than one proxy and the defendant has more than one defense counsel, closing arguments may not be repeated. The representatives of the prosecution, injured person i.e. defense shall by mutual agreement select the issues about which, each of them shall speak.

(4) After all the closing arguments are completed the President of the Trial Chamber is required to inquire whether anyone wishes to make a further statement.

Concluding of the trial

Article 372

(1) If, after having heard closing arguments from the parties, the defense counsel, the injured person and his proxy the Trial Chamber finds that no additional

evidence needs to be examined, the President of the Trial Chamber shall announce that the trial is closed.

(2) If the Trial Chamber decides to examine further evidence, it shall continue with presentation of evidence and upon conclusion thereof shall proceed pursuant to Article 367 of the present Code. The prosecutor, the injured person, his proxy, the defense counsel and the defendant may supplement their closing arguments only in regard with the subsequently examined evidence.

(3) After having announced that the trial is closed, the Trial Chamber shall retire for deliberation and voting for the purpose of rendering a judgment.

10. Dismissal of charges

Article 373

In the course of the trial or upon its conclusion the Trial Chamber shall dismiss a charge by a ruling if it establishes:

1) That the court lacks subject matter jurisdiction;

2) That the proceedings were conducted without the request of the authorized prosecutor or the motion of the injured person or the approval of the competent government authority, or that the competent government authority has withdrawn given approval;

3) That other circumstances exist which temporarily prevent prosecution.

Chapter XXV
JUDGMENT

1. Rendering of the judgment

Rendering and pronouncing of the judgment

Article 374

(1) If the Court in the course of deliberations does not decide that the trial should be reopened to supplement the proceedings or to clarify certain issues, it shall render a judgment.

(2) The judgment shall be rendered and pronounced in the name of the people.

Relation between the judgment and the charges

Article 375

(1) The judgment may relate only to indicted person and only to the offense which is the subject of the charges as specified in the indictment submitted, amended i.e. extended at the trial.

(2) The court shall not be bound by the prosecutor's legal qualification of the offense.

(3) Factual findings established in the judgment on the basis presented evidence does not have to be identical to factual description of the criminal offence from the indictment, however, the finding of fact determined by the judgment must directly relate to the same event included in the indictment and it may not substantially alter the facts and circumstances from the indictment.

Judgment based on evidence

Article 376

(1) The court shall base its judgment only on evidence directly presented at the trial or contained in the records i.e. other materials, which are read or otherwise appropriately presented at the trial in accordance with the present Code.

(2) The court shall conscientiously assess each item of evidence individually and in relation to other evidence and, on the basis of such assessment reach a conclusion on whether a particular fact has been proved.

2. Types of judgment

Judgment denying the charge, judgment of acquittal and judgment of conviction

Article 377

(1) The charges shall be denied or the defendant shall be acquitted from the charges or pronounced guilty in a judgment.

(2) If the charges include more than one criminal offense, the judgment shall specify whether and for which offense the charge is denied or whether and for which offense the defendant is acquitted or pronounced guilty.

Judgment denying the charge

Article 378

The Court shall render a judgment denying the charge:

1) If the Prosecutor withdraws the charge in the course of the trial or the injured person withdraws the motion for prosecution;

2) If the defendant has already been convicted or acquitted for the same offense by a final judgment, or the charge was denied by a final judgment or if the criminal proceedings against him were discontinued by a final ruling;

3) If the defendant has been released from prosecution by an amnesty or pardon;

4) If the period of limitation for institution of prosecution has expired, or if other circumstances permanently barring prosecution exist.

Judgment of acquittal

Article 379

The court shall render a judgment of acquittal:

1) If the offense for which the defendant is charged with is not a criminal offense;

2) If it has not been proven that the defendant committed the offense he is charged with.

Judgment of conviction

Article 380

(1) In a judgment of conviction the court shall state:

1) The offense for which the defendant is found guilty, stating the facts and circumstances which constitute the elements of the definition of the criminal offense, as well as those on which the application of particular provisions of the Criminal Code depends;

2) The statutory title of the criminal offense and the provisions of the Code applied;

3) The type of penalty the defendant is sentenced to, or whether he was releaved from penalty according to the provisions of the Criminal Code;

4) The decision on suspended sentence i.e. on the revocation of the suspended sentence or parole;

5) The decision on security measures and the confiscation of pecuniary benefit;

6) The decision on including the time spent in detention or served under an earlier sentence, i.e. ban specified in Article 168, paragraph 2 hereof, as well as any other form of deprivation of freedom related to the criminal offence.

7) The decision on costs of the criminal proceedings, on the claim for indemnification and on a public announcement of the final judgment.

(2) If the defendant is sentenced to a fine, the judgment shall state the term wherein the fine is to be paid and the manner of substitution of the fine even when enforced collection is not possible, and if the pronounced fine is in daily amounts in accordance with Article 49 of the Criminal Code, the judgment shall explain the manner of its calculation and the manner of determining one daily amount, with a separate elaboration of the daily amount of the fine which is determined at the court's discretion based on available information.

3. Pronouncement of judgment

Procedure for pronouncing the judgment

Article 381

(1) After the court renders a judgment, the President of the Trial Chamber shall pronounce it immediately. If the court is unable to render a judgment on the same day the trial has concluded, it shall postpone pronouncement of the judgment for not more than five days and determine the time and place of the pronouncement. If the judgment is not pronounced within the period of five days from the closing of the trial, the President of the Trial Chamber shall be required to accordingly inform the President of the Court without delay and notify him of the reasons.

(2) The President of the Trial Chamber shall, in the presence of the parties, their legal representatives, proxies and defense counsel, read out the ordering part of the judgment and briefly state the reasons for such a judgment.

(3) The judgment shall be pronounced even if the party, legal representative, proxy or defense counsel is absent. Trial Chamber may order that defendant who is absent be orally notified about the rendered judgment by the President of the Trial Chamber or that the judgment be served on him.

(4) If the trial was *in camera*, the ordering part of the judgment shall always be read out in open court session. The Trial Chamber shall decide on whether to exclude the public during the pronouncement of the statement of reasons of the judgment.

(5) All present shall stand during reading of the ordering part of the judgment.

Decision on detention

Article 382

(1) When the court pronounces a sentence of less than five years in prison, the Trial Chamber shall order detention against defendant defending from freedom if the reasons referred to in Article 174, paragraph 1 items 1 and 3 of the present Code exit, and shall discontinue detention against defendant who is in detention if reasons for ordering detention no longer exist.

(2) The Trial Chamber shall always vacate detention and order the defendant to be released if he is acquitted of the charges, or the charges are denied, or if found guilty but relieved from penalty, or if sentenced only to a fine, i.e. to community service or a judicial admonition or suspended sentence is pronounced, or if due to computation of time in detention or other form of deprivation of liberty, the sentence has already been served, or the indictment is dismissed (Article 373), except due to lack of subject matter jurisdiction.

(3) After the pronouncement of a judgment and until it becomes final, detention shall be ordered or vacated according to the provisions of paragraph 1 of the present Article. The decision thereon shall be made by the Trial Chamber referred to in Article 24 paragraph 6.

(4) In cases referred to in paragraphs 1 and 3 of the present Article, before rendering a ruling by which a detention is ordered or vacated, the opinion of the Public Prosecutor shall be obtained if the proceedings are conducted upon his request.

(5) If the defendant is already in detention and the Trial Chamber establishes that the grounds for which detention was ordered still exist, or that the grounds referred to in Article 174 paragraph 1 item 6 of the present Code and paragraph 1 of the present Article exist, it shall render a separate ruling on extending detention. The Trial Chamber shall also render the separate ruling when it is necessary to order or vacate detention. An appeal against the ruling does not stay its execution.

(6) Detention ordered or extended in accordance with the provisions of the previous paragraphs may last until a judgment becomes final, but at the longest until the term of the sentence imposed by the judgment at first instance expires.

(7) Upon the request of the defendant, who is in detention after being sentenced to imprisonment, the President of the Trial Chamber may render a ruling on his transfer to the penitentiary institution even before the judgment becomes final.

(8) When any grounds for vacating detention specified in paragraph 2 of the present Article exist, and the defendant is under pronouncement of any limitation of personal liberty i.e. ban specified in Article 168 of the present Code, the Trial Chamber shall also always vacate such limitation i.e. ban.

Instruction and caution by the president of the trial chamber

Article 383

(1) Upon pronouncing the judgment the President of the Trial Chamber shall instruct the parties of their right to appeal and of their right to respond to an appeal.

(2) If the enforcement of the pronounced penalty to the defendant is postponed, the President of the Trial Chamber shall warn him of the significance of a suspended sentence and on the conditions he has to comply with.

(3) The President of the Trial Chamber shall warn the parties that they have to report to the court any change of address until the proceedings are concluded.

4. Drawing up and serving of the judgment

Time limit to draw up the judgment and persons to whom the judgment is served upon

Article 384

(1) The pronounced judgment shall be drawn up in writing within eight days after it was read, and exceptionally within a term of fifteen days in the case of complex matters.

(2) If justifiable due to the number of defendants or the number of criminal offences, the complexity of the presented evidence and other important circumstances which clearly account for extraordinary complexity of the case, the President of the Trial Chamber shall request from the President of the Court to approve the extension of the time limit specified in paragraph 1 of the present Article for up to one month, by a special ruling which may not be appealed.

(3) If the judgment is not drawn up within the deadlines specified in paragraphs 1 and 2 of the present Article, the President of the Trial Chamber shall be required to inform in writing the President of the Court about the reason of failing to do so. The President of the Court shall undertake measures in order to have a judgment drawn up in the shortest period of time.

(4) Upon expiry of terms specified in paragraph 1 and 2 of the present Article and after the President of the Trial Chamber informed President of the Court about it, the President of the Trial Chamber shall notify the President of the Court every week if the judgment was drawn up, and if not, what were the reasons for that. If such case, the President of the Court shall undertake measures to for judgment to be drawn up as soon as possible.

(5) The judgment shall be signed by the President of the Trial Chamber and the court reporter.

(6) The certified copy of the judgment shall be served on the prosecutor and the defendant and defense counsel in accordance with Article 193 of the present Code. If the defendant is in detention, certified copies of the judgment shall be sent within terms specified in paragraph 1 of the present Article.

(7) The defendant, private prosecutor and subsidiary prosecutor shall also be served with an instruction regarding the right to appeal.

(8) The court shall send a certified copy of the judgment along with an instruction on the right to appeal to the injured person if he is entitled to appeal, to the person whose object was seized by this judgment and to the legal entity against which the court ordered confiscation of material gain. A copy of the judgment shall be sent to the injured person who is not entitled to appeal in cases referred to in Article 61 paragraph 2 of the present Code, with an instruction of his right to petition for *restitutio in integrum*. The final judgment shall be sent to the injured person if he so requests.

(9) If the court, by the application of the provisions for determining a joint sentence for criminal offenses committed in concurrence, imposes a sentence taking into account judgments rendered by other courts, a certified copy of the final judgment shall be sent to these courts as well.

Contents of a written judgment

Article 385

(1) A written judgment shall fully correspond to the judgment that was pronounced. The judgment shall consist of an introduction, ordering part and the statement of reasons.

(2) The introduction of the judgment shall contain: the statement that the judgment is rendered in the name of the people, name of the court, full names of the president and the members of the Trial Chamber as well as of the court reporter, full name of the defendant, the criminal offense he is charged with and whether he was present at the trial, the date of the trial and whether the trial was public, full name of the

prosecutor, defense counsel, legal representative and proxy present at the trail and the date of pronouncing the rendered judgment.

(3) The ordering part of the judgment shall contain the personal data of the defendant (Article 95 paragraph 1) and the decision declaring defendant guilty of the offense he is charged with or acquitting him of the charge, or denying the charge against him.

(4) If the defendant was found guilty, the ordering part of the judgment shall contain the necessary information referred to in Article 380 of the present Code, and if he was acquitted or the charge was denied, it must contain a description of the offense he was charged with and the decision on the costs of the criminal proceedings as well as the decision on the claim for indemnification if such a claim was submitted.

(5) In the case of concurrence of criminal offenses, the court shall enter in the ordering part of the judgment the penalty imposed for each individual offense, and after that, joint penalty imposed for all the offenses committed in concurrence.

(6) The statement of reasons shall contain the reasons for each count of the judgment, in particular ensuring not to unnecessarily repeat statements already contained in the ordering part and, while meeting the conditions set under paragraph 7 of the present Article, the statement of reasons shall not be excessively long, and especially that the statements of the defendant, witnesses and expert witnesses, or quotes from documents or other evidence from the files are not quoted to a large extent, if not necessary.

(7) The court shall clearly and thoroughly, but as concisely as possible, indicate which facts are considered proven or unproven and for what reasons, with special emphasis on the credibility of contradictory evidence, the reasons for which the motions of the parties were denied, the reasons for its decision not to examine directly a witness or expert witness but to read the written testimony or expert witness findings, the reasons for its decision on questions of law, particularly regarding the existence of the criminal offense and the culpability of the defendant and regarding the application of certain provisions of law to the defendant and his offense.

(8) If the defendant was sentenced to a penalty, the statement of reasons shall indicate the circumstances the court took into account in determining the penalty. The court shall particularly explain the reasons for its decision to impose more severe penalty than prescribed, or for the decision to mitigate or releave from penalty, or to impose a suspended sentence, security measure or confiscation of pecuniary benefit or to revoke a parole.

(9) If the defendant is acquitted, the statement of reasons shall particularly indicate the reasons for such a decision referred to in Article 379 of the present Code.

(10) In the statement of reasons for a judgment denying the charge and in the statement of reasons for a ruling dismissing the charge, the court shall not discuss the meritum matter of the case but shall limit itself only to the reasons for denying i.e. dismissing the charge.

Errors in the judgment

Article 386

(1) The President of the Trial Chamber shall correct errors in names and figures and other obvious mistakes in writing and counting, deficiencies in form and discrepancies between the written copy and the original of the judgment by a separate ruling upon the request of the parties or *ex officio*.

(2) If there is incoherence between the written copy and the original of a judgment regarding the data referred to in Article 380 paragraph 1 items 1 to 5 and item 7 of the present Code, the ruling on the correction shall be forwarded to persons referred to in Article 384 of the present Code. In such cases, the term for appeal against the judgment commences to run as of the day this ruling, against which an interlocutory appeal is not allowed, is served.

D. JUDICIAL REVIEW

Chapter XXVI
REGULAR LEGAL REMEDIES

1. Appeal against the judgment of the first instance court

a) The right to appeal

Term for filing an appeal and the effect of an appeal

Article 387

(1) Authorized persons may file an appeal against a judgment rendered at first instance within fifteen days from the day the copy of the judgment was served.

(2) An appeal filed in due time by an authorized person shall stay the enforcement of the judgment.

Persons with the right to appeal

Article 388

(1) An appeal may be filed by the parties, the defense counsel and the injured person.

(2) The defendant's spouse, person with whom he is in common law marriage, linear relative in blood, legal representative, adoptive parent, adopted child, brother, sister and foster parent may file an appeal on behalf of the defendant.

(3) The Public Prosecutor may file an appeal to the benefit or to the prejudice of the defendant.

(4) The Public Prosecutor shall file an appeal if the court renders a judgment of acquittal.

(5) The injured party may challenge a judgment only regarding the court's decision on the costs of the criminal proceedings, but if the Public Prosecutor assumes the prosecution from the subsidiary prosecutor, (Article 63 paragraph 2), the injured person may file an appeal on all grounds whereby a judgment may be appealed (Article 391).

(6) An appeal may be filed by a person whose object was seized or from whom material gain acquired by the commission of a criminal offense was confiscated.

(7) The defense counsel and persons referred to in paragraph 2 of the present Article may file an appeal without the special authorization of the defendant, but not against his will, except when the defendant is sentenced to thirty years in prison or more.

Waiver of the right to appeal and withdrawal of appeal

Article 389

(1) The defendant may waive the right to appeal only after the judgment is served on him. The defendant may waive his right to appeal before this if the Prosecutor and the injured person, when defendant is entitled to appeal also on other grounds and not only for costs, waive their right to appeal, except if the defendant is sentenced to imprisonment. The defendant may withdraw an appeal already filed until the decision of the appellate court is rendered. The defendant may also withdraw an appeal filed by his defense counsel or the persons referred to in Article 388 paragraph 2 of the present Code.

(2) The Prosecutor and the injured person may waive the right to appeal from the moment the judgment is read until the expiry of the term for filing an appeal, and may withdraw an already filed appeal until the decision of the appellate court is rendered.

(3) A waiver and withdrawal of an appeal may not be revoked.

(4) The defendant may not waive his right to appeal or withdraw an already filed appeal if sentenced to imprisonment of thirty or more years.

(5) If defendant, Prosecutor and injured party having right to appeal for other reasons as well, and not only for costs, waived their right to appeal before the judgment was drawn up in writing, the statement of reasons of the judgment shall not contain all data stipulated in Article 385 paragraphs 6 to 8 of the present Code, but shall only contain summarized reasons which the court considered when assessing that certain criminal penalty was to be pronounced, i.e. the type and the measure of the penalty.

b) Contents of an appeal

Article 390

(1) An appeal shall contain:

1) designation of the judgment appealed;

2) grounds for challenging the judgment (Article 391);

3) reasoning for the appeal;

4) motion to amend or revoke the challenged judgment in whole or in part;

5) at the end, the signature of the person filing the appeal.

(2) If an appeal does not contain elements referred to in paragraph 1 of the present Article, the court shall dismiss the appeal.

(3) An appeal may present new facts or evidence, but the appellant shall be obligated to state reasons why he failed to present them earlier. If he presents new facts, the appellant shall be required to provide evidence substantiating such facts, and when proposing new evidence he shall state facts which he wants to prove with such evidence. Otherwise, the court deciding upon the appeal shall not take them under consideration.

c) Grounds for challenging a judgment

Reasons for appeal

Article 391

A judgment may be challenged:

1) For substantive violation of the criminal procedure provisions;

2) For violation of the Criminal Code;

3) For erroneous or incomplete finding of fact;

4) In regard to the decision on sanction, caution, security measure, confiscation of material gain, cost of criminal proceedings, claims for indemnification as well as the decision on a public announcement of the judgment in the media.

Substantive violations of the provisions of criminal procedure

Article 392

(1) A substantive violation of criminal procedure provisions shall exist in following cases:

1) If the court was not composed in accordance to the Law or if a judge or lay judge who did not participate in the trial or who was disqualified by a final decision, participated in rendering a judgment;

2) If a judge or lay judge who should have been disqualified sat in the trial (Article 39 paragraphs 1 to 6);

3) If the trial was held in absence of a person whose presence at the trial was mandatory under the law or if the defendant, defense counsel, subsidiary prosecutor or private prosecutor were, contrary to their request, denied the right to use their language at the trial and to follow the course of the trial in their language (Article 8).

4) If the public was excluded from the trial contrary to the law;

5) If the court violated provisions of criminal procedure related to the existence of charges by authorized Prosecutor or the existence of the motion of an injured person, i.e. the approval of competent authority;

6) If the judgment was rendered by the court which did not have subject matter jurisdiction, or if the court incorrectly denied the charge due to the lack of subject matter jurisdiction, except when a higher court rendered the judgment for the criminal offence which was under the jurisdiction of a lower court;

7) If the judgment exceeds the charge (Article 375 paragraph 1);

8) If the judgment violates the provision of Article 406 of the present Code;

9) If the judgment was founded on evidence on which according to the present Code it may not be founded;

10) If the ordering part of the judgment is incomprehensible;

(2) A substantive violation of the provisions on criminal procedure shall also exist if:

1) The ordering part of the judgment is self-contradictory or contrary to the reasons for judgment, or the judgment does not contain reasons referring to the relevant facts or if these reasons are incomprehensible or contradictory, or if in regard to relevant facts a contradiction exists between what is referred in the reasoning of the judgment in respect of the contents of certain documents or records of statements given in the proceedings and the documents or records themselves, and this affected a legal and fair adjudication;

2) The court failed to apply or has incorrectly applied a provision of the present Code, thus affecting a legal and fair adjudication.

Violations of the Criminal Code

Article 393

A violation of the Criminal Code shall exist if Criminal Code was violated in respect of:

1) Whether an offense for which the defendant is being prosecuted constitutes a criminal offense;

2) Whether circumstances exist which permanently preclude prosecution of the defendant or not;

3) Whether in respect of the charged criminal offense a law was applied that may not be applied;

4) Whether the decision on criminal sanction or confiscation of material gain or revocation of parole exceeds the legal powers of the court;

5) Whether provisions are violated on calculation of time spent in detention and served sentence, i.e. the ban specified in Article 168, paragraph 2 of the present Code, and also any other form of deprivation of liberty in respect of the criminal offence.

Erroneous or incomplete establishment of fact

Article 394

(1) The judgment may be challenged on the grounds of erroneous or incomplete establishment of fact when the court has determined a relevant fact incorrectly or did not determine it at all.

(2) An incomplete finding of fact also exists when new facts and new evidence indicate so.

Challenging of the decisions on penalty, admonition, security measure, confiscation of material gain and additional issues of criminal procedure

Article 395

(1) A court decision on penalty may be challenged if such decision does not exceed the legal power (Article 393, item 4), but the court did not correctly determine the penalty in respect to circumstances affecting severity of penalty and because the court applied or failed to apply the provisions on mitigation of penalty, on remittal of penalty, on parole, on revocation of parole or judicial admonition, although there were legal grounds to do so.

(2) A decision on a security measure or confiscation of material gain may be challenged if there is no violation of law referred to in Article 393 paragraph 4 of the present Code, but the court has incorrectly rendered this decision or failed to order a security measure i.e. the confiscation of material gain despite existence of legal grounds.

(3) A decision on costs of the proceedings may be challenged when it is rendered incorrectly or contrary to legal provisions.

(4) A decision on the claim for indemnification and a decision on the public announcement of the judgment in the press, on the radio or television may be challenged if they are rendered contrary to legal provisions.

d) Appellate proceedings

Filing and dismissal of an appeal

Article 396

(1) An appeal shall be filed with the court that rendered the judgment of first instance, in sufficient number of copies for the court, the opposing party, the defense counsel and injured party.

(2) Untimely (Article 410, paragraph 1) or inadmissible (Article 410, paragraph 2) appeal shall be dismissed by the President of the Trial Chamber of the court of first instance by ruling.

(3) The President of the Trial Chamber of the first-instance court shall dismiss an appeal as inadmissible if it was filed only on grounds of the decision on criminal sanction, if the law does not provide for a lenient sentence.

Delivery of an appeal for reply and delivery to the second-instance court

Article 397

(1) If an appeal was not dismissed, the President of the Trial Chamber of the first-instance court shall send a copy of the appeal to the opposing party and the injured party (Articles 193 and 194), who may file a reply to the court within eight days of receiving the appeal.

(2) Immediately upon expiry of the deadline referred to in paragraph 1 of the present Article or after the reception of timely reply to the appeal, the President of the Trial Chamber of the first-instance court shall forward the appeal, the reply to the appeal and all the case-file documents to the second-instance court.

(3) If several appeals or several replies to the appeals have been filed, President of the Trial Chamber of the first-instance court shall immediately upon expiry of the deadline referred to in paragraph 1 of the present Article or after the reception of the last timely reply to the appeal, submit to the second-instance court all the appeals and replies to them, together with all the documents.

Appointing of Reporting judge, examination of the documents of the file and the possibility for the President of the Trial Chamber to take over the role of Reporting judge

Article 398

(1) When the file and an appeal are delivered to the second instance-court, the Presiding of the second-instance Trial Chamber shall immediately assign a reporting judge. If a criminal offense subject to public prosecution is involved, the Reporting judge shall deliver the file to the Public Prosecutor of competent jurisdiction, who is required to promptly and not later than eight days, review it and file his motion and return it to the court. The Prosecutor may amend his motion at the session of the chamber.

(2) When the Public Prosecutor returns the file, the President of the Trial Chamber shall schedule the session of the Trial Chamber and notify the Public Prosecutor thereof and the defendant and the defense counsel. The President of the Trial

Chamber shall schedule the session within two months after the Public Prosecutor returns the file to the court at the latest, and in case of proceedings for a criminal offence which is not prosecuted at request of the Public Prosecutor, then within two months after the reception of the file from the first-instance court.

(3) If the President of the Trial Chamber fails to meet the deadlines referred to in paragraph 2 of the present Article, he shall promptly notify the President of the Court, who shall undertake measures to expedite the proceedings.

(4) The Reporting judge may, as appropriate, obtain a report on the violations of criminal procedure provisions from the court of first instance, and may through the same court or through the Investigative Judge of the court in whose jurisdictional territory a particular action should be carried out or the allegations in the appeal regarding new evidence and new facts otherwise checked, or from other authorities or organizations obtain necessary reports or documents.

(5) If the Reporting judge determines that the files contain records and information referred to in Article 209 of the present Code, he shall deliver the files to the court of first instance before the session of the second-instance Trial Chamber is held in order for the President of the Trial Chamber at first instance to render a ruling on their exclusion from the file, and when the ruling becomes final he shall seal them in a separate cover and hand them over to the Investigative Judge for the purpose of safekeeping apart from other files.

(6) If he considers it necessary for reasons of complexity of the subject matter of the appeal or other significant circumstances, the President of the second-instance Trial Chamber shall not appoint the Reporting judge, but shall assume his role and carry out the actions referred to in paragraphs 1, 4 and 5 of the present Article.

(7) In the case referred to in paragraph 6 of the present Article, the President of the Trial Chamber shall directly examine the file before the session of the second-instance Trial Chamber and notify other members of the appeals chamber that they are obligated to examine the file before the beginning of the session and shall, if necessary, provide them with photocopies of the documents so that they could examine them in due time.

Notification on the session and the course of the session of the trial chamber

Article 399

(1) The defendant and his defense counsel, subsidiary prosecutor, private prosecutor or their proxies who, within the term for appeal or for a reply to an appeal, requested that they be notified of the session or moved for holding of trial before a second-instance court (Articles 402 to 403), shall be notified of the Trial Chamber session. The President of the Trial Chamber or the Chamber may decide to notify the parties of the Trial Chamber session even if they have not so requested, or to

notify a party of the Trial Chamber session who has not so requested, if their presence would be of benefit for the clarification of the case.

(2) If the defendant who is in detention or serving a sentence is notified of the Trial Chamber session, the President of the Trial Chamber shall order his presence only if he deems it necessary for clarification of the case.

(3) The session of the Trial Chamber shall begin with the report of the Reporting judge or the President of the Trial Chamber (Article 398, paragraph 6 hereof) on the facts of the case. The Trial Chamber may request from the parties present at the session necessary explanations on the appeal allegations. The parties may propose that certain files be read in order to supplement the report and may, subject to the approval of the President of the Trial Chamber, give necessary explanations of their positions stated in the appeal or the reply to the appeal, without repeating what the report contains.

(4) The session may be held in the absence of the parties who were duly summoned. If the defendant did not report change of residence or domicile to the court, the Trial Chamber session may be held although he was not informed of the session.

(5) The court may exclude the public from the session at which the parties are present only in accordance with the conditions specified in the present Code (Articles 317 to 318).

(6) The records of the Trial Chamber session shall be enclosed with the files of the first and second instance courts.

(7) The rulings referred to in Articles 410, paragraphs 1 and 2 of the present Code may be rendered even without the notification of the parties of the Trial Chamber session.

Rendering of decision at the session of the trial chamber or at the hearing before the second-instance court

Article 400

(1) The second-instance court shall render a decision either at the session of the Trial Chamber or based on held hearing.

(2) The chamber of the second-instance court shall decide whether to hold a hearing.

(3) If the chamber decides to hold a hearing, the President of the Chamber shall schedule the hearing to commence not later than one month of the day of rendering of the decision specified in paragraph 2 of the present Article.

(4) If the hearing does not commence within the time limit specified in paragraph 3 of the present Article, the President of the Trial Chamber shall notify the President of the Court, who shall undertake necessary measures to commence the hearing without delay.

(5) If the session of the Trial Chamber or hearing before the second-instance court lasts longer than one day, it shall be held, as a rule, on each working day until it is finished.

Hearing before the second-instance court and summoning of particular persons

Article 401

(1) A hearing before a second-instance court shall be held only if it is necessary to examine new evidence or to re-examined previously presented evidence due to appeal because of erroneous or incomplete finding of fact, and if justifiable reasons exist not to refer the case to the court of first instance for retrial, as well as in the case referred to under Article 412, paragraph 5 hereof, if the second-instance court does not adjudicate in the session of the chamber.

(2) The following persons shall be summoned for the hearing before a second-instance court: the defendant and his defense counsel, the prosecutor, the injured person, the legal representatives and proxies of the injured person, of the subsidiary prosecutor and private prosecutor, as well as those witnesses and expert witnesses for whom the court decides that they shall be examined.

(3) If the defendant is in detention, the President of the second-instance Court Chamber shall take necessary steps to have the defendant brought to the hearing.

(4) If the subsidiary prosecutor or the private prosecutor fails to appear at the trial before the second-instance court, the provision of Article 326 paragraph 2 of the present Code shall not be applied.

The course of proceedings before the second-instance court

Article 402

(1) A hearing before a second-instance court shall begin with the report of the Reporting judge or President of the Trial Chamber (Article 398, paragraph 6), who shall present the facts of the case without giving his opinion on whether the appeal is founded.

(2) Upon a motion or *ex officio* the judgment or part of the judgment to which the appeal relates shall be read and, if appropriate, the record of the trial as well.

(3) Thereafter, the appellant shall be called on to substantiate his appeal and than the opposing party to respond. The defendant and his defense counsel shall always present their arguments the last.

(4) The parties may present new evidence and facts at the hearing.

(5) The prosecutor may, depending on the result of the hearing, withdraw the charge completely or in part or amend the charge to the benefit of the defendant. If the Public Prosecutor completely withdraws the charge, the injured person is entitled to the rights specified in Article 61 of the present Code.

Application of the provisions on trial before the first-instance court

Article 403

Unless otherwise provided in previous articles, the provisions on a trial before court at first instance shall be applied *mutatis mutandis* to the proceedings before second-instance court, as well.

e) Scope of appellate review

Violation of provisions which are reviewed ex officio

Article 404

A court of second instance shall confine its review of the judgment to the part which is challenged by the appeal, but the court must always *ex officio* review:

1) whether there is violation of the criminal procedure provisions referred to in Article 392 paragraph 1 items 1 and 5 through 10 of the present Code, and whether the trial was, in violation of the provisions of the present Code, held in the absence of the defendant, and in the absence of his defense counsel if the defense was mandatory;

2) whether the Criminal Code was violated to the prejudice of the defendant (Article 393).

Limitation of invoking grounds for appeal

Article 405

(1) The violation referred to in Article 392 paragraph 1 item 2 of the present Code may be cited in the appeal only if the appellant was unable to present this violation in the course of the trial or if he presented it but the court at first instance did not take it into account.

(2) The appeal referred to in Article 394, paragraph 2 may be filed only if the appellant proves it probable that at the time of the trial he was not cognisant of the evidence which substantiates the appeal, or that he proposed such evidence to be presented in the trial as soon as he learned about it, but the President of the Trial Chamber denied it.

Ban on Prejudicial Reversal

Article 406

If only an appeal to the benefit of the defendant is filed, the judgment may not be reversed to his prejudice.

Contents of an appeal filed due to incorrect or incomplete finding of fact

Article 407

An appeal on the ground of an erroneous or incomplete determination of the fact or a violation of the Criminal Code filed to the benefit of the defendant shall include an appeal against the decision on a criminal sanction and on the confiscation of pecuniary benefit (Article 393).

The privilege of association of defendants

Article 408

If the court of second instance upon anybody's appeal, determines that the reasons for which it rendered a decision to the benefit of the defendant are also beneficial to a co-defendant who did not appeal or did not appeal in this respect, it shall proceed *ex officio* as if such an appeal was filed.

f) Decisions of a court of second instance on appeal

Dismissing, denying or accepting of an appeal

Article 409

(1) A court of second instance may, in the session of the Trial Chamber or on basis of conducted hearing, dismiss an appeal as untimely or inadmissible, or deny an appeal as unfounded and confirm the first instance judgment, or vacate this judgment and refer the case to the court of first instance for retrial, or adjudicate the case in accordance with Article 412, paragraph 5 hereof, or reverse the first instance judgment.

(2) The court of second instance shall decide on all the appeals against the same judgment by single decision.

Dismissal of an appeal as untimely and inadmissible

Article 410

(1) An appeal shall be dismissed by a ruling as untimely if filed after expiry of legal deadline.

(2) An appeal shall be dismissed by a decision as inadmissible, if it was filed by a person who was not authorized to file an appeal or a person who waived the right to appeal, or if an appeal is abandoned or if an appeal was filed again after abandoning, or if an appeal is not allowed pursuant to the present Code.

Denying of an appeal as unfounded

Article 411

The second-instance court shall render a judgment to deny an appeal as unfounded and confirm the judgment of the first-instance court, if it finds that there are no grounds to challenge the judgment and that there are no violations referred to under Article 404 hereof.

Cancellation of first-instance judgment

Article 412

(1) When sustaining an appeal or *ex officio*, a court of second instance shall cancel first instance judgment by a ruling and remand the case for retrial if it establishes a substantial violation of the criminal procedure provisions, except in cases referred to in Article 414 paragraph 1 of the present Code or if it considers that, for reasons of erroneously or incompletely determined finding of fact, a new trial should be held before the court of first instance.

(2) A court of second instance may order that a new trial before the court at first instance be held before a completely different Trial Chamber.

(3) A court of second instance may only partially annul the judgment at first instance if certain parts of the judgment may be separated without prejudice to correct adjudication, in which case the court shall act pursuant to paragraph 2 of the present Article.

(4) If the defendant is in detention, a court of second instance shall review whether the reasons for detention still exist and render a ruling on extending or vacating detention. This ruling is not subject to appellate review.

(5) If the first-instance judgment was annulled for two times, the second-instance court shall adjudicate the appeal itself either meeting in a session or after a hearing.

Setting aside of the judgment, dismissal of charges and lack of subject-matter jurisdiction of first-instance court

Article 413

(1) If a court of second instance determines that some of the reasons referred to in Article 296, paragraph 2 of the present Code exist, it shall by a ruling set aside the judgment at first instance and dismiss the charge.

(2) If the court of second instance in reviewing an appeal determines that it has subject matter jurisdiction to adjudicate the case in first instance, it shall set aside the first instance judgment, remand the case to a Trial Chamber of the same court and notify the court of first instance thereof.

(3) If only an appeal to the benefit of the defendant is filed, and it is established that a higher court has jurisdiction over the case in first instance, the first instance judgment may not be vacated for that reason only.

Reversal of first-instance judgment

Article 414

(1) When sustaining an appeal or *ex officio*, the court of second instance shall reverse the first instance judgment by a judgment if it establishes that the relevant facts were correctly determined in the judgment at first instance and that regarding the finding of fact, and by the correct application of law, a different judgment should be rendered, pursuant to the state of the matter and in the case of violations referred to in Article 392 paragraph 1 paragraphs 5, 7 and 8 of the present Code.

(2) If a court of second instance establishes that legal conditions for pronouncing a judicial admonition are met, it shall reverse the judgment at first instance by a ruling and pronounce a judicial admonition.

(3) If, due to the reversal of the judgment at first instance, conditions are met for ordering i.e. vacating detention on the grounds of Article 174 paragraph 1 item 6 and Article 382 paragraph 2 of the present Code, the court of second instance shall render a separate ruling thereof, which is not subject to appellate review.

Statement of reasons of second-instance court

Article 415

(1) In the statement of reasons for its judgment or for its ruling, the court of second instance shall assess all the references in the appeal and state all the violations of law which it took into account.
(2) When the judgment at first instance is annulled due to substantial violations of the criminal procedure provisions, the statement of reasons shall indicate which provisions were violated and what these violations were (Article 392).

(3) When the judgment at first instance is annulled due to an erroneous or incomplete determination of the fact, the deficiencies in finding of fact shall be stated, i.e. why new evidence and facts are important and affect rendering of a proper decision, and may indicate omissions of the parties which influenced the judgment of the first instance court.

Delivery of the case file and the decisions of the second-instance court

Article 416

(1) The court of second instance shall return all files to the court of first instance, together with sufficient number of certified copies of its decision for forwarding to the parties and other persons concerned.

(2) The court of second instance is required to deliver its decision together with the files to the court at first instance within a term of three months at the latest, and if the defendant is in detention, at the latest within a term of two months from the day of receipt of the files from that court.

New trial before the first-instance court

Article 417

(1) The court at the first instance to which the case was remanded for trial shall proceed on the basis of the previous indictment. If the judgment at first instance was partially vacated, the court of first instance shall proceed on the basis of that part of the indictment to which the vacated part of the judgment relates.

(2) At the new trial the parties may present new facts and new evidence.

(3) The court of first instance shall conduct all procedural actions and debate all contentious issues specified by the court of second instance in its decision.

(4) When rendering a new judgment, the court of first instance shall be bound by the prohibition referred to in Article 406 of the present Code.

(5) If the defendant is in detention, the Trial Chamber of the court at first instance is bound to proceed pursuant to the provision of Article 178 paragraph 2 of the present Code.

2. Appeal against judgment of the court of second instance

Article 418

(1) The judgment of the second-instance court may be appealed with a court at third instance only in the following cases:

> 1) If the court of second instance has pronounced a penalty of imprisonment to a term of thirty years or more severe penalty or if it has affirmed the judgment at first instance which imposed such a penalty;
>
> 2) If the court of second instance on basis of conducted hearing has determined the finding of fact differently from the court at first instance and based its judgment on such finding of fact;
>
> 3) If the court of second instance has revised the judgment of acquittal rendered by the court at first instance and rendered a judgment pronouncing the defendant guilty.
>
> 4) If the second-instance court rendered a judgment pursuant to Article 412, paragraph 5 hereof.

(2) A court at third instance shall decide on an appeal against the judgment at second instance at a session of the Trial Chamber according to the provisions applicable for second-instance proceedings. A hearing may not be held before this court.

(3) The provisions of Article 408 of the present Code shall be applied to the co-defendant who was not entitled to appeal the judgment at second instance.

3. Appeal against a ruling

Admissibility of appeal against a ruling

Article 419

(1) Parties and persons whose rights have been violated may appeal a ruling of the Investigative Judge and other rulings of the court of first instance, unless the appeal is not explicitly barred by the present Code.

(2) Unless otherwise stipulated by the present Code, rulings rendered by the Trial Chamber before and in the course of the investigation are not subject to appellate review.

(3) The Investigative Judge shall make a decision against the Ruling on instigating investigation or other rulings of the Public Prosecutor, unless otherwise provided by the present Code.

(4) Rulings rendered for the purpose of preparing the trial and the judgment may be challenged only by appeal against the judgment.

(5) Rulings rendered by the Supreme Court of Serbia are not subject to appellate review, unless otherwise provided by the present Code.

The term for filing an appeal against a ruling and effect of the appeal

Article 420

(1) An appeal is filed with the court, which rendered the ruling within three days of the delivery of the ruling, unless otherwise provided by the present Code.

(2) Unless otherwise envisaged by the present Code, appeal filed against the ruling shall stay the enforcement of the ruling.

Deciding on appeal against a ruling

Article 421

(1) Unless otherwise provided under the present Code, the appeal against a ruling of the first instance court is decided by a second-instance court in session of the chamber.

(2) Unless otherwise provided under the present Code, an appeal against the ruling rendered by Investigative Judge shall be decided by the Trial Chamber of the same court (Article 24 paragraph 6).

(3) When deciding on appeal, the court may by a ruling dismiss the appeal as untimely or inadmissible or deny the appeal as unfounded or may sustain the appeal and revise or annul the ruling and, if necessary, remand the case for retrial.

Application of other provisions

Article 422

(1) The provisions of Articles 388, 390, 396, 398 paragraphs 1, 4 and 5 and Articles 406 and 408 of the present Code shall apply *mutatis mutandis* to the proceedings on appeal against a ruling.

(2) If an appeal is filed against a ruling referred to in Article 484 of the present Code, the Public Prosecutor shall be notified of the Trial Chamber's session, and other persons - under the conditions provided in Article 399 of the present Code.

(3) Unless otherwise provided by the present Code, the court shall be obligated to deliver its decision on an appeal together with the files to the court which rendered the ruling not later than thirty days from the day of receipt of the files from that court at the latest.

(4) Unless otherwise provided by the present Code, the provisions of Articles 419 hereof shall apply *mutatis mutandis* to all other rulings that are rendered pursuant to the present Code.

Chapter XXVII
EXTRAORDINARY LEGAL REMEDIES

1. Reopening of criminal proceedings

Reopening of criminal proceedings concluded by final ruling or final judgment

Article 423

Criminal proceedings concluded by a final ruling or a final judgment may be reopened on the request of an authorized person only in cases and under conditions provided under the present Code.

Reversal of final judgment without reopening of criminal proceedings

Article 424

(1) A final judgment may be reversed even without the reopening of criminal proceedings:

1) If in two or more judgments against the same convicted person several final sentences were imposed without application of provisions on pronouncing of an aggregate sentence for offenses committed in concurrence;

2) If, when imposing an aggregate sentence by the application of provisions on concurrence, a sentence already included in the sentence pronounced pursuant to the provisions on concurrence of criminal offences by a previous judgment was taken as established;

3) If a final judgment imposing an aggregate sentence for several offenses is partially unenforceable due to an act of amnesty, pardon, or for other reasons;

(2) In the case referred to in paragraph 1 item 1 of the present Article, the court shall by a new judgment reverse the previous judgments in respect of the decisions on sentences and impose an aggregate sentence. The court of the first instance which imposed the most severe sentence shall have jurisdiction for rendering a new judgment, and if the sentences are of the same type - the court pronouncing the highest level of sentence, and if the sentences are equal - the court which last pronounced the sentence.

(3) In the case referred to in paragraph 1 paragraph 2 of the present Article, a court shall revise its judgment that while imposing an aggregate sentence wrongly took into account a sentence already included in some previous judgment.

(4) In the case referred to in paragraph 1 item 3 of the present Article, a court of first instance shall revise a previous judgment with regard to the sentence, and either pronounce a new sentence or determine what part of the sentence imposed by a previous judgment should be executed.

(5) The new judgment shall be rendered by the court at a session of the Trial Chamber upon the motion of the Public Prosecutor or the convicted person, after hearing of the opposing party.

(6) If in the case referred to in paragraph 1 paragraphs 1 and 2 of the present Article, judgments of other courts were taken into account in imposing the sentence, a certified copy of a new final judgment shall be delivered to those courts as well.

Continuation of criminal proceedings

Article 425

(1) If the Public Prosecutor has rendered a Ruling on withdrawal of the Ruling on instigating investigation (Article 287 paragraph 3), he shall continue the investigation or shall bring direct charges if he receives new evidence that did not exist at the time when the Ruling on withdrawal of the Ruling on instigating investigation was rendered or which were unknown to the Public Prosecutor, or if the Public Prosecutor himself obtains such evidence wherefrom reasonable suspicion may be derived that the defendant has committed a criminal offence prosecuted *ex officio*.

(2) If charges were dismissed because there was no request from the authorized prosecutor, or there was no motion of an injured person or no necessary approval of a government authority for prosecution, or some other circumstances temporarily barring the prosecution existed, or the criminal proceedings were discontinued by a final ruling for the same reasons, the proceedings shall be resumed upon the motion of the authorized prosecutor as soon as the causes of the above mentioned decisions cease to exist.

(3) If a ruling of the Public Prosecutor on instigating investigation is dismissed by a final decision of the court due to lack of reasonable suspicion that the suspect has committed a criminal offence or if the charges were dismissed on grounds determined in Article 296, paragraph 2, item 2 hereof, criminal proceedings may be reopened upon the request of the Public Prosecutor if new evidence is submitted that did not exist at the time of previous request or were not known to the Public Prosecutor, on basis of which the Trial Chamber (Article 24 paragraph 6) determines that the conditions for reopening of criminal proceedings are met.

Grounds for reopening of criminal proceedings concluded by a final judgment

Article 426

(1) Criminal proceedings terminated by a final judgment may be reopened only to the benefit of the defendant and only in the following cases:

1) If the judgment is based on a false document or the false testimony of a witness, expert witness or interpreter;

2) If the judgment resulted from a criminal offense committed by the judge, lay judge or person who carried out investigatory actions;

3) If new facts or new evidence are presented which alone or in relation to previous evidence appear likely to lead to the acquittal of the person who was convicted or to his conviction on the basis of a more lenient criminal law;

4) If a person was convicted more than once for the same offense or if more than one person was convicted for the criminal offense which could have been committed only by one person or by some of them;

5) If in the case of conviction for an extended criminal offense or any other offense which under the law includes several acts of the same kind or several acts of a different kind, new facts or new evidence are presented indicating that the convicted person did not commit an act included in the adjudicated offense, and the existence of these facts would lead to the application of a more lenient law or would substantially affect sentencing;

6) if by a decision of the European Court for Human Rights or other court established under a ratified international treaty, it is determined that human rights and fundamental freedoms were violated during the criminal proceedings and that the judgment is based on such violation, and that by reopening of the proceedings it is possible to redress the violation;

7) if the judgment is based on a law or other regulation that was revoked by a decision of the Constitutional Court.

(2) In cases referred to in paragraph 1, items 1 and 2 of the present Article, there must be a final judgment proving that said persons were found guilty for the said criminal offenses. If proceedings against these persons may not be conducted by reason of their death or the existence of circumstances which prevent prosecution, the facts referred to in paragraph 1, items 1 and 2 of the present Article may be ascertained by other evidence as well.

Persons authorized to submit a motion for reopening of criminal proceedings

Article 427

(1) A motion for the reopening of criminal proceedings may be submitted by the parties i.e. defense counsel and, after the death of the convicted person, by the Public Prosecutor i.e. the persons referred to in Article 388, paragraph 2 hereof.

(2) The motion for reopening of criminal proceedings may also be submitted after the convicted person has served a sentence, regardless of statutes of limitation, amnesty or pardon.

(3) Where the court which would have jurisdiction to decide on the reopening of criminal proceedings (Article 428) learns about the existence of reasons for the reopening of criminal proceedings, it shall notify the convicted person or a person authorized to submit a request on behalf of the convicted person.

The court ruling on the motion for reopening of criminal proceedings and the content of the motion

Article 428

(1) The Trial Chamber of the court (Article 24 paragraph 6) which tried the case at first instance in the previous proceedings shall decide on the motion for the reopening of criminal proceedings.

(2) The motion shall state the legal grounds for reopening and evidence which substantiates the facts on which the motion is founded. If the motion does not include this information, the court shall call on the person who submitted the motion to supplement it within a set term.

(3) If possible, the judge who participated in rendering the judgment in the previous proceedings shall not sit as a member of the Trial Chamber when deciding on the motion.

Ruling on the motion to reopen criminal proceeding

Article 429

(1) The court shall dismiss a motion by a ruling if it determines on the basis of the motion itself and the file of the previous proceeding that the motion was submitted by an unauthorized person, or that there are no legal grounds for reopening, or that the facts and evidence on which the motion is founded were presented in a previous motion for reopening which was denied by a final court's ruling, or that the facts and evidence presented are clearly inadequate to allow reopening, or that the person who submitted the motion did not proceed in accordance with Article 428, paragraph 2 hereof.

(2) If the court does not dismiss the motion, it shall serve a copy of the motion to the opposing party, who is entitled to reply to the motion within eight days. After the court receives the reply or after the time limit to send the reply expires, the President of the Trial Chamber shall order the facts to be inquired and evidence collected, which were referred to in the motion and the reply thereto.

(3) Upon completion of the inquiries, if the offence is prosecuted *ex officio*, the President of the Trial Chamber shall order that the file be delivered to the Public Prosecutor, who shall return the file with his opinion without delay or within one month at the latest.

Approval or denial to reopen criminal proceedings

Article 430

(1) After the Public Prosecutor returns the file, the court shall on the basis of the results of the inquiries, unless it orders additional inquiries, either approve the motion and allow the reopening of criminal proceeding or deny the motion.

(2) If the court determines that the reasons for which it allowed the reopening of proceedings also exist in respect of another co-defendant who did not file a motion, it shall proceed *ex officio* as if such motion exists.

(3) In the ruling allowing the reopening of criminal proceedings, the court shall order that a new trial be scheduled immediately, or that the case be returned to the phase of investigation, or that an investigation be instigated if there was no investigation before.

(4) If the court finds that in re-trial, taking into consideration evidence presented, the convicted person could be sentenced to a such a sentence based on which he should be released after including the time served under earlier sentence, or that he could be acquitted of charges, or that the charge could be denied, it shall order stay or discontinuance of execution.

(5) When a ruling allowing the reopening of criminal proceedings becomes final, the execution of penalty shall be discontinued, but the court shall, upon the motion of the Public Prosecutor, order detention if the conditions referred to in Article 174 hereof exist.

Rules for new proceeding

Article 431

(1) The new proceeding, based on a ruling allowing the reopening of criminal proceeding shall be conducted in pursuance of the same provisions which were applied in the previous proceeding. In the new proceeding, the court shall not be bound by rulings rendered in previous proceeding.

(2) If the new proceeding is discontinued before the beginning of the trial, the ruling on discontinuance of the proceeding shall also vacate previous judgment.

(3) When the court renders the judgment in the new proceedings, it shall pronounce that the previous judgment is partially or entirely set aside or that it remains in force. The new sentence shall include the time served under the previous sentence, and if reopening was only for some of the offenses for which the person was convicted, the court shall impose a new aggregate sentence pursuant to the provisions of the Criminal Code.

(4) In the new proceeding, the court shall be bound by the prohibition referred to in Article 406 hereof.

Reopening of proceedings in which a person was convicted in absentia

Article 432

(1) Criminal proceeding in which a person was convicted *in absentia* (Article 328) shall be reopened even regardless of the conditions referred to in Article 426 hereof, provided the convicted person and his defense counsel file a motion for reopening of proceedings within six months from the day it becomes possible to conduct a trial in the presence of the convicted person.

(2) Criminal proceeding in which a person was convicted *in absentia* shall be reopened even regardless of the conditions referred to in Article 426 hereof, if a foreign state allowed his extradition under the condition that the proceeding be reopened.

(3) In the ruling allowing the reopening of criminal proceeding, pursuant to paragraphs 1 and 2 of the present Article, the court shall order that the indictment be served on the convicted person if it was not served before, or may order that the

case be returned to the phase of investigation, or that an investigation be instigated if there was no investigation before.

(4) After the expiry of the time period referred to in paragraph 1 of the present Article, the reopening of proceeding shall only be permitted subject to the conditions set forth in Articles 426 and 427 hereof.

(5) In rendering the judgment in the proceeding conducted pursuant to paragraphs 1 and 2 of the present Article, the court shall be bound by the prohibition referred to in Article 406 of the present Code.

2. Extraordinary mitigation of penalty

Permissible mitigation of penalty

Article 433

(1) Mitigation of sentence imposed by a final judgment which is not executed, shall be permitted if after the judgment becomes final, circumstances arise which did not exist at the time the judgment was rendered or were unknown to the court, and such circumstances would have obviously lead to a more lenient sentence.

(2) Mitigation of final sentence shall not be allowed when the most lenient sentence for such criminal offence envisaged by the Criminal Code was pronounced to the convicted person.

(3) Mitigation of final sentence shall not be allowed when the grounds specified in paragraph 1 of the present Article at the same time represent the grounds for staying the enforcement of sentence or discontinuance of its enforcement.

Persons who may file a motion for extraordinary mitigation of sentence and effects of the motion

Article 434

(1) A motion for extraordinary mitigation of penalty may be submitted by the Public Prosecutor, the convicted person and his defense counsel, as well as by persons who are authorized to file an appeal against the judgment to the benefit of the defendant (Article 388).

(2) The convicted person and his defense counsel, as well as persons authorized to file an appeal against the judgment in favor of the convicted person (Article 388) shall not be entitled to file a motion for extraordinary mitigation of sentence if it is evident that they were aware or could have been aware of circumstances specified in Article 433, paragraph 1 hereof at the moment of pronouncing of judgment and

did not, immediately upon learning of such circumstances, file a motion with the court for presentation of relevant evidence.

(3) A motion for extraordinary mitigation of penalty does not stay the execution of penalty.

Ruling on the motion for extraordinary mitigation of sentence

Article 435

(1) A motion for extraordinary mitigation of penalty shall be submitted to the court which rendered the judgment at first instance.

(2) The President of the Trial Chamber of the court at first instance shall dismiss by a ruling a motion for extraordinary mitigation of penalty submitted by an unauthorized person, or if the motion is filed contrary to Article 433, paragraphs 2 and 3 i.e. Article 432 paragraph 2 of the present Code, or if filed contrary to the rule specified in Article 436 paragraph 1 hereof or prior to expiry of deadlines specified in Article 436 paragraph 2 hereof, as well as if the grounds on which the motion is based are evidently incompatible for mitigation of sentence or do not justify more lenient penalty.

(3) If the motion is dismissed on grounds specified in Article 433 paragraph 3 hereof, the person who filed the motion i.e. the defendant and his defense counsel, if they had not filed the motion, shall be advised of the possibility to request deferral of enforcement of penalty or discontinuing of enforcement of penalty.

(4) If the ruling specified in paragraph 2 of the present Article was not rendered, the court at first instance shall inquire whether grounds for mitigation exist and, after having obtained the opinion of the Public Prosecutor if the proceeding was conducted upon his request, it shall deliver the files along with its substantiated motion to the Supreme Court of Serbia which is competent to decide on the motion for extraordinary mitigation of penalty.

(5) In case of a criminal offense which is prosecuted upon the request of the Public Prosecutor, the Supreme Court of Serbia shall, before rendering a ruling, deliver the files to the Public Prosecutor who represents prosecution before that court. The Public Prosecutor may submit his written motion to the court.

(6) The Supreme Court of Serbia shall dismiss a motion by a ruling if it establishes that circumstances exist specified in paragraph 2 of the present Article or shall deny the motion if it finds that legal conditions for extraordinary mitigation of penalty were not met. When the motion is approved, the court shall by a judgment revise the final judgment regarding the decision on penalty.

(7) No appeal is allowed against the decision of the Supreme Court of Serbia specified in paragraph 6 of the present Article.

Limitations on filing a new motion for extraordinary mitigation of penalty

Article 436

(1) A new motion for extraordinary mitigation of penalty may not be filed if the previous motion was sustained and by the Supreme Court of Serbia judgment the final judgment was reversed in regards to the decision on penalty.

(2) A new motion for extraordinary mitigation of penalty may not be filed before the expiry of minimum two years after the decision specified under Article 435 paragraph 6 hereof was rendered by the court deciding on the matter, if the pronounced sentence is up to ten years of imprisonment, i.e. minimum three years if the pronounced sentence exceeds ten years of imprisonment.

Revoking a judgment on sustaining a motion for extraordinary mitigation of penalty

Article 437

The court shall revoke a judgment by which it sustained a motion for extraordinary mitigation of penalty if it is proven (Article 426, paragraph 2) that the judgment was based on a false document, false testimony of a witness, false findings and opinion i.e. false testimony of expert witness.

3. Motion for the protection of legality

Grounds for filing a motion for protection of legality

Article 438

(1) The Republic Public Prosecutor may submit a motion for the protection of legality against final court decisions and against judicial proceedings which preceded such final decisions, if the law was violated.

(2) The Republic Public Prosecutor may file the motion specified in paragraph 1 of the present Article also if it was determined by a decision of the European Court for Human Rights or other court established based on ratified international treaty that human rights and fundamental freedoms were violated during the criminal proceedings, and the court decision was based on such violation, and that court of competent jurisdiction did not allow reopening of criminal proceedings, or if the violation made in court's decision may be rectified by setting aside the decision or by reversing it, without reopening the proceedings.

(3) The Republic Public Prosecutor may file the motion specified in paragraph 1 of the present Article also if the decision of the court is based on a law or other regulation rescinded by a decision of the Constitutional Court, and if a judgment was rendered in such manner, the motion for the protection of legality may be filed if the court of competent jurisdiction did not allow reopening of criminal proceedings or if the violation made in the decision of the court may be rectified by setting aside the decision or its reversal, without reopening the proceedings.

(4) The defendant sentenced to unconditional prison sentence of one year imprisonment or more severe penalty, or juvenile detention, and the defense counsel of such defendant may, within one month from the date when the defendant received the final judgment, request from the Republic Public Prosecutor in a written and substantiated motion to file a motion for protection of legality against the final judgment if in their opinion such judgment violates the Criminal Code to the detriment of the defendant, or that in the criminal proceedings preceding rendering of the final decision the defendant's right to defense was violated thus affecting rendering of lawful and proper judgment.

(5) The motion specified in paragraph 4 of the present Article may not be filed by the defendant who did not file an appeal against the judgment, except if the judgment of the second-instance court has pronounced, instead of acquittal from sentence, judicial admonition, suspended sentence or fine, a sentence of one year imprisonment or more severe penalty i.e. a sentence of juvenile detention instead of corrective measure.

(6) The Republic Public Prosecutor shall dismiss the motion specified in paragraph 4 of the present Article by a ruling if in his assessment there are no grounds for filing the motion for protection of legality.

(7) The defendant and his defense counsel may file an appeal against the ruling specified in paragraph 6 of the present Article to the Supreme Court of Serbia within eight days from the day of receiving the ruling.

(8) The appeal specified in paragraph 7 of the present Article is deliberated by a chamber comprising of three judges of the Supreme Court of Serbia who shall dismiss the appeal as unfounded and confirm the ruling referred to in paragraph 6 of the present Article or shall sustain the appeal if it determines probability of presumptive grounds invoked by the defendant or his defense counsel.

(9) If the chamber of the Supreme Court of Serbia specified in paragraph 8 of the present Article sustains the appeal specified in paragraph 7 of the present Article, it shall proceed as if a motion for protection of legality has been filed and, in such cases, the Republic Public Prosecutor has the right and duty to take part in the proceedings as if he has filed the motion for protection of legality.

Jurisdiction for adjudicating the motion for protection of legality and decisions against which the motion may not be filed

Article 439

(1) The Supreme Court of Serbia shall decide on a motion for the protection of legality.

(2) A motion for the protection of legality shall not be allowed against judgments rendered by the Supreme Court of Serbia upon a motion for the protection of legality.

Ruling on the motion for protection of legality

Article 440

(1) The court shall decide on a motion for the protection of legality in a session of the Court Chamber.

(2) Before the case is presented for deliberation, the reporting judge shall deliver a copy of the motion to the defendant and his defense counsel, and if necessary, he may provide information about the violation of law that is stated in the motion.

(3) The Public Prosecutor shall always be notified of the session, while the defendant and his defense counsel shall be notified if the motion is to the prejudice of the defendant, and the presence of the convicted person shall be secured if the Presiding Judge deems it necessary (Article 399 paragraph 2).

(4) The court having jurisdiction to decide on a motion for the protection of legality, may, taking into account the contents of the motion, order that the execution of the final judgment be stayed or discontinued.

(5) The court having jurisdiction to decide on a motion for the protection of legality shall be obligated to deliver its decision along with the file to the court at first instance or the higher court within not later than four months of the day the motion was submitted.

Limitations when deciding on allegations in the motion, privilege of association and ban on prejudicial reversal

Article 441

(1) When deciding on a motion for the protection of legality, the court shall limit its review only to those violations of law which the Public Prosecutor stated in his motion.

(2) If the court finds that the grounds on which it rendered a decision to the benefit of the convicted person also exist in respect of any co-defendant for whom a motion for the protection of legality was not filed, it shall proceed *ex officio* as if such a motion was filed.

(3) If the motion for the protection of legality is filed to the benefit of the convicted person, the court shall be bound by the prohibition referred to in Article 406 hereof.

Denying of the motion for protection of legality as unfounded

Article 442

The court shall by its judgment deny as unfounded a motion for the protection of legality if it establishes that the violation of law which the Public Prosecutor stated in his motion does not exist.

Upholding of the motion for protection of legality

Article 443

(1) If the court establishes that a motion for the protection of legality is well-founded, it shall render a judgment whereby it shall, according to the nature of the violation of law, either reverse the final decision or set aside fully or partially both the decision of the first instance court and the higher court or only the decision of the higher court and remand the case for a new decision or retrial before the first instance court or the higher court, or it shall only determine the violation of law.

(2) If a motion for the protection of legality was submitted to the prejudice of the defendant and the court finds that it is well founded, it shall only determine that the violation of law exists, without interfering with the final decision.

(3) If, pursuant to the provisions of the present Code, the court at second instance did not have the power to rectify a violation of law made in the judgment at first instance or in the trial that preceded it, and the court adjudicating on the motion for the protection of legality which was submitted to the benefit of the defendant determines that the motion is well founded and that, in order to eliminate the violation of law which occurred, the decision at first instance should be set aside or reversed, it shall set aside or reverse the decision at second instance as well, although the latter did not violate the law.

New trial

Article 444

If, while the court is deliberating a motion for the protection of legality that was filed to the benefit of the defendant, considerable suspicion arises regarding the

decisive facts that were established in the decision against which the motion was submitted, so that it is not possible to adjudicate on the motion for the protection of legality, the court shall set aside such decision by the judgment on the motion for the protection of legality and order that a new trial be held before the same court or another court at the first instance with subject matter jurisdiction.

Rules for new trial

Article 445

(1) If a final judgment is set aside and the case remanded for retrial, the previous indictment or its part referring to the part of the judgment that was set aside, shall be the basis for new trial.

(2) The court shall be obligated to carry out all procedural actions and discuss all issues indicated by the court which was deciding on the motion.

(3) The parties may present new facts and new evidence before the court at first instance i.e. court of second instance.

(4) If, in addition to the decision of the lower court, the decision of the higher court was also set aside, the case shall be remanded to the lower court through the higher court.

Chapter XXVIII

E. SPECIAL PROVISIONS ON SUMMARY PROCEEDINGS, PROCEEDINGS FOR IMPOSITION OF CRIMINAL SANCTIONS WITHOUT TRIAL, MEDIATION FOR THE PURPOSE OF SETTLEMENT AND PROCEEDINGS FOR PRONOUNCING OF JUDICIAL ADMONITION

SUMMARY PROCEEDINGS

Offences subject to summary proceedings

Article 446

(1) In proceedings for criminal offences subject to a fine or imprisonment of up to three years as a principal penalty, the provisions of Articles 446 to 459 hereof shall apply, and unless these provisions prescribe otherwise, other provisions of the present Code shall apply *mutatis mutandis*.

(2) Upon a motion of an authorized prosecutor and with defendant’s explicit consent, the Single Judge may approve the application of the provisions on summary proceedings related to trial, judgment and appellate procedure, and in

respect of criminal offences subject to a sentence of up to five years of imprisonment.

(3) The motion of the prosecutor referred to in paragraph 2 of the present Article may be included in the indictment, regardless of whether an investigation was carried out prior to the indictment or it was raised directly (Article 285 of the present Code).

(4) The defendant may give his consent in a separate document or orally for the record with the court, within eight days of the service of an indictment. If the defendant files an objection to the indictment it shall be deemed that he refuses to give his consent. If, within eight days, the defendant fails to give his consent or to file an objection to the indictment, he may give his plea on the prosecutor's motion at the first hearing for the trial.

(5) After the defendant gives his consent, the indictment shall be deemed as a motion to indict.

(6) In the case referred to in paragraph 2 of the present Article, a more severe penalty than a penalty of imprisonment of up to three years may not be imposed on the defendant and he must be informed thereof at the time of service of indictment.

Instituting of proceedings

Article 447

(1) Summary proceedings shall be instituted following the indictment of the Public Prosecutor, subsidiary prosecutor or upon a private charge.

(2) An indictment and a private charge shall be submitted in a sufficient number of copies for the court and the defendant.

Detention in summary proceedings

Article 448

(1) For the purpose of undisturbed conducting of criminal proceedings, detention may be ordered against a person for whom a reasonable suspicion exists that he committed an offense if:

> 1) he is in hiding or his identity may not be established or if other circumstances exist indicating a danger of flight;
>
> 2) particular circumstances indicate that the defendant might commit a new offence or complete the attempted one or commit the offence he is threatening with;

(2) Before submitting a motion to indict, detention may last only for the time necessary for carrying out of investigatory actions, but no longer than eight days. The Chamber (Article 24 paragraph 6) shall decide on an appeal against a Ruling on detention.

(3) From the moment a motion to indict was submitted until the end of the trial, the provisions of Article 178 of the present Code shall be applied *mutatis mutandis* in regards to detention, and the Trial Chamber shall be obligated to review every month whether the grounds for detention still exist.

(4) When the defendant is in detention, the court shall be obligated to proceed as expeditiously as possible.

Instituting of prosecution by the injured party

Article 449

If a criminal offence report was filed by an injured person and the Public Prosecutor fails within a term of one month either to submit the motion to indict or notify the injured person of the dismissal of the criminal offence report, the injured person shall be entitled to institute criminal proceedings as a prosecutor, by submitting a motion to indict to the court.

Contents of the motion to indict
Article 450

(1) A motion to indict i.e. private charge shall state as follows: the name and surname of the defendant along with his personal data if known; a brief description of the criminal offence; a designation of the court before which the trial shall be held; a proposal for evidence to be presented at the trial and the proposal that the defendant be pronounced guilty and convicted under the law.

(2) If the defendant is free, the motion to indict may propose ordering of detention or requesting the defendant to bail, i.e. for restrictions referred to under Article 168 of the present Code to be applied. If the defendant is in detention, the motion to indict may propose his release with or without bail or the application of measures referred to under Article 168 hereof.

(3) When the Public Prosecutor finds that it is not necessary to hold a trial, he may propose the ruling on penalty to be rendered against the defendant without holding a trial (Article 460).

Examination of the motion to indict

Article 451

(1) When the court receives an indictment or a private charge, the judge shall first assess whether the court has jurisdiction, and whether there are grounds for the dismissal of the motion to indict or private charge.

(2) If the judge establishes that another court has jurisdiction, he shall declare incompetence and refer the case to that court after the ruling becomes final, and if he establishes that a higher court has jurisdiction, he shall refer the case to the Public Prosecutor who represents the prosecution before the higher court, for further action. If the Public Prosecutor considers that the court which referred the case to him has jurisdiction, he shall request decision from the Court Chamber (Article 24, paragraph 6) before which he represents the prosecution.

(3) If the judge does not render any of the rulings referred to in paragraph 1 of the present Article, he shall submit the motto to indict to the defendant and immediately schedule the trial. If the trial is not scheduled within one month from the day of receipt of the motion to indict or private charge, the judge shall inform the President of the Court on the reasons thereof who shall undertake measures to hold the trial as soon as possible.

(4) After the trial is scheduled, the court may not *ex officio* declare lack of territorial jurisdiction.

Denial or dismissal of the motion to indict or private charge

Article 452

(1) The judge shall deny a motion to indict or private charge by a ruling if he establishes that reasons, specified in Article 296 paragraph 1 hereof, exist.

(2) The judge shall dismiss a motion to indict or private charge by a ruling if he establishes that reasons, specified in Article 296 paragraph 2 hereof, exist.

(3) The rulings referred to in paragraphs 1 and 2 of the present Article, with a concise statement of reasons shall be delivered to the Public Prosecutor, subsidiary prosecutor or private prosecutor, as well as to the defendant.

Summons for a trial

Article 453

(1) The judge shall summon to the trial the defendant and his defense counsel, the prosecutor, the injured person and their legal representatives and proxies, witnesses, expert witnesses and an interpreter, and if necessary he shall provide objects which are to be used as evidence at the trial.

(2) The summons served on the defendant shall state that he may appear at the trial with evidence for his defense, or that he should propose evidence timely to the court so that evidence could be provided for the trial. The defendant shall be advised in the summons that the trial will be held even in his absence if legal conditions therefore exist (Article 456 paragraph 3). In the summons the defendant shall be instructed that he is entitled to retain the defense counsel, but in the case where defense is not mandatory, the court shall not postpone the trial if the defense counsel fails to appear at the trial or if the defendant retains a defense counsel only at the trial.

(3) A summons shall be served on the defendant in such a way as to leave him adequate time between the serving of the summons and the day of the trial for the preparation of his defense, but not less than eight days. This term may be shortened upon defendant's consent.

Venue of the trial

Article 454

The trial shall be held in the seat of the court. In urgent cases, particularly if there is a need for crime scene investigation, or in order to facilitate presentation of evidence, the venue of the trial may, with approval of the President of the Court, be where the criminal offense was committed, or where crime scene investigation should be carried out, if these places are within the territorial jurisdiction of that court.

Objection of territorial jurisdiction

Article 455

(1) The parties may enter a plea of venue jurisdiction until the commencement of the trial at the latest.

(2) The judge who carried out preliminary proceeding shall not be disqualified from participation in the trial.

Conducting of trial

Article 456

(1) The trial shall be held even if the duly summoned Public Prosecutor fails to appear. In such case the injured party shall be entitled to represent the prosecution within the limits of the motion to indict.

(2) The judge shall notify the higher Public Prosecutor of the case referred to in paragraph 1 of the present Article. If the duly summoned Public Prosecutor does not

appear at the trial, the judge shall not delay the commencement of the trial so that Public Prosecutor could state his opinion on the evidence proposed by the defendant and his defense counsel, and if the trial is held without the duly summoned Public Prosecutor, the judge shall decide whether to present the evidence proposed by the motion to indict, in which case the Public Prosecutor shall not be entitled to challenge the judgment in respect of reasons specified under Article 394, paragraph 2 hereof.

(3) The trial may also be held in the absence of the defendant, the subsidiary prosecutor or private prosecutor provided that he submitted a motion that the trial be held in his absence.

(4) If a duly summoned defendant fails to appear at the trial or the summons could not be served on him because he did not report to the court a change of address, the court may decide to hold the trial in his absence, provided that his presence is not necessary and that he has already been heard.

Trial proceedings

Article 457

(1) The trial shall commence with reading of the motion to indict or private charge. If possible, the trial shall proceed without interruptions.

(2) In the case of the defendant's complete confession given at the trial and supported by evidence, the court shall, upon agreed proposal of the parties discontinue the presentation of evidence and impose a criminal sanction, unless it finds the confession suspicious.

(3) Subject to the conditions referred to in paragraph 2 of the present Article, the court may impose the following criminal sanctions: judicial admonition, suspended sentence, fine and imprisonment of up to two years, and along with them - one or several of the following measures: seizure of objects, prohibition on driving a motor vehicle and confiscation of pecuniary benefit. For criminal offenses referred to in Article 446 paragraph 1 of the present Code, prison sentence may not exceed three years.

(4) If during or after the trial the judge finds that a Trial Chamber has jurisdiction or that higher court has subject matter jurisdiction, he shall submit the file to the competent Public Prosecutor. When the judge establishes that some other reasons referred to in Article 296, paragraph 2 hereof exists, he shall dismiss the indictment or private charge by a ruling.

(5) After the conclusion of the trial, the court shall render a judgment immediately and pronounce it together with relevant reasons. The judgment, including a brief

reasoning of the facts, legal assessment of the offence and the decision on criminal sanction, shall be written within eight days from the day of its pronouncement.

(6) An appeal on judgment may be filed within a term of eight days from the day the copy of the judgment is served.

(7) Immediately upon the pronouncement of the judgment, the parties and injured person may waive their right to appeal. In such a case a copy of the judgment shall be delivered to the party and injured person only if they so require. If, after the pronouncement of the judgment, both parties and the injured person waive their right to appeal and if no one of them requires that the judgment be served on them, the written copy of the judgment shall only include the legal assessment of the offence and a brief reasoning of the sanction.

(8) Provisions of Article 382 of the present Code shall apply *mutatis mutandis* also in regard to discontinuance of detention after pronouncement of judgment.

(9) When the court imposes prison sentence, it may decide that the defendant be put or kept in detention, provided that grounds referred to in Article 448 paragraph 1 hereof exist. In such case, detention may last until the judgment becomes final, and at longest until the expiration of imprisonment sentence ordered by the court at first instance.

(10) If the Public Prosecutor was not present at the trial (Article 456 paragraph 1 the injured person shall be entitled to file, in the capacity of a prosecutor, an appeal on the judgment, regardless of whether an appeal was also taken by the Public Prosecutor or not.

Attempt of settlement in criminal proceedings against offences under private prosecution

Article 458

(1) Before scheduling a trial for criminal offenses subject to private prosecution, the judge may summon only the subsidiary prosecutor and the defendant to a hearing for a preliminary clarification of the matter and an attempt of settlement if he considers it appropriate for the prompt termination of proceedings. Along with the summons, the defendant shall be served with a copy of the private charge.

(2) If there is no settlement or withdrawal of the private charge, the judge shall take statements from the parties and invite them to make their proposals regarding the evidence to be provided.

(3) If the judge does not find that conditions exist for the dismissal of the charge, he shall render a decision on evidence to be presented at the trial and shall, as a rule, immediately schedule the trial and notify the parties thereof.

(4) If the subsidiary prosecutor and the defendant do not propose that evidence be presented, either before or when they appear before the court, and the judge considers that presentation of evidence is not necessary and that there are no other reasons to schedule a separate trial, he may immediately open the trial and after presenting the evidence available to the court, render a decision regarding the private charge. The subsidiary prosecutor and the defendant shall explicitly be advised of this possibility in the summons.

(5) If the subsidiary prosecutor fails to appear after he is summoned in accordance with paragraph 1 of the present Article, the provision of Article 58 hereof shall apply.

(6) If the defendant fails to appear, and the judge decides to open the trial, the provision of Article 456 paragraph 4 hereof shall apply.

Appearance at the session of appeals chamber

Article 459

(1) When the court at second instance decides on an appeal on a judgment rendered in summary proceedings, the parties and the defense counsel shall be notified of the session of the chamber only if the President of the chamber or the chamber considers that the presence of parties would be useful for the clarification of the matter.

(2) In case of an offence which is prosecuted *ex officio*, the President of the appeals chamber shall submit the files to the Public Prosecutor before the chamber session who may submit his written motion.

Chapter XXIX
PROCEEDINGS FOR THE IMPOSITION OF CRIMINAL SANCTIONS WITHOUT HOLDING A TRIAL

1. Proceedings for sentencing without trial

General provisions

Article 460

(1) For criminal offenses subject to a fine as a principal penalty or term of imprisonment of up to three years, and upon a motion of the Public Prosecutor, the judge may render a ruling on sentencing even without holding a trial.

(2) The Public Prosecutor shall propose in a motion to indict that the ruling referred to in paragraph 1 of the present Article be rendered, if he finds that it is not necessary to hold a trial.

(3) In case of an indemnification claim, the authorized person shall be directed to a civil lawsuit.

Criminal sanctions that may be ordered in proceedings prior to trial

Article 461

(1) In a ruling on sentencing, the judge may impose a sentence of imprisonment up to one year, a fine up to ninety daily amounts or 250,000 CSD, community work, revocation of driver's license, suspended sentence or judicial admonition.

(2) In addition to the sanction referred to in paragraph 1 of the present Article, the judge may impose one or more of the following measures: seizure of objects, seizure of pecuniary benefit and prohibition on driving a motor vehicle for the period of up to two years, except when sentence of revocation of driver's license has been pronounced.

Rendering the ruling on sentencing

Article 462

(1) Before he determines that the conditions for rendering of the ruling on sentencing exist, the judge shall act according to Article 451 paragraph 1 and Article 452 of the present Code. If the judge finds that such conditions are not met, he shall submit the motion to indict to the defendant and schedule the trial without delay.

(2) If the judge agrees with the motion of the Public Prosecutor, he shall obtain information on prior convictions and, if necessary, on the defendant's personality, and after the defendant is heard, he shall render the ruling on sentencing.

(3) The ruling on sentencing shall include conclusion that the Public Prosecutor's motion is upheld; personal data of the defendant; the criminal offense for which he is found guilty with stated facts and circumstances which constitute elements of criminal offence and which determine the application of particular provision of the Criminal Code; statutory title of the offence and the provisions of the Criminal Code and other laws applied; the decision on a fine or measure imposed; the decision on directing the authorized person to civil lawsuit in regard to the claim for indemnification; reasoning of the sentence or measure imposed; instruction on the right to appeal, as well as a warning that, after the expiry of the time limit for an appeal, if an appeal is not filed, the ruling on sentencing shall become final.

Serving of ruling on sentencing and the right to object

Article 463

(1) The ruling on sentencing shall be delivered to the Public Prosecutor and the defendant.

(2) The defendant may, within eight days after the delivery, file an objection against the ruling.

Objection against the ruling on sentencing and final ruling on sentencing

Article 464

(1) If the defendant files an objection in due time, the judge shall schedule the trial based on the Public Prosecutor's motion to indict and further proceed pursuant to provisions of Articles 447 to 459 of the present Code.

(2) In proceedings instigated based on the motion to indict, the judge shall not be bound by the Public Prosecutor's motion proposing sanction or by the prohibition specified in Article 406 hereof.

(3) A Trial Chamber (Article 24 paragraph 6) shall decide on an appeal against a ruling dismissing an objection.

(4) If no objection is filed against the ruling on sentencing, the ruling shall become final.

2. Procedure for sanctioning and pronouncing of suspended sentence by the Investigative Judge

General provisions

Article 465

(1) In case of full confession of the defendant i.e. suspect given to the investigative judge in the presence of the Investigative Judge i.e. Public Prosecutor or police authority pursuant to Article 260 paragraph 6 hereof, supported also by other evidence collected in the course of preliminary investigation or investigation, the Public Prosecutor may, immediately after the investigation is completed and no later than within eight days, propose in the raised indictment that a separate public hearing before the Investigative Judge be scheduled instead of a trial, at which judgment may be pronounced after hearing the parties and exclusively with consent of the defendant.

(2) The proceedings referred to in paragraph 1 of the present Article may be applied for criminal offenses punishable by a fine as a principal penalty or by imprisonment not exceeding five years.

Objection against the indictment and motion by the defendant

Article 466

(1) The defendant and his defense counsel may, within eight days of the receipt of the indictment file an objection against the indictment referred to in Article 465 hereof, which shall exclude the application of these proceedings. The defendant must be advised thereof at the time the indictment is served on him.

(2) The Investigative Judge may also pronounce judgment upon a motion of the defendant, provided that such a motion is submitted within eight days from the day the indictment is served and that the Public Prosecutor and the Investigative Judge gave their consent.

Criminal sanctions that may be pronounced by the Investigative Judge` judgment

Article 467

(1) Under conditions referred to in Article 465 of the present Code, the Investigative Judge may impose a term of imprisonment not exceeding two years, a fine up to twenty daily amounts or 250,000 CSD, community work, revocation of driver's license, suspended sentence or judicial admonition.

(2) In addition to the sanction referred to in paragraph 1 of the present Article, the judge may impose one or more of the following measures: seizure of objects, seizure of pecuniary benefit and prohibition on driving a motor vehicle up to two years, except when revocation of driver's license has been pronounced.

Appeal against the judgment of the Investigative Judge

Article 468

A judgment rendered by the investigative judge may be challenged by an appeal submitted within eight days from the day of receipt, on the grounds referred to in Article 391 paragraphs 1, 2 and 4 hereof.

3. Expedited procedure

Decision to conduct expedited proceedings

Article 469

(1) A Public Prosecutor may move to conduct expedited proceedings if a person brought before the investigative judge was caught in commission of a criminal offence which is prosecuted *ex officio* (Article 263 paragraph 5 or 266 paragraph 5), carrying statutory penalty of a fine or a term of imprisonment up to three years.

(2) If the investigative judge finds the motion specified in paragraph 1 of the present Article justified by not complex fact finding and by the full confession of the defendant, which is supported by other evidence, he shall so inform the defendant and advise him that in expedited proceedings the maximum penalty that may be pronounced is half the statutory fine for the criminal offence with which he is charged i.e. imprisonment of up to two years.

(3) If the defendant agrees to holding of expedited proceedings, his statement shall be entered on record and signed by the defendant.

(4) If the defendant denies holding of expedited proceedings, the investigative judge shall render a ruling confirming that there no purpose exists for holding such proceeding.

(5) If the requirements specified in paragraphs 2 and 3 of the present Article are met, the Public Prosecutor shall file his motion specified in paragraph 1 of the present Article in writing, so that its contents correspond to the motion to indict.

(6) If the conditions referred to in paragraphs 2, 3 and 5 of the present Article are met, the investigative judge shall render a ruling on conducting expedited proceedings which shall not be a subject to an appeal.

Joinder and severance of proceedings

Article 470

If the criminal offence in respect of which expedited proceedings are instituted is connected with another criminal offence and other defendants in relation to whom requirements for expedited proceedings are not met, severed proceedings shall be conducted and, if appropriate, joined expedited proceedings shall be conducted for all criminal offences and for all defendants.

Instituting and conducting of expedited proceeding

Article 471

(1) The investigative judge shall serve the ruling referred to in Article 469, paragraph 6 hereof on the defendant, his defense counsel and Public Prosecutor, together with summons for the trial to be held before the investigative judge.

(2) The summons for the defendant shall contain data specified in Article 166, paragraphs 2 and 3 hereof, and shall be served so that minimum three days elapse between delivery and holding of the trial. The defendant shall be advised in the summons of his right to demand granting of a period of time for preparation of defense that may not exceed eight days.

(3) Unless otherwise provided under the present Code, provisions on the trial, judgment and appeals procedure in summary proceedings shall apply in expedited proceedings.

(4) Victims, witnesses and expert witnesses may also be summoned verbally by the court.

Summary proceedings instead of expedited proceedings

Article 472

(1) If in the course of the trial the investigative judge finds that the complexity of facts does not justify conducting of expedited proceedings, he shall render a ruling that there are no grounds for expedited procedure.

(2) No appeal is allowed against the ruling specified in paragraph 1 of the present Article.

(3) The decision specified in paragraph 1 of the present Article is delivered together with the case file to the Public Prosecutor without delay, who may institute proceedings in accordance with Article 447 paragraph 1 hereof.

Conclusion of expedited proceeding

Article 473

(1) If prior to commencement of the trial the investigative judge finds that grounds specified in Article 296 paragraph 1 hereof exist, he shall render a ruling of on suspension of criminal proceedings.

(2) If prior to, during or upon conclusion of the trial the investigative judge finds that grounds specified in Article 296 paragraph 2 hereof exist he shall render a ruling dismissing the indictment.

(3) Upon conclusion of the trial the investigative judge shall immediately pronounce the verdict and pronounce it along with all relevant reasons. The judgment shall be drawn up in writing within three days of the day of reading thereof.

Rendering and submitting of the second-instance court's decision

Article 474

The second-instance court shall be required to submit its decision with all documents to the first-instance court not later than within two months from the date of receiving the appeal and the documents from that court.

Chapter XXX
MEDIATION PROCEDURE AIMED AT ACHIEVING SETTLEMENT BETWEEN THE DEFENDANT AND THE VICTIM

Referral to mediation for settlement

Article 475

(1) The Public Prosecutor may upon the motion of the defendant or his defense counsel, i.e. the motion of the victim or his proxy, or *ex officio,* after receiving notification of a criminal offence or criminal offence report for a felony punishable under law by fine or imprisonment of up to one year, summon the victim and the defendant to a special hearing to investigate the possibility to refer them to mediation proceedings to achieve settlement.

(2) When so justified by particular circumstances and particularly by the assessment of the Public Prosecutor that the defendant with no prior criminal record has shown genuine remorse because of the committed criminal offense and readiness to rectify the consequences of the offense, compensate the damages caused or meet other obligations to the benefit of the victim or the community, the Public Prosecutor may proceed in the manner set forth in paragraph 1 of the present Article also when receiving notification of a criminal offence or criminal offence report for a felony punishable under law with imprisonment of up to three years.

(3) The Public Prosecutor shall forward the summons referred to in paragraph 1 of the present Article if due to the criminal offense cited in the notification or criminal offence report, the consequence of the criminal offence and circumstances under which it was committed, previous life-style of the defendant, his attitude after the committed criminal offence, personality of the defendant and the victim, their previous relations and their future possible and expected relations and all other essential circumstances, it is evidently justified for settlement to be concluded between the victim and the defendant.

(4) To determine the circumstances referred to in paragraph 2 of the present Article, the Public Prosecutor shall obtain all necessary data, and particularly the report from criminal records for the defendant, data related to his personal and family circumstances, information on whether remittal from criminal prosecution was previously applied to him, information on whether he is a repeat offender committing criminal offence with intent, or a repeat offender committing congenial offences.

(5) At the hearing referred to in paragraph 1 of the present Article that may be attended by the defense counsel and the victim's counsel, the Public Prosecutor shall inform all persons present of the possibility to be directed to mediation procedure for settlement, explain to them the legal and procedural consequences of

settlement and inform them of his assessment that settlement between them would be the best way for resolving their future relations.

(6) The Public Prosecutor may proceed in accordance with paragraph 1 of the present Article also when the motion to indict has been filed, until conclusion of the trial, if due to presented evidence and circumstances specified in paragraph 2 of the present Article, and particularly in respect to the behavior of the defendant and the victim during trial, it is his deliberation that concluding of settlement between the defendant and the victim would be most appropriate in terms of realizing the goal of Article 1, paragraph 1 hereof and protection of the interests of the victim.

(7) If the defendant and the victim agree at the hearing referred to in paragraph 1 of the present Article to be referred to settlement proceedings, the Public Prosecutor shall render a ruling on referral to settlement procedure wherein the defendant may also set fulfillment of one or more obligations specified in Article 268, paragraph 1 hereof.

(8) After rendering the ruling specified in paragraph 7 of the present Article, the Public Prosecutor shall stay criminal prosecution of the defendant, if notice of a criminal offence or criminal offence report have been filed against him, i.e. shall request the court to render a ruling to stay commencement of the trial or adjourn the trial if he has already filed a motion to indict against the defendant.

(9) If at the hearing referred to in paragraph 1 of the present Article the defendant and the victim fail to agree to be referred to settlement proceedings, the Public Prosecutor shall file the motion to indict i.e. shall continue criminal prosecution, or proceed pursuant to Articles 268 or 269 hereof, if in his assessment prerequisites under the law have been met.

Conducting of mediation proceedings to effect settlement

Article 476

(1) Mediation proceedings for settlement shall commence within eight days from the date of rendering of ruling referred to in Article 475, paragraph 7 hereof.

(2) Mediation proceedings for settlement shall be conducted by an authorized mediator appointed by the Republic Public Prosecutor from the ranks of inactive prominent jurists - judges, Public Prosecutors or lawyers, i.e. scholars who are recognized experts in fields that are of significance for successful conducting of mediation proceedings for settlement.

(3) The authorized mediator shall have demonstrated affinity for mediation between persons in dispute i.e. persons with conflicting interests. The Center for Mediation in cooperation with the Judicial Training Center, the Ministry of Justice, research institutions, expert and professional associations shall provide the specialist skills

required to conduct settlement proceedings and continuous professional education to persons already granted the status of authorized mediator or who are to acquire such status. The Center for mediation organizes regular professional seminars, tests and other forms of supplementary professional training and continuous education of authorized mediators who shall receive relevant certificates after testing and on continuous education.

(4) The settlement proceeding shall be informal and may last at most up to three months after the initial meeting between the defendant, victim and authorized mediator to institute settlement proceeding.

(5) If in the ruling referred to in paragraph 7 of Article 475 hereof the Public Prosecutor ordered the defendant to fulfill one or more obligations specified in Article 268, paragraph 1 hereof, the deadline specified in paragraph 3 of the present Article may be extended for another three months with separate ruling by the Public Prosecutor.

(6) If due to mediation proceedings for settlement the trial is stayed, mediation proceedings may last at most two months from the initial meeting between the defendant, victim and authorized mediator.

Results of mediation for settlement and conduct of the Public Prosecutor

Article 477

(1) If the defendant and the victim reach settlement, they shall conclude and verify by their signatures a written agreement that shall contain the subject of settlement, deadline for fulfillment of obligations accepted by the defendant, or certification that the defendant's obligation has already been fulfilled and a declaration by the victim that he is aware that in the event of full realization of settlement he shall not be entitled to undertake or continue criminal prosecution of the defendant after dismissal of the notification on criminal offence or dismissal of criminal offence report, i.e. after the Public Prosecutor's waiver of prosecution.

(2) If, pursuant to the agreement on settlement, the defendant's obligation is to be fulfilled within a set time period, such period may not be longer than three months and in more complex cases it may not exceed six months.

(3) The agreement on settlement may also impose on the defendant fulfillment of one or more obligations specified in Article 268, paragraph 1 hereof.

(4) The authorized mediator shall periodically review fulfillment of obligations by the defendant related to the set time frame and shall accordingly inform the Public Prosecutor. When the defendant has fully discharged his obligation, the authorized mediator shall submit a relevant report to the Public Prosecutor. The Public Prosecutor may also by himself follow and monitor discharge of defendant's

obligation, and when the obligation relates to community work he may delegate monitoring of the discharge of the obligation to a social services center.

(5) If settlement is successful, the authorized mediator shall accordingly notify the Public Prosecutor in writing, and attach thereto other proof that the defendant has discharged the obligation which was the subject of settlement.

(6) In cases specified in paragraph 5 of the present Article, the Public Prosecutor shall dismiss criminal offence report or discontinue criminal prosecution of the defendant if in his assessment pronouncing of the defendant guilty, with remittal of penalty (article 59 of the Criminal Code), is not appropriate.

(7) The ruling dismissing criminal offence report or the ruling staying the proceedings, i.e. the judgment denying the indictment (paragraph 6 of the present Article) shall be delivered to the victim, with notice to the victim that he is not entitled to undertake or continue criminal prosecution.

(8) If settlement is successful but the Public Prosecutor deems it appropriate to pronounce the defendant guilty with remittal of penalty, the Public Prosecutor shall file a motion to indict or continue criminal prosecution, and shall submit to the court proof of successful settlement and recommend rendering of ruling based on Article 59 of the Criminal Code.

(9) If the court sustains the motion of the Public Prosecutor referred to in paragraph 8 of the present Article and remits the defendant from penalty, the Public Prosecutor shall not entitled to appeal such judgment, and if the court pronounces penalty to the defendant, the Public Prosecutor shall be required to file an appeal to the benefit of the defendant.

(10) If settlement was unsuccessful, the authorized mediator shall submit a relevant report in writing to the Public Prosecutor who shall without delay file a motion to indict, i.e. continue criminal prosecution or shall proceed in accordance with Articles 268 or 269 hereof, if in his assessment the defendant bears the blame for unsuccessful settlement, and requirements are met for waiver of criminal prosecution, i.e. criminal prosecution would not be appropriate.

Enactment of a more comprehensive regulation

Article 478

(1) The Republic Prosecutor shall, in accordance with provisions of the present Code, determine more exhaustive regulations determining the basic criteria for referral to mediation proceedings for settlement, more comprehensive rules for conducting that procedure and more detailed instructions and criteria for assessment of success of the concluded settlement agreement between the victim and the defendant.

(2) The Republic Prosecutor may issue one or more mandatory instructions to lower-ranking prosecutors wherein he may set criminal offences that may or may not be referred to mediation for settlement, i.e. determine the types of obligations that may or may not be imposed to the defendant alongside the subject of settlement, the time frame wherein, as a rule, the specified obligations should be fulfilled, as well as the manner of keeping the records of public prosecution regarding rendered final decisions pursuant to successful settlement.

Chapter XXXI
SPECIAL PROVISIONS ON JUDICIAL ADMONITION

General provisions

Article 479

(1) Judicial admonition shall be imposed by a decision.

(2) Except otherwise provided under present Chapter, the provisions of the present Code concerning judgment of conviction shall apply *mutatis mutandis* to the decision on judicial admonition.

(3) Judicial admonition may be imposed in the proceedings for sanctioning before trial or proceedings for sanctioning by investigative judge (Chapter XXIX).

Ruling on judicial admonition

Article 480

(1) The ruling on judicial admonition, together with essential reasons, shall be pronounced immediately after the completion of the trial. On this occasion the judge shall warn the defendant that no penalty is imposed on him for the criminal offense he committed, because it is expected that the judicial admonition will be sufficient deterrence from repeated offending. If the ruling on judicial admonition is pronounced in the defendant’s absence, the court shall include such warning in the reasoning of the ruling. The provision of Article 457 paragraph 5 hereof shall apply to the waiver of the right to appeal and the issuance of a written copy of the ruling.

(2) Beside the personal data of the defendant, the ordering part of the ruling on judicial admonition shall only state that judicial admonition is imposed on the defendant for the offense he is charged with and the statutory title of the criminal offense. The ordering part shall also state the data referred to in Article 380 paragraph 1 items 5 and 7 hereof.

(3) In the reasoning of the decision, the court shall state the reasons it was guided by when imposing the judicial admonition.

Appeal against the ruling on judicial admonition

Article 481

(1) The ruling on judicial admonition may be challenged for the reasons referred to in Article 391 items 1 to 3 hereof, but also because circumstances which justify the imposition of judicial admonition did not exist.

(2) If the ruling on judicial admonition includes a decision on security measures, on the confiscation of pecuniary benefit, on the costs of criminal proceedings, on a claim for indemnification or on a public announcement, said decision may be challenged because the court did not correctly apply the security measure or the confiscation of pecuniary benefit, or because it rendered a decision on the costs of criminal proceedings, a claim for indemnification or a public announcement contrary to the law.

(3) A violation o the Criminal Code concerning the imposition of judicial admonition shall exist, in addition to cases referred to under Article 393, paragraphs 1 to 4 hereof, also where the decision on judicial admonition, security measure, confiscation of pecuniary benefit or public pronouncement exceeds the legal powers of the court.

Second-instance court decision on an appeal against the ruling on judicial admonition

Article 482

(1) If the prosecutor files an appeal against the ruling on judicial admonition to the prejudice of the defendant, the court at second instance may render a judgment of conviction and impose a penalty or suspended sentence if it establishes that the court at first instance correctly determined the relevant facts but that correct application of the law requires imposition of penalty or suspended sentence.

(2) Upon an appeal from the ruling on judicial admonition taken by any authorized person, the court at second instance may render a ruling dismissing the charge or a judgment denying the charge or a judgment of acquittal if it establishes that the court at first instance correctly determined the relevant facts but that correct application of the law requires imposition of one of these decisions.

(3) Where the conditions referred to in Article 411 hereof are met, the court at second instance shall render a ruling denying the appeal as unfounded and uphold the ruling of the court at first instance on judicial admonition.

Part III
SPECIAL PROCEEDINGS

Chapter XXXII
PROCEEDINGS FOR IMPLEMENTATION OF SECURITY MEASURES, FOR THE CONFISCATION OF PECUNIARY BENEFIT, REVOCATION OF SUSPENDED SENTENCE AND FOR RELEASE ON PAROLE

1. Proceedings for implementation of security measures

General provisions on imposition of security measure of compulsory treatment and confinement in medical institution or compulsory psychiatric treatment out of medical institution

Article 483

(1) If the defendant committed a criminal offense in the state of mental incapacity, the Public Prosecutor shall submit to the court a motion to impose a security measure of compulsory psychiatric treatment and confinement in a medical institution or motion for compulsory psychiatric treatment of the perpetrator out of the institution, if the conditions for the imposition of such a measure specified in the Criminal Code are met.

(2) In this case, the defendant who is in custody shall not be released but shall be temporarily placed in an appropriate medical institution or in some other suitable premises until the conclusion of proceedings for the implementation of security measures.

(3) After the motion referred to in paragraph 1 of the present Article is submitted, the defendant must have a defense counsel.

Ordering of security measure of compulsory treatment and confinement in medical institution or compulsory psychiatric treatment out of medical institution and suspension of proceedings for security measure

Article 484

(1) The court having jurisdiction to decide at first instance shall, upon holding the trial, decide on the application of security measures of compulsory psychiatric treatment and confinement in a medical institution or compulsory psychiatric treatment out of the institution.

(2) In addition to persons that have to be summoned for the trial, physiatrists from the medical institution which was designated to testify on mental capacity of the defendant shall also be summoned as expert witnesses. The defendant shall be

summoned if his condition allows his presence at the trial. The spouse of the defendant, his parents i.e. guardian shall be notified of the trial, and depending on circumstances, other close relatives as well.

(3) If the court, based on evidence presented, determines that the defendant has committed a criminal offense and that at the time of the commission he was mentally incapable, it shall decide, based on testimonies of summoned persons and findings and opinions of expert witnesses, whether to impose on the defendant a security measures of compulsory psychiatric treatment and confinement in a medical institution or compulsory psychiatric treatment out of the institution. When deciding which of these security measures to impose, the court shall not be bound by the motion of the Public Prosecutor.

(4) If the court determines that the defendant was not mentally incapable when committed the offense, it shall discontinue the proceedings for the implementation of security measures.

(5) Except for the injured person, all persons entitled to file an appeal against a judgment (Article 388) may file an appeal against the court ruling within eight days from the delivery of the ruling.

Motion to order security measure of compulsory treatment and confinement in medical institution or compulsory psychiatric treatment out of medical institution by amending the indictment

Article 485

The security measures referred to in Article 483 paragraph 1 hereof may also be imposed when, at the trial, the Public Prosecutor amends the raised indictment or the motion to indict by submitting a motion for the imposition of these measures.

Imposition of security measure in case of diminished mental capacity of the defendant

Article 486

If the court imposes a penalty on a person who has committed a criminal offense in condition of diminished mental capacity, it shall impose a security measure of compulsory psychiatric treatment and confinement in a medical institution by the same judgment, after it establishes that statutory conditions are met.

Service of the final decision to the court which decides on working capacity of the defendant

Article 487

The final judgment by which the security measure of compulsory psychiatric treatment and confinement in a medical institution or compulsory psychiatric treatment out of the institution is imposed shall be submitted to the court having jurisdiction to decide on deprivation of working capacity. The welfare institution shall also be notified of the decision.

Examination of the security measure of compulsory treatment and confinement in medical institution and release from institution

Article 488

(1) Every nine months, the court which imposed the security measure shall *ex officio* examine whether the need for treatment and confinement in a medical institution still exists. The medical institution, the welfare institution and the person against whom the security measure is imposed may submit a motion to that court for discontinuance of the measure. After hearing the Public Prosecutor, the court shall discontinue this measure and order release of the person, provided that it establishes, based on the opinion of a doctor, that the need for treatment and confinement in the medical institution no longer exists, or may order his compulsory treatment out of the institution. If the motion for discontinuance of the measure is denied, it may be submitted again after six months of the day the decision was rendered.

(2) When the defendant with diminished mental capacity is released from the institution in which he spent shorter time than he was sentenced to, the court shall in the ruling on release decide whether this person is to serve the remaining time of sentence or to be released on parole. Against the perpetrator who is released on parole, the security measure of compulsory psychiatric treatment out of the institution may be imposed if the statutory conditions are met.

(3) The court may, *ex officio* or upon a motion of the medical institution where the defendant is treated or should have been treated, and after hearing the Public Prosecutor, impose the security measure of compulsory psychiatric treatment and confinement in a medical institution on the perpetrator who is under the security measure of compulsory psychiatric treatment out of institution, if it establishes that such person did not undergo treatment or quit it on his own initiative, or that despite the treatment he is still so dangerous for his surroundings that his compulsory treatment and confinement in a medical institution is necessary. If necessary, before it renders a decision, the court shall also obtain an opinion of the doctor and hear the defendant if his condition permits so.

(4) The court shall render decisions referred to in previous paragraphs of the present Article at a session of the Trial Chamber (Article 24 paragraph 6). The Public Prosecutor and the defense counsel shall be notified of the Trial Chamber session. Before rendering a decision, and if necessary and possible, the defendant shall be heard.

Security measure of compulsory drug or alcohol addiction treatment

Article 489

(1) After it obtains the findings and opinion of an expert witness, the court shall decide upon the application of the security measure of compulsory drug and alcohol addiction treatment. The expert witness shall also give an opinion regarding possibilities for the defendant's treatment.

(2) If the compulsory treatment out of the institution is ordered against the perpetrator by a suspended sentence, and if he fails to submit himself to the treatment or quits treatment at his own will, and after hearing the Public Prosecutor and the defendant, the court may *ex officio* or upon a motion of the institution in which the perpetrator is treated or should have been treated, order the revocation of the suspended sentence or the enforcement of the security measure of compulsory drug and alcohol addiction treatment in a medical institution or other specialized institution. If necessary, before rendering a decision, the court shall obtain an opinion of the doctor.

Procedure for imposition of security measure of seizure of objects

Article 490

(1) Objects which must be seized pursuant to the Criminal Code shall also be seized if the criminal proceeding is not concluded with a judgment of conviction, if this is in the interest of public safety or protection of morality.

(2) The authority before which the proceeding was held shall render a special ruling on seizure of objects at the time the proceeding is concluded or discontinued.

(3) The ruling on seizure of objects referred to in paragraph 1 of the present Article shall also be rendered by the Trial Chamber referred to under Article 24 paragraph 6 of the court at first instance in case this was not done by the judgment of conviction.

(4) A certified copy of the ruling on seizure of objects shall be delivered to the owner of objects, if known.

(5) The owner of the objects is entitled to file an appeal against the ruling referred to in paragraphs 2 and 3 of the present Article if he considers that there are no legal grounds for the seizure of objects. If the ruling referred to in paragraph 2 of the present Article is not rendered by a court, the Trial Chamber (Article 24 paragraph 6) of the court having jurisdiction to try at first instance shall decide on the appeal. If the Trial Chamber referred to in Article 24, paragraph 6 of the court at first-instance (paragraph 3 of the present Article) rendered the ruling on seizure of

objects, an appeal against such decision shall be adjudicated by the Trial Chamber of the higher court.

2. Proceedings for the confiscation of pecuniary benefit

General provisions on confiscation of pecuniary benefit

Article 491

(1) Pecuniary benefit obtained through commission of criminal offence shall be determined in the criminal proceedings instituted *ex officio*.

(2) In the course of proceedings, the court and other authorities before which criminal proceedings are conducted are bound to obtain evidence and investigate circumstances which are relevant for the determination of pecuniary benefit.

(3) If the injured person submits indemnification claim for the recovery of objects acquired through commission of criminal offence or of a corresponding value, the pecuniary benefit shall only be determined in respect of the part exceeding the claim for indemnification.

Confiscation of pecuniary benefit from persons to whom it was transferred

Article 492

(1) Where confiscation of pecuniary benefit acquired through commission of criminal offence from other persons is under consideration, the person to whom the pecuniary benefit was transferred to or the person for whom it was obtained, or the representative of a legal entity shall be summoned for hearing in preliminary proceedings and at the trial. The summons shall state that the proceedings will be held if the person does not appear.

(2) The representative of the legal entity shall be heard at the trial after the defendant. The court shall proceed in the same manner regarding other person referred to in the paragraph 1 of the present Article, unless he is summoned as a witness.

(3) The person to whom the pecuniary benefit was transferred or the person for whom it was obtained, or the representative of the legal entity shall be entitled to propose evidence concerning the determination of the pecuniary benefit and, upon the approval of the president of the Trial Chamber, ask questions to the defendant, witnesses and expert witnesses.

(4) The exclusion of the public from the trail does not refer to the person to whom the pecuniary benefit was transferred to or for whom it was obtained i.e. the representative of the legal entity.

(5) If the court establishes that the confiscation of pecuniary benefit comes into consideration while the trial is in progress, it shall adjourn the trial and summon the person to whom the pecuniary benefit was transferred to or for whom it was obtained, i.e. the representative of the legal entity.

Determining the amount of pecuniary benefit at the discretion of the court

Article 493

The amount of pecuniary benefit shall be determined at the discretion of the court if its determination would create disproportionate difficulties or a significant delay in the proceedings.

Establishment of temporary security measures

Article 494

Where the confiscation of pecuniary benefit is under consideration, the court shall *ex officio* and pursuant to the provisions governing enforcement proceedings, order provisional security measures. In such case, the provisions of Article 241 paragraphs 2 and 3 hereof shall apply *mutatis mutandis*.

Ordering the confiscation of pecuniary benefit

Article 495

(1) The court may order the confiscation of pecuniary benefit by a judgment of conviction, by a decision on sentencing without trial, by a decision on judicial admonition or by a decision on the application of correctional measure, as well as by a ruling on the imposition of the security measure of compulsory psychiatric treatment and confinement in a medical institution or psychiatric treatment out of the institution.

(2) In the ordering part of a judgment or ruling the court shall state the object or amount to be seized.

(3) A certified copy of the judgment or ruling shall also be delivered to the person to whom the pecuniary benefit was transferred or for whom it was obtained, as well as to the representative of the legal entity, provided that the court ordered confiscation of pecuniary benefit from such person or legal entity.

The request for reopening of criminal proceedings in respect of the decision on confiscation of pecuniary benefit

Article 496

The person referred to in Article 492 hereof may submit a motion for the reopening of criminal proceedings in respect of the decision on the confiscation of pecuniary benefit.

Application of provisions on appeal and procedure following filing of an appeal and application of other provisions mutatis mutandis

Article 497

(1) The provisions of Article 389 paragraphs 2 and 3 and Articles 397 and 401 hereof shall be applied *mutatis mutandis* in regard to an appeal against the decision on the confiscation of pecuniary benefit.

(2) Unless the provisions of this Chapter envisage otherwise regarding the application of security measures or confiscation of pecuniary benefit, other provisions of the present Code shall apply *mutatis mutandis*.

3. Proceedings for revocation of suspended sentence

Article 498

(1) Where a suspended sentence orders that the penalty be executed if the convicted person does not return pecuniary benefit, compensate damages or fulfill other obligations, and the convicted person fails to meet these obligations within a specified term, the court which tried the case at first instance shall conduct the proceedings for the revocation of the suspended sentence upon a motion of the competent prosecutor or *ex officio*.

(2) The judge assigned to the case shall hear the convicted person, if he is available, and conduct the necessary inquiries for the purpose of determining facts and obtaining evidence important for the decision.

(3) Thereafter, the President of the Trial Chamber shall schedule a session of the Trial Chamber and notify the prosecutor, the convicted person and the injured person thereof. If the duly notified parties and the injured person fail to appear, this shall not prevent the session of the Trial Chamber from being held.

(4) If the court establishes that the convicted person failed to meet an obligation ordered by the judgment, the court shall render a judgment which revokes the suspended sentence and order execution of the penalty determined by the suspended sentence, or set a new time limit for fulfillment of obligation or cancel the time

limit, or replace the existing obligation. If the court finds that there are no grounds for rendering of any of these decisions, it shall discontinue proceedings for the revocation of suspended sentence by a ruling.

4. Proceedings for Release on Parole

Article 499

(1) The proceedings for release on parole shall be instituted upon a petition of a convicted person.

(2) The petition shall be submitted to the court which tried the case at first instance.

(3) The Trial Chamber of the court at first instance (Article 24 paragraph 6) shall determine whether the time specified by the Law regarding release on parole has expired and request from the institution where the convicted person is serving prison sentence a record on his behavior, fulfillment of work tasks according to his working ability and on other circumstances indicating to what extent the purpose of treatment programmers has been achieved and whether it is realistic to expect that the convicted person will not re-offend, if such report is not submitted along with the petition of the convicted person.

(4) If the Trial Chamber does not dismiss the petition, it shall hear the Public Prosecutor representing the prosecution before that court.

(5) The Public Prosecutor and the convicted person who submitted the petition for release on parole may file an appeal against the decision of the Trial Chamber.

Chapter XXXIII
PROCEEDINGS FOR RENDERING A DECISION ON THE EXPUNGEMENT OF CRIMINAL RECORDS, FOR CESSATION OF LEGAL EFFECTS OF CONVICTION AND SECURITY MEASURES

General provisions on expungement of conviction

Article 500

(1) Where the law provides that expungement of the conviction imposing a judicial admonition, fine, imprisonment of up to one year or juvenile imprisonment, or the judgment whereby the perpetrator was remitted from penalty occurs after the elapse of a certain period of time and provided that the convicted person within that period does not commit a new criminal offense, the authority in charge of the criminal register shall *ex officio* render a ruling on the expungement of conviction from criminal records.

(2) Before the ruling on the expungement of conviction from criminal records is rendered, necessary inquires shall be conducted and, in particular, it shall be established whether the convicted person is on trial for any new criminal offense committed before the end of the time period prescribed for the expungement of conviction from criminal records.

Request to determine that expungement of conviction occurred by force of law

Article 501

(1) If the competent authority does not render a ruling on the expungement of conviction, the convicted person may request that it be established that the expungement of conviction from criminal records occurred by force of law.

(2) If the authority fails to comply with the request of the convicted person within thirty days from the day of receipt of the request, the convicted person may request that the court which rendered the judgment at first instance render a ruling on the expungement of conviction.

(3) The court shall decide on the request of the convicted person after having heard the Public Prosecutor.

The decision on expungement of suspended sentence

Article 502

If a suspended sentence is not revoked even one year after the end of the period of probation, the court which tried the case at first instance shall render a ruling on the expungement of the suspended sentence. This ruling shall be served on the convicted person, the Public Prosecutor and the authority in charge of the criminal register.

Expungement of conviction upon petition of the convicted person

Article 503

(1) The proceedings for the expungement of conviction to a term of imprisonment from one to three years upon a court's decision shall be instituted upon a petition of the convicted person.

(2) The petition shall be submitted to the court which tried the case at first instance.

(3) The judge assigned to the case shall inquire whether the term prescribed by law has elapsed, and thereafter he shall conduct the necessary inquiries, determine the facts indicated by the petitioner and obtain evidence on all circumstances relevant for the decision.

(4) The court may request a record on behavior of the convicted person from the police authority in whose region he has resided after serving the sentence, and may request such a record from the administration of the institution in which the convicted person has served the sentence.

(5) After the inquiries are made and after having heard the Public Prosecutor, the judge shall submit the files with a substantiated motion to the Trial Chamber of the court which tried the case at first instance.

(6) The petitioner and the Public Prosecutor may appeal the decision of the court on the expungement of conviction from criminal records rendered upon the petition.

(7) If the court denies the petition because the convicted person does not deserve the expungement of conviction from criminal records due to his behavior, the convicted person may again submit a petition after one year from the day when the ruling denying the petition became final.

Contents of certificate issued to citizens on basis of criminal records

Article 504

A certification issued to the citizens upon the criminal register may not mention the expunged conviction and the expunged legal consequences of conviction.

Application for termination of particular security measures and application for termination of legal consequences of conviction

Article 505

(1) A petition for discontinuance of the security measure of prohibition to engage in a profession, activity or duty or the security measure of prohibition on driving a motor vehicle or a petition for discontinuance of the legal consequence of conviction regarding the acquirement of certain rights shall be submitted to the court which tried the case at first instance.

(2) The judge assigned to the case shall inquire whether the term prescribed by law has expired and conduct the necessary inquiries, determine the facts indicated by the petitioner and obtain evidence on all circumstances important for the decision.

(3) The court may request a record on behavior of the convicted person from the police authority in whose region has resided after the principal sentence is served, remitted or purged by the statute of limitations, and may request such a record from the institution in which the convicted person has served the sentence.

(4) After the inquiries are made and after having heard the Public Prosecutor, the judge shall submit the files with a substantiated motion to the Trial Chamber of its court.

Submitting of new application for termination of security measures or legal consequences of conviction

Article 506

When the court denies the petition for discontinuance of security measures or legal consequences of conviction, a new appeal may be submitted after expiration of one year from the day when the ruling denying the previous petition became final.

Chapter XXXIV
PROCEDURE FOR INTERNATIONAL LEGAL ASSISTANCE AND ENFORCEMENT OF INTERNATIONAL TREATIES IN CRIMINAL MATTERS

Provisions governing international legal assistance

Article 507

(1) International legal assistance shall be provided in accordance with the provisions of international treaties.

(2) If there is no international treaty or an international treaty does not regulate certain issues, the international criminal/legal assistance shall be provided in accordance with the provisions of the present Code.

Substance of international legal assistance in criminal matters

Article 508

International legal assistance shall particularly include execution of certain evidentiary and other procedural actions such as interrogation of the defendant, witnesses or expert witnesses, crime scene investigation, search of dwellings or persons, seizure of objects, as well as handing over of files, documents and other objects in connection with preliminary criminal proceedings in the requesting state.

Letters rogatory from the local courts and prosecutor's offices and jurisdiction for providing international legal assistance

Article 509

(1) Letters rogatory of the domestic courts and Public Prosecutors on legal assistance in preliminary and trial proceedings shall be delivered to foreign authorities through an authority determined by a special regulation. The same channels shall be used for delivering the letters rogatory of the foreign authorities to the domestic courts.

(2) In case of urgency, if reciprocity exists, letters rogatory may be delivered through the Ministry of Internal Affairs.

(3) By a special act, it shall be determined which courts shall have jurisdiction to execute requests for legal assistance in criminal matters or a certain court may be designated to deal with these matters for all courts from a particular territory.

Forwarding of letter rogatory to the competent court and deciding on admissibility and the manner of execution of requested action

Article 510

(1) The authority determined by a special regulation shall transmit letters rogatory of a foreign authority to the court having jurisdiction to proceed on.

(2) In cases referred to in Article 509 paragraph 2 of the present Code, the Ministry of Internal Affairs shall transmit letters rogatory to the court through the Ministry of Justice.

(3) A court shall decide in accordance with a domestic law on admissibility and the manner of execution of an action requested by a letter rogatory.

(4) When a letter rogatory concerns a criminal offense for which, according to a domestic law, extradition is not permitted, the court shall request from the authority determined by a special regulation an opinion whether to proceed upon a letter rogatory.

Enforcement of the foreign court judgment

Article 511

(1) Domestic courts shall not proceed upon letters rogatory of a foreign authority which requested enforcement of the criminal judgment rendered by a foreign court.

(2) In exceptional cases, regardless of the provision of paragraph 1 of the present Article, a domestic court shall enforce a foreign judgment regarding a sanction imposed by a foreign court if this is provided by an international treaty or based on reciprocity, and provided that the sanction is also imposed by the domestic court in accordance with the penal legislation of the Republic of Serbia.

(3) A court having jurisdiction shall render a judgment at the session of the Trial Chamber referred to in Article 24 paragraph 6 hereof. The Public Prosecutor and defense counsel shall be notified of the Trial Chamber session.

(4) Territorial jurisdiction of the court is determined according to the last domicile of the convicted person in the Republic of Serbia, and if he did not have a domicile in the Republic of Serbia – according to his place of birth. If the convicted person had no domicile nor was born in the Republic of Serbia, the Supreme Court of Serbia shall designate one of the courts having subject matter jurisdiction to conduct the proceedings.

(5) A court having subject matter jurisdiction is a court determined by the Law.

(6) In the ordering part of the judgment referred to in paragraph 3 of the present Article, the court shall include the complete ordering part and the name of the court referred to in the foreign judgment and shall impose a sanction. The statement of reasons of the judgment shall contain the reasons taken into account when imposing the sanction.

(7) The Public Prosecutor, the convicted person or his defense counsel and persons referred to in Article 388 paragraph 2 hereof may file an appeal against the judgment.

(8) If a foreigner sentenced by a domestic court or a person authorized by a treaty files a petition to the court at first instance that the convicted person serve the sentence in his own country, the court at first instance shall proceed upon the international treaty or reciprocity.

Centralization of data

Article 512

In regard with criminal offenses related to counterfeiting of money, money laundering, illicit manufacturing and trafficking in narcotics, trafficking in persons as well as other criminal offenses for which centralization of data is required under international treaties, the authority before which the proceedings are conducted shall without delay provide the Ministry of Internal Affairs with data about the criminal offence and the perpetrator, and the court at first instance shall provide the final judgment, as well.

Transfer of criminal cases to foreign state

Article 513

(1) If a foreigner who has residence in a foreign country commits a criminal offense in the territory of the Republic of Serbia, the criminal files may be transferred to

that country for the purpose of prosecution and trial regardless of the conditions specified under Article 540 hereof, provided that the foreign country does not object thereon.

(2) In the course of preliminary investigation and investigation, the Public Prosecutor shall decide on the transfer. Prior to coming into force of the indictment, the Investigative Judge shall render this decision upon the proposal of the Public Prosecutor, and prior to trial the decision is made by a Trial Chamber (Article 24, paragraph 6).

(3) Transfer may be allowed for criminal offenses punishable by a term of imprisonment not exceeding ten years, as well for criminal offenses against safety in traffic.

(4) If the injured person is a national of Serbia and Montenegro, the transfer shall not be allowed if he objects to that, unless a security to assert his claim of indemnification is deposited.

(5) If a defendant is in detention, the foreign state shall be requested to state in the most expedient manner and within a term of fifteen days, whether it shall assume prosecution.

Transfer of prosecution of a local citizen for an offence committed abroad

Article 514

(1) A request of a foreign state to the Republic of Serbia to prosecute a national of the Republic of Serbia or a person who has residence in the Republic of Serbia for a criminal offense committed abroad shall be sent along with the files to the Public Prosecutor having jurisdiction in the territory of the residence of this person.

(2) If a claim for indemnification is submitted to a competent authority of a foreign state, the procedure is the same as if it was submitted to the court having jurisdiction.

(3) The requesting state shall be notified of the denial of the request for transfer of proceedings as well as of the final decision rendered in criminal proceedings.

Additional legislation

Article 515

The minister in charge of judiciary shall more precisely regulate the contents of the request and other issues related to international legal assistance in criminal matters which are not specified by the present Code.

Chapter XXXV
PROCEEDINGS FOR EXTRADITION OF DEFENDANTS AND SENTENCED PERSONS

Provisions governing extradition of defendants and sentenced persons

Article 516

(1) Extradition of defendants or sentenced persons shall be conducted in accordance with the provisions of international treaties.

(2) If there is no international treaty or the international treaty does not regulate certain issues, extradition of defendants or sentenced persons shall be conducted in accordance with the provisions of the present Code.

Preconditions for extradition

Article 517

(1) Preconditions for extradition shall be the following:

1) that the person subject to extradition is not a national of Serbia and Montenegro;

2) that the offense for which extradition is requested is not committed in the territory of the Republic of Serbia, against it or its citizen;

3) that the offense for which extradition is requested is a criminal offence according to both domestic law and law of the state where it was committed;

4) that pursuant to the domestic law the statute of limitations for prosecution or enforcement of sentence has not expired, or that the criminal offence was not granted amnesty;

5) that the foreigner whose extradition is requested has not already been sentenced by a domestic court for the same offense or acquitted for the same offense by a final judgment rendered by the domestic court, except when the conditions specified in the present Code for reopening of criminal proceedings are met, or that against the foreigner, for the same offense committed against the Republic of Serbia, criminal proceedings have not been instituted in the Republic of Serbia, and if proceedings have been instituted for an offense committed against a citizen of Serbia and Montenegro - that a security for a claim for indemnification of the injured person is given;

6) that the identity of the person whose extradition is requested is established;

7) that there is enough evidence for reasonable suspicion that the foreigner, whose extradition is requested, has committed particular offense or that there is a final judgment.

(2) In accordance with the conditions referred to in paragraph 1 items 3, 4 and 6 of the present Article and provided that a foreigner or a citizen of Serbia and Montenegro has not been already sentenced for the same offense by a domestic court, extradition may be granted to an international court which is recognized by a ratified international agreement.

Request for extradition of defendants or sentenced persons

Article 518

(1) Proceedings for extradition of defendants or sentenced persons shall be instituted upon a request of a foreign state.

(2) The request shall be submitted to the authority determined by a special regulation.

(3) Along with the request, the following must be attached:

1) Means to establish the identity of the defendant or the sentenced person (an accurate description, photographs, finger prints etc);

2) Certificate or other proof of citizenship;

3) The indictment or judgment or decision on detention or other document equal to this decision, either as original or certified copy, which shall state the name and surname of the person whose extradition is requested as well as other data necessary to establish his identity, a description of the offense, its statutory title and evidence supporting reasonable suspicion;

4) The excerpt from the text of the criminal law of the foreign state with the provisions to be applied or have been applied against the defendant for the offense for which extradition is requested, and if the offense has been committed in the territory of a third state, the relevant excerpt from the criminal law of that state as well.

(4) If the above attachments are in a foreign language, their certified translation into Serbian language should be attached.

Proceedings before investigative judge

Article 519

(1) An authority determined by a special regulation shall forward the request for extradition to the investigative judge of the court within whose territory the foreigner resides or is located.

(2) If current residence of the foreigner whose extradition is requested is unknown, his previous residence shall be established through the police.

(3) If the request complies with conditions referred to in Article 518 hereof, the investigative judge shall order detention against the foreigner provided that grounds referred to in Article 174 hereof exist, or shall undertake other measures for securing his appearance, except when it is obvious from the request itself that there are no grounds for extradition. Detention may last at the longest until the enforcement of the decision on extradition, but no longer than one year from the day when he was detained. The provisions of Articles 175 and 178 paragraph 2 hereof shall apply *mutatis mutandis* to this detention.

(4) After he establishes the identity of the foreigner, the investigative judge shall without delay inform him about the reasons why his extradition is requested and about the evidence supporting the request and call him to present his defense.

(5) A record shall be made of interrogation and defense. The investigative judge shall advise the foreigner that he may retain a defense counsel or he shall appoint one for him *ex officio*, if defense is mandatory pursuant to the present Code.

Proceedings before investigative judge in urgent cases

Article 520

(1) In urgent cases, if there is danger that the foreigner may escape or hide, the police may arrest the foreigner in order to bring him before the investigative judge of the competent court, upon a request of a foreign authority, regardless of how the request was submitted. The request shall contain data for identification of the foreigner, the nature and title of the criminal offense, the case number, date, place and indication of the foreign authority which ordered detention and a statement that extradition shall be requested though regular channels.

(2) If detention pursuant to paragraph 1 of the present Article has been ordered and the foreigner is brought before the investigative judge, the investigative judge shall, after interrogation of the foreigner, order detention against him and notify the body determined by a special regulation thereof.

(3) The investigative judge shall release the foreigner when grounds for detention cease to exist, or if the request for extradition is not submitted within a time period

set by the investigative judge after taking into account distance of the foreign state which requested extradition, and which may not be longer than two months from the day the foreigner was arrested. The foreign state shall be notified of this term. Upon a request of the foreign state, the Trial Chamber of the court having jurisdiction may prolong this term for justifiable reasons for an additional month at the longest.

(4) When the request is submitted within the specified time, the investigative judge shall proceed in accordance with Article 519 paragraphs 3 and 4 of the present Code.

Delivery of the case file to the chamber

Article 521

(1) After having heard the Public Prosecutor and the defense counsel, the investigative judge shall, if appropriate, undertake other actions in order to establish whether the preconditions for granting extradition of a foreigner exist, or for handing over objects used in the commission of crime, provided that such objects have been confiscated from the foreigner.

(2) After the actions are completed, the investigative judge shall deliver the files along with his opinion, to the Trial Chamber (Article 24, paragraph 6).

(3) If against a foreigner whose extradition is requested criminal proceedings are under way before a domestic court, or if this person is sentenced or serving sentence for the same or other criminal offense, the investigative judge shall indicate so in the files.

Denial of the request for extradition

Article 522

(1) If the Trial Chamber of the court having jurisdiction establishes that the preconditions for granting extradition are not met, it shall render a ruling denying the request for extradition. This court shall *ex officio* deliver this ruling to the court designated by law of the member republic, which shall, after having heard the Public Prosecutor, uphold, set aside or amend the decision.

(2) If the foreigner is detained, the Trial Chamber may decide that he remain in detention until the ruling denying extradition becomes final.

(3) The final ruling denying extradition shall be delivered to the body determined by a special regulation, which shall notify the foreign state thereof.

Establishing of preconditions for extradition of a foreigner and appeal against ruling on extradition

Article 523

If the Trial Chamber of the court having jurisdiction establishes that the preconditions for granting extradition of a foreigner are met (Article 517), it shall render a ruling thereon. The foreigner may file an appeal against that decision with a court designated by the Law of the member republic.

Referral of case to the authority deciding on extradition

Article 524

If upon an appeal the court establishes that the preconditions for extradition are met, or if against such a ruling rendered by the court at first instance an appeal is not filed, the case shall be referred to the authority determined by a special regulation, who shall decide on extradition.

Rendering a ruling on denying or approving the extradition

Article 525

(1) The authority determined by a special regulation shall render a ruling granting or denying extradition. The authority may render a ruling to postpone extradition due to pending of criminal proceedings before a domestic court for other criminal offense committed by the foreigner whose extradition is requested, or because he is serving sentence in the Republic of Serbia.

(2) The authority determined by a special regulation shall not grant extradition of the foreigner who is entitled to asylum in the Republic of Serbia, or in case of a political or military offense, if the life or liberty of the foreigner is threatened due to his race, religion, ethnic origin, social status or political convictions, and there are serious reasons to believe that the foreigner shall be exposed to inhumane treatment or torture in the state which requested extradition, or if in the proceeding preceding extradition it was not made possible for the foreigner to retain a defense counsel, or the proceeding was not conducted in compliance with legal standards set in the ratified international treaties. The authority may deny extradition in case of criminal offenses which are according to domestic law punishable by a term of imprisonment not exceeding three years, or if the foreign court has imposed imprisonment sentence not exceeding one year.

Contents of the ruling granting extradition

Article 526

(1) The authority shall include the following in the ruling granting extradition of a foreigner:

1) that the foreigner may not be prosecuted for other criminal offense, committed prior to extradition;

2) that a penalty for other criminal offense committed prior to extradition may not be executed against the foreigner;

3) that no more severe penalty than one he is sentenced to or a death penalty may be executed against the foreigner;

4) that the foreigner may not be extradited to a third state for the purpose of prosecution for a criminal offense committed prior to extradition.

(2) In addition to the above said conditions, the authority determined by a special regulation may also set other conditions for extradition, in accordance with law and international treaty.

Notification of the foreign state on the ruling and delivery of the ruling to the Ministry of Internal Affairs

Article 527

(1) A foreign state shall be notified of the ruling on extradition through diplomatic channels.

(2) The ruling granting extradition shall be delivered to the Ministry of Internal Affairs which shall order that the foreigner be brought to the state border, where he shall be surrendered to the authorities of the foreign state which requested extradition.

Setting of priority in case when several states request extradition of the same person in relation to the same offence

Article 528

(1) If extradition of the same person is requested by several foreign states for the same criminal offense, priority shall be given to the request of the state whose national is the person requested, and if that state does not request extradition – to the request of the state on whose territory the criminal offense was committed, and if it was committed on the territory of several states or if unknown where it was committed – to the request of the state which first requested extradition.

(2) If extradition of the same person is requested by several foreign states for different criminal offenses, priority shall be given to the request of the state whose national is the person requested, and if that state does not request extradition – to the request of the state on whose territory the most severe criminal offense was committed, and if criminal offenses are of the same gravity – to the request of the state which first requested extradition.

Request for extradition of person who is in a foreign state

Article 529

(1) If a criminal proceeding is under way in the Republic of Serbia against a person who is abroad or if the person who is abroad is sentenced by a domestic court, the authority determined by a special regulation may submit a request for extradition.

(2) The request along with documents and information referred to in Article 518 hereof is submitted to a foreign state through diplomatic channels.

Request for detention of person whose extradition is requested

Article 530

(1) If there is a danger that the person whose extradition is requested may flee or hide, the authority determined by a special regulation may, before applying Article 529 of the present Code, request that measures be taken for that person to be arrested.

(2) The request for detention shall in particular include data about the identity of the person sought, nature and statutory title of the criminal offense, the case number, date, place and indication of the authority which ordered detention or information indicating that the judgment is final, as well as a statement that extradition shall be requested through regular channels.

Limitations related to prosecution and sentencing of the person whose extradition is requested

Article 531

(1) If a person is extradited, he may be prosecuted or a penalty may be executed only for the criminal offense for which extradition is granted.

(2) If such a person is convicted by a final judgment of a domestic court for other criminal offenses committed prior to extradition and for which extradition is not granted, the provisions of Article 424 hereof shall apply *mutatis mutandis.*

(3) If extradition is granted under certain conditions referring to the type and level of penalty to be imposed or executed, and provided that extradition under such conditions is accepted, the court shall be bound by these conditions when imposing a penalty, and if enforcing a penalty, the court which tried the case at last instance shall revise the judgment and adjust the penalty to the conditions of extradition.

(4) If the extradited person was detained in the foreign state for the criminal offense for which he was extradited, the time spent in detention shall be calculated in the penalty.

Transit of extradited person through the territory of Serbia

Article 532

(1) If a foreign state requests extradition from another foreign state and the person sought should be transferred through the territory of the Republic of Serbia, the authority determined by a special regulation may allow transit upon a request of the interested state, provided the person is not a national of Serbia and Montenegro and that extradition is not granted for a political or military offense.

(2) The request for transit of persons through the territory of the Republic of Serbia shall have to contain all data referred to in Article 518 hereof.

(3) The costs of transit through the territory of the Republic of Serbia shall be paid from the budget, provided that reciprocity exists.

Chapter XXXVI
PROCEEDINGS FOR COMPENSATION OF DAMAGES, REHABILITATION AND REALIZATION OF OTHER RIGHTS OF UNJUSTIFIABLY CONVICTED PERSONS OR PERSONS ILLEGALLY DEPRIVED OF LIBERTY

Persons entitled to compensation of damages due to wrongful conviction

Article 533

(1) The right to damages for wrongful conviction may be claimed by a person against whom a criminal sanction was imposed by a final decision or who was pronounced guilty but whose penalty was remitted, and subsequently, upon a request for an extraordinary judicial remedy, the new proceedings were discontinued by a final decision or the convicted person was acquitted by a final judgment or the charge was denied, except in the following cases:

1) If the proceeding was discontinued or the indictment denied by a judgment because in the new proceedings the subsidiary prosecutor or private prosecutor desisted from prosecution or if the injured person desisted from prosecution, provided that desistance occurred on the basis of an agreement with the defendant;

2) If the ruling on discontinuation of criminal proceeding or the judgment denying the indictment is rendered because the criminal offence was covered by amnesty or pardon;

3) If in the new proceeding the indictment was dismissed due to the lack of court's jurisdiction and the authorized prosecutor has initiated prosecution before the court having jurisdiction.

(2) A convicted person is not entitled to damages if he deliberately caused his conviction through a false confession or otherwise, unless he was forced to do so by illegal actions of an official of a government authority (article 9).

(3) In case of a conviction for concurrence of offenses, the right to damages may also apply to individual criminal offenses in respect of which conditions for granting of damages are met.

Filing of claim for damages to administrative authority

Article 534

(1) The statute of limitations for the right to damages shall expire in three years from the day the judgment at first instance for acquittal or judgment denying the indictment became final or from the day when the ruling at first instance on discontinuance of proceedings became final, and if a higher court decided on an appeal - from the day of receipt of the higher court decision.

(2) Before filing a civil claim for damages, the injured person shall submit his request to the competent authority, in order to reach an agreement on the existence of damage and the type and amount of compensation.

(3) In the case referred to in Article 533 paragraph 1 items 3 hereof, the claim for damages shall be decided only if the authorized prosecutor has not initiated prosecution before the court having jurisdiction within a term of three months from the day of receipt of the final decision. If after this time limit the authorized prosecutor initiates prosecution before the competent court, the proceeding for damages shall be adjourned until the conclusion of the criminal proceeding.

Civil Claim for Damages

Article 535

(1) If a claim for damages is not accepted or if the administrative authority does not decide upon it within three months from the day the claim is submitted, the injured person may bring a civil action for damages with the court having jurisdiction. If a settlement was reached only on one part of the claim, the injured person may bring a civil action regarding the rest of the claim.

(2) While the proceeding referred to in paragraph 1 of the present Article is under way, the statute of limitations referred to in Article 534 paragraph 1 of the present Code does not run.

(3) A civil action for damages is brought against the Republic of Serbia.

Rights of heirs of the injured person

Article 536

(1) The heirs shall inherit only the right to compensation of property damage. If the injured person filed a claim, the heirs may resume the proceedings only within the limits of the filed claim for compensation of property damage.

(2) The heirs may resume proceedings for compensation of damages or institute proceedings after his death if the injured person died before the statute of limitations expired and did not waive the claim, pursuant to the rules on damages specified by the Law on torts and contracts.

Right to damages for persons wrongfully deprived of liberty

Article 537

(1) The following persons shall also be entitled to damages:

1) A person who was detained or was imposed a ban referred to under Article 168, paragraph 2 hereof or who was otherwise deprived of liberty in connection with a criminal offence by a court, Public Prosecutor or the police, when criminal proceedings were not instituted or discontinued by a final ruling or who was acquitted by a final judgment or when the indictment was denied;

2) A person who served the sentence of imprisonment, and upon the request for the reopening of criminal proceedings, i.e. request for the protection of legality or request for a review of the legality of final judgment which was filed under the previous Criminal Procedure Code, or when the sentence of a shorter duration than the sentence served was imposed on him, or non-custodial criminal sanction was imposed or if he was pronounced guilty but the penalty was remitted;

3) A person who, due to an error or unlawful action of state authorities, was deprived of liberty without legal grounds, or was kept in detention or penitentiary institution or who was under the ban referred to in Article 168, paragraph 2 hereof for a longer period than prescribed;

4) A person whose detention or the ban referred to in Article 168, paragraph 2 hereof lasted longer than the sentence.

(2) A person who was deprived of liberty according to Article 267 hereof without legal grounds is entitled to damages if detention or the ban referred to in Article 168, paragraph 2 hereof was not ordered against him, or if the time during which he was deprived of liberty was not included in the penalty for the criminal offense or misdemeanor.

(3) A person who caused his deprivation of liberty by illicit acts is not entitled to damages. In cases referred to in paragraph 1 item 1 of the present Article, a person is not entitled to damages, despite the existence of circumstances referred to in Article 533 paragraph 1 items 1 and 2, or if the proceeding was discontinued pursuant to Article 248 hereof, or if judgment of non-suit was rendered, or the proceeding was not initiated due to settlement between the parties or due to pardon of offence (Article 477 and 268).

(4) In cases referred to in paragraphs 1 and 2 of the present Article the provisions of this Chapter shall apply *mutatis mutandis*.

Publication in the media of the decision revealing wrongfulness of previous judgment and delivery of such decision to other persons

Article 538

(1) If the case related to unjustifiable conviction or illegal deprivation of liberty of some person is announced in the media and the reputation of that person is damaged thereby, the court shall, upon his request, publish in newspapers or through other media the announcement on a decision declaring that the previous conviction was wrongful or that the deprivation of liberty was unlawful. If the case is not announced in the media, such announcement shall, upon this person's request, be delivered to a state authority, local government authority, enterprise, other legal entity or his employer, and if this is necessary for his rehabilitation – to a social or other organization. After the death of convicted person, his spouse, common-law partner, children, parents, brothers and sisters are entitled to submit such a request.

(2) The request referred to in paragraph 1 of the present Article may also be submitted if the claim for damages was not submitted.

(3) Regardless of the conditions referred to in Article 533 hereof, the request referred to in paragraph 1 of the present Article may also be submitted when the legal qualification of the offense was altered upon an extraordinary judicial remedy if, due to the legal qualification in the original judgment, the reputation of the convicted person was seriously damaged.

(4) The request referred to in paragraphs 1 to 3 of the present Article shall be submitted to the court which tried the case at first instance within a term of six months (Article 534, paragraph 1). A Trial Chamber (Article 24 paragraph 6) shall decide on the request. In deciding on the request, the provisions of Article 533 paragraphs 2 and 3 and Article 537 paragraph 3 shall apply *mutatis mutandis*.

Annulment of entry in criminal records

Article 539

The court which tried the case at first instance shall *ex officio* render a decision which annuls the entry of a wrongful conviction into the criminal register. The decision shall be delivered to an authority in charge of the criminal register. Data from the criminal register concerning the annulled entry shall not be available to anyone.

Limited inspection and copying of files

Article 540

A person allowed to inspect and copy files (Article 201) concerning wrongful conviction or illegal deprivation of liberty may not use data from such files in a manner which would be detrimental to the rehabilitation of the person against whom criminal proceedings were conducted. The President of the Court shall warn the person allowed to inspect the files, and this shall be noted on the file and signed by this person.

Retroactive recognition of employment right and social insurance

Article 541

(1) A person whose employment or social insurance was terminated due to a wrongful conviction or illegal deprivation of liberty shall have the same years of service or years of social insurance recognized as if he had been employed. The period of unemployment caused by a wrongful conviction or unlawful deprivation of liberty which was not caused through the fault of the person shall also be included in the years of service or social insurance.

(2) Whenever deciding on a right related to years of service or years of social insurance, the competent authority or institution shall take into account the years of

service or social insurance recognized by the provision of paragraph 1 of the present Article.

(3) If the authority or institution referred to in paragraph 2 of the present Article does not take into account the years of service or social insurance recognized by the provision of paragraph 1 of the present Article, the injured person may request that the court referred to in Article 535 paragraph 1 hereof determines that recognition of such a period occurred by force of law. A civil action is brought against the authority or institution which contests the recognition of years of service or social insurance and against the Republic of Serbia (Article 535 paragraph 3).

(4) Upon the request of the authority or institution competent for the realization of the right referred to in paragraph 2 hereof, the contributions specified for the period of time to which the person is entitled according to paragraph 1 of the present Article shall be paid out from budget funds (Article 535 paragraph 3).

(5) The years of social insurance recognized pursuant to the provision of paragraph 1 of the present Article shall also be the years of pension insurance.

Chapter XXXVII
PROCEEDINGS FOR ISSUANCE OF ARREST WARRANT AND NOTICE

Pursuit of the defendant and notification of his address

Article 542

If permanent or temporary address of the defendant is unknown, and where required pursuant to the provisions of the present Code, the court or Public Prosecutor shall request the police authority to look for the defendant and inform them on his address.

Issuance of arrest warrant

Article 543

(1) The issuance of arrest warrant may be ordered if the defendant is in flight and there is an order for his bringing or a decision on detention.

(2) Issuance of an arrest warrant is ordered by the court conducting the proceedings following the proposal of the Public Prosecutor or *ex officio*. In preliminary investigation and during investigation, the investigative judge shall order issuance of an arrest warrant, following the proposal of the Public Prosecutor. If the investigative judge does not agree with the proposal of the Public Prosecutor, the Trial Chamber referred to under Article 24, paragraph 6 hereof shall decide within 48 hours.

(3) The issuance of arrest warrant shall also be ordered if the defendant escapes from the institution where he is serving sentence regardless of the level of penalty, or from the institution where an institutional measure related to deprivation of liberty is enforced against him. In this case, the warden shall issue an arrest warrant.

(4) The order of the court or head of the institution for the issuance of an arrest warrant shall be delivered to the police authorities for execution.

Notice

Article 544

(1) Where information concerning particular objects related to a criminal offense is required or if these objects need to be located, and in particular if this is necessary to determine the identity of a corpse, it shall be ordered that a notice is published requiring that such information be communicated to the authority conducting the proceedings.

(2) The police authority may publish photographs of corpses and missing persons if there is reasonable suspicion that the death or disappearance of such persons was the result of a criminal offense.

Withdrawal of arrest warrant or notice

Article 545

The authority which ordered the issuance of arrest warrant or notice shall withdraw it immediately after the wanted person or object has been found, or after the statute of limitations for initiating prosecution or execution of penalty has expired, or due to other reasons for which the arrest warrant or notice is no longer necessary.

Issuance of arrest warrant or notice

Article 546

(1) An arrest warrant and notice shall be issued by the police authority located within the territory of the state authority before which criminal proceedings are conducted and of institution from which the person serving a sentence or institutional measure has escaped.

(2) Media may be used to inform the public of the arrest warrant and notice.

(3) If it is likely that the person on the wanted list is abroad, the Ministry of Internal Affairs may also issue an international arrest warrant, with the approval of the Ministry of Justice.

(4) Upon a request of a foreign authority, the Ministry of Internal Affairs may issue an arrest warrant for a person who is reasonably suspected to be in the Republic of Serbia, provided that the request states that extradition will be requested if such person is found.

Chapter XXXVIII
TRANSITIONAL AND FINAL PROVISIONS

Lack of judges and failure of setting up the chamber under Article 24, paragraph 6

Article 547

If, due to the lack of judges, a court which decides at first instance cannot constitute the Trial Chamber prescribed in Article 24 paragraph 6 hereof, the tasks of this chamber shall be discharged by a Trial Chamber of the directly higher court.

Terms which were applicable prior to entering into force of the present Code

Article 548

If on the day of entering into force of the present Code a term is running, it shall be calculated pursuant to the provisions of the present Code, unless the term was longer pursuant to provisions of previous regulations.

Terms for prosecution of crimes upon the motion of the injured party

Article 549

(1) For criminal offenses for which the perpetrator is prosecuted upon a motion of the injured person, the term referred to in Article 52 paragraph 1 hereof shall begin to run from the day of entry into force of the criminal law which prescribes that particular offenses shall be prosecuted upon a motion of the injured person.

(2) Criminal proceedings for criminal offenses which were prosecuted *ex officio* or upon a private charge before the Law referred to in paragraph 1 of the present Article entered into force, and after it entered into force upon a motion of the injured person, shall be conducted pursuant to the regulations applicable before the entry into force of such Law, provided that proceedings were instituted before that.

(3) If, in the case referred to in previous paragraph, a judgment is vacated in the proceedings conducted upon judicial remedies, further proceedings shall be conducted upon a private charge or motion of the injured person.

Right to reopening of criminal proceeding and compensation of damages to wrongfully convicted persons and persons wrongfully deprived of liberty pursuant to special provisions

Article 550

(1) The right to reopening of criminal proceedings terminated by a final judgment before January 1, 1954 shall be regulated by a separate Act. Until the adoption of such Act, Article 6 of the Initial Code for the Criminal Procedure Code ("Official Gazette of the Federal People's Republic of Yugoslavia", No. 40/53) shall be in force.

(2) Upon entry into force of the present Code, Article 7 of the Initial Code for the Criminal Procedure Code ("Official Gazette of Federal People's Republic of Yugoslavia", No. 40/53) shall also apply with respect to damages to wrongfully convicted persons or persons unlawfully deprived of liberty, unless otherwise provided by the special Act referred to in paragraph 1 of the present Article.

Article 551

Persons with the status of witness collaborator granted pursuant to previous CPC

Persons who were granted the status of witness collaborator prior to entering into force of the present Code shall retain such status, and their status in the criminal proceeding shall be governed by the provisions of previous Criminal Procedure Code (Articles 504e – 504g).

Application of provisions of the previous Code

Article 552

(1) If, before the day of entry into force of the present Code, investigation was started pursuant to provisions of the previous CPC (Official Gazette of the FRY, nos. 70/01 and 68/02 and Official Gazette of the RS, nos. 58/04, 85/05 and 115/05, the investigation shall be completed in accordance with such provisions.

(2) If, before the day of entry into force of the present Code, a decision was rendered from which, according to then applicable law, a judicial remedy may be taken, and if such a decision is not yet delivered, or if the term for submitting the judicial remedy is still running, or the judicial remedy was submitted but the decision is not yet rendered, the provisions of the Criminal Procedure Code (Official Gazette of the FRY, nos. 70/01 and 68/02 and Official Gazette of the RS, nos. 58/04, 85/05 and 115/05) shall apply regarding the right to judicial remedy and proceedings upon judicial remedy.

Adoption of implementing legislation (by laws)

Article 553

The competent authorities shall pass implementing legislation specified in this Code within a term of six months from the day of entry into force of the present Code.

Revocation of previous Criminal Procedure Code

Article 554

By entry into force of the present Code, the Criminal Procedure Code (Official Gazette of the FRY, nos. 70/01 and 68/02 and Official Gazette of the RS, nos. 58/04, 85/05 and 115/05) shall be revoked.

Entering into force of the Criminal Procedure Code

Article 555

This Code shall enter into force eight days after its publication in the Official Gazette of the Republic of Serbia and shall apply as of 1 June 2007, except for Articles 107, 110, 117 through 122 and Articles 333 through 335 hereof, which shall apply as of the day of entry into force of the present Code.