

**Code of Criminal Procedure**  
**(amended)**

# **ACT**

on Criminal Judicial Procedure

(Code of Criminal Procedure)

No. 141/1961 Coll. in the wording of acts No. 57/1965  
Coll., No. 58/1969 Coll., No. 149/1969 Coll., No. 48/1973 Coll., No. 29/1978 Coll.,  
No. 43/1980 Coll., No. 159/1989 Coll., No. 178/1990 Coll., No. 303/1990 Coll., No.  
558/1991  
Coll., No. 6/1993 Coll., No. 178/1993 Coll., and in the  
wording of the Act passed by the National Council of  
the Slovak Republic on 18 August 1994.

## **PART ONE**

### **COMMON PROVISIONS**

#### **CHAPTER ONE**

##### **GENERAL PROVISIONS**

## **Section 1**

### **Purpose of the Act**

/1/ The purpose of the Code of Criminal Procedure is to regulate procedures used by the bodies active in penal proceedings to ensure that criminal offences be properly investigated and their perpetrators justly punished under the law. The proceedings shall also strengthen the rule of law, prevent and suppress criminal activity, educate citizens to consistently abide by the law and the rules of civil co-existence and to honestly fulfil their duties to the State and the society.

/2/ The citizens shall have the right and, under the provisions of the present Act, also the duty to assist in the attainment of the purpose of criminal proceedings.

## **Section 2**

### **Basic Principles of Criminal Proceedings**

/1/ No one shall be prosecuted as accused on other than the legal grounds and in any other manner than that provided for under the present Act.

/2/ Any person charged with an offense shall be presumed innocent until proven guilty by a final sentencing judgment of a court.

/3/ The prosecutors shall have the duty to prosecute all criminal offences of which they gained knowledge; exceptions shall only be admissible under a law or a promulgated international treaty.

/4/ Unless the present Act provides otherwise, the bodies active in criminal proceedings shall act ex officio; they shall hear criminal cases without any undue delay and shall consistently observe human rights as guaranteed by the Constitution. The bodies active in criminal proceedings shall not consider the petitions whose content infringes on the fulfilment of this duty.

/5/ The bodies active in criminal proceedings shall proceed so as to properly establish the facts of the case to the extent necessary for making the decision. They shall thoroughly clarify the circumstances regardless of whether they prejudice or benefit the accused and they shall take evidence in both these directions without waiting for the motion of the parties. The confession of the accused shall not relieve the bodies active in criminal proceedings of their duty to review all the circumstances of the case.

/6/ In evaluating the evidence, the bodies active in criminal proceedings shall act in accordance with their deep conviction based on the careful consideration of all the facts of the case, separately and jointly, irrespective of whether they were supplied by the bodies active in criminal proceedings or by one of the parties to the proceedings.

/7/ All the bodies active in criminal proceedings shall co-operate with civil associations and shall make use of the educational impact thereof.

/8/ Judicial criminal proceedings shall only be initiated on the basis of an indictment filed by a prosecutor.

/9/ In judicial criminal proceedings, the decision shall be made by a panel of judges or by single judges; presiding judges of panels or single judges shall decide alone only when the law expressly provides for it. Decisions made in pre-trial proceedings by a first-instance court shall be taken by single judges.

/10/ Criminal cases shall be heard in open court to give the citizens a possibility to attend the hearing and to follow the trial. Public attendance may be excluded from the main hearing and open court hearing only in cases explicitly provided for under the present Act.

/11/ Judicial proceedings shall be oral; as a rule, the court shall take evidence on the basis of witness statements, expert testimonies and from the accused by interrogating these persons.

/12/ When deciding at the main hearing, open or closed court hearing, the court shall consider only evidence that was taken during the hearing.

/13/ The party against whom the proceedings has been instituted shall be advised of his right to defence and his right to choose a counsel at any stage in the proceedings; all the bodies active in criminal proceedings shall make it possible for this party to exercise his rights.

/14/ Every person shall have the right to use his mother tongue before the bodies active in criminal proceedings.

## **Co-operation with Civil Associations**

### **Section 3**

/1/ The bodies active in criminal proceedings shall co-operate with civil associations to strengthen the educational impact of criminal proceedings and to use these organisations to suppress and prevent criminal activities.

/2/ Civil associations may inform the bodies active in criminal proceedings of the cases of the violation of law and thus cause criminal prosecution. They may file a motion to hold the court hearing of the case at the workplace of the accused or in the community in which the accused lives so as to strengthen educational impact of criminal proceedings. The court shall also co-operate with civil associations in securing the participation of citizens in court hearings; under the provisions of the present Act, these associations shall cooperate in re-educating persons sentenced on probation and released on parole; they shall also help creating conditions that will allow the convicted person to lead normal life after serving the sentence.

#### **Section 4**

/1/ Civil associations which, for the purpose of the present Act, shall mean especially the trade unions and other social organisations, work collectives and churches, excluding the political parties and political movements, may - in consultation with their members - offer a pledge of re-educating the accused if there are reasonable grounds to believe that the accused can be reformed under the influence of the collective. The court that received such motion shall discuss the matter at the main hearing, usually in the presence of members of the civil association concerned; if the court decides to accept the pledge, it will take this fact into account in imposing the sentence. In particular, and if the Penal Act allows it, the court may suspend the execution of the sentence or impose a different type of sentence which does not include the deprivation of liberty, or it may waive the punishment altogether.

/2/ The civil association that offered a pledge shall take care of re-educating and reforming the accused entrusted to their care and of the accused compensating for the damage inflicted as a result of his criminal offence.

#### **Section 5**

Pursuant to section 4 civil associations shall have the right to appoint their representative to attend the hearing of the case before a district court or a regional court acting as a court of appeal; on the basis of a ruling issued by the court concerned, such representative shall attend the hearing in conformity with the provisions of the present

Act and present the position of the collective concerned on the criminal case being heard, on the offender and on the possibility of his correction (section 183).

## **Section 6**

/1/ Pursuant to section 4 paragraph (1), civil associations may offer a pledge of assuming responsibility for ensuring the correction of a convicted person and to apply, on this basis, for a release on probation of the person serving an imprisonment sentence or for a conditional pardon of the remainder of his sentence or of the ban on performing certain activities or the ban of residence. To collect the data for such motion they may request information on how far the re-education of the sentenced person progressed.

/2/ Civil associations may also propose to replace custody of the accused with their pledge (section 73) and, on behalf of the convicted person, file a petition for pardon and for the erasure of the sentence.

## **Cooperation of Public Authorities, Municipalities and Other Legal Entities and Natural Persons**

## **Section 7**

The bodies active in criminal proceedings shall have the duty to assist one another in the fulfilment of the tasks ensuing from the present Act.

## **Section 8**

/1/ Public authorities, municipalities and other legal entities as well as natural persons carrying out entrepreneurial activities under separate legislation shall assist the bodies active in criminal proceedings in the fulfilment of their tasks and, in particular, promptly respond to their request for legal assistance. Public authorities shall inform without delay the prosecutors or the police bodies of the facts indicating the commission of a criminal offence. Municipalities and other legal entities as well as

natural persons carrying out entrepreneurial activities under separate legislation shall inform the prosecutors or the police bodies of the facts indicating the commission of crime if such duty is imposed on them under separate legislation<sup>1/</sup>.

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<sup>1/</sup> Section 6, Act of the National Council of the Slovak Republic No. .../1994 Coll. on combating the legalisation of proceeds from the most serious, especially organised forms of criminal activities and changes in some other laws.

/2/ In pre-trial proceedings, data that are subject to bank secrecy regulations may only be requested by a prosecutor. An investigator or a police body may request such data only with a prior authorization by a prosecutor. In judicial proceedings, such data may be requested by the presiding judge of a panel.

/3/ If the data specified in section 7 paragraph (2) are necessary to verify informations and other motions (section 158 paragraph 3) reporting criminal offences under separate legislation<sup>2/</sup>, a prosecutor may request such data also outside pre-trial proceedings.

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<sup>2/</sup> Section 2, Act of the National Council of the Slovak Republic No. .../1994 Coll. on combating the legalisation of proceeds from the most serious, especially organized forms of crime and on the amendment of some other laws.

/4/ The provisions of sections 8 paragraphs (1) and (2) do not relieve of the obligation of non-disclosure of State secrets.

## **Section 8a**

### **Public Information on Criminal Proceedings**

/1/ The bodies active in criminal proceedings shall inform the public of their activities through the mass media. They shall take care not to endanger the clarification of facts relevant for adjudicating the case, not to report those data about the parties to criminal proceedings that are not directly connected with the criminal act, and not to violate the principle of considering the person against whom the criminal proceedings

has been instituted innocent until proven guilty by a final sentencing judgment (section 2 paragraph (2)).

/2/ The bodies active in criminal proceedings shall have the right to withhold information on any of the grounds set out in section 8a paragraph (1).

## **Section 9**

### **Assessment of Preliminary Issues**

/1/ The bodies active in criminal proceedings shall have the competence to assess the preliminary issues arising in the proceedings; if, however, a court or another public authority has finally decided on the issue concerned, the bodies active in criminal proceedings shall be bound by such decision unless it involves assessment of guilt of the accused.

/2/ The bodies active in criminal proceedings shall not have the competence to assess the preliminary issues related to one's personal status which are subject to a decision in civil judicial proceedings. If no decision was made on the given issue, they shall wait for such decision.

## **Section 10**

### **Exemption from the Competence of Bodies Active in Criminal Proceedings**

/1/ Any person granted privileges and immunities under domestic or international law shall be exempt from the competence of the bodies active in criminal proceedings.

/2/ If in doubt whether and/or to what extent does the present Act entitle a person to exemption from the competence of the bodies active in criminal proceedings, the Minister of Justice shall be asked to give his opinion on the matter; such opinion shall be binding for all the bodies active in criminal proceedings.

## **Section 11**

## **Inadmissibility of Criminal Prosecution**

/1/ Criminal prosecution may not be instituted or, if already initiated, may not continue and shall be stayed

a/ on an order by the President of the Republic in pursuance of his right to grant pardon or amnesty,

b/ if penal prosecution is not allowed because of the statute of limitation;

c/ if the prosecution is conducted against a person enjoying exemption from the jurisdiction of the bodies active in criminal proceedings (section 10) or a person who may be lawfully prosecuted only on the basis of an authorization and the competent body has not issued such authorization,

d/ if conducted against a minor person who may not be held criminally liable,

e/ if conducted against a deceased person,

f/ if conducted against a person whose previous prosecution for the same offence resulted in a final court sentence or was lawfully stayed, unless such decision was nullified in the prescribed manner,

g/ if conducted against a person whose previous prosecution for the same offence resulted in a final decision by a body having competence for prosecuting criminal offences, unless such decision was nullified in the prescribed manner,

h/ if the criminal prosecution requires the consent of the injured and such consent has not been granted or has been withdrawn (section 163a), or

i/ if so stipulated by a promulgated international treaty to which the Slovak Republic is a signatory.

/2/ Criminal prosecution stayed on the grounds set out in subparagraphs a/ or b/ of paragraph (1) shall, however, be resumed if the accused declares, within three days from receiving the notice on the staying of criminal prosecution, that he insists on the case being heard. The accused shall be duly advised of this right.

## **Section 12**

### **Definitions of Certain Terms**

/1/ The term "bodies active in criminal proceedings" means the court, the prosecutor, the investigator and the police body.

/2/ The term "police bodies" means the competent bodies of the Police Corps<sup>3/</sup>. The competent bodies of the Military Police<sup>4/</sup> shall have the same status in the proceedings held against the members of armed forces, competent bodies of the Corps of the Prison and Judicial Guard of the Slovak Republic shall have the same status in the proceedings against the members of the Corps<sup>5/</sup> and the persons serving imprisonment sentences or held in custody detention, competent bodies of the Railway Police of the Slovak Republic<sup>6/</sup> shall have the same status in the proceedings held against the members of the Corps and the persons who committed crimes within the circuit of the railway tracks and sidings, customs authorities<sup>7/</sup> shall have the same competence for offenses involving the violation of customs regulations, and the captains of long-distance vessels<sup>8/</sup> shall have the same competence for criminal offences committed on their ships.

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<sup>3/</sup> Section 5 the Act No. 171/1993 Coll. of the National Council of the Slovak Republic on the Police Corps.

<sup>4/</sup> Act No. 124/92 Coll. on Military Police.

<sup>5/</sup> Act No. 59/1960 Coll. on serving a deprivation of liberty sentence in the wording of later regulations.

<sup>6/</sup> Act No. 230/1990 Coll. on the Federal Railway Police in the wording of the Act No. 61/1993 Coll. of the National Council of the Slovak Republic on Railway Police of the Slovak Republic.

<sup>7/</sup> Act No. 618/92 Coll., Customs Act, in the wording of the Act No. 165/93 Coll. of the National Council of the Slovak Republic.

<sup>8/</sup> Section 38 Act No. 61/1952 Coll. on Maritime Navigation.

/3/ Whenever the present Act mentions a court, it means a district court, a regional court, a military circuit court, the higher military court and the Supreme Court of the Slovak Republic ("Supreme Court" hereinafter).

/4/ Wherever the present Act mentions a district court, it also means a subdistrict court or a different court with the same competence and, unless specific provisions indicate otherwise, also a military circuit court; wherever the present Act mention a regional court, it also means the Bratislava Municipal Court and, unless specific provisions provide otherwise, also the higher military court.

/5/ Wherever the present Act mentions a district prosecutor, it also means a subdistrict prosecutor or another prosecutor with the same competence and, unless specific provisions provide otherwise, also a military circuit prosecutor; wherever the present Act mentions a regional prosecutor, it also means the municipal prosecutor in Bratislava and, unless specific provisions provide otherwise, also the higher military prosecutor.

/6/ A "party" is the person against whom the criminal proceedings has been instituted, a participating person and the injured and, in judicial proceedings, also a prosecutor and a representative of a civil association; the person on a petition or a motion of whom the proceedings is being held or who applied for legal remedy has the same status as a party.

/7/ Wherever the present Act mentions an organisation, it means legal entities and natural persons carrying out entrepreneurial activities under separate legislation, except for the case set out in section 4 paragraph (1).

/8/ Unless the nature of the case indicates otherwise, an accused means also a defendant and a convicted person.

/9/ After the main hearing has been ordered, the accused shall be called the defendant.

/10/ The convicted person is a person found guilty in a final sentencing judgment.

/11/ Criminal proceedings are the proceedings held in compliance with the present Act; criminal prosecution is that part of the proceedings which starts with the opening of the investigation and ends when a judgment or other decision of a body active in criminal proceedings on the same case becomes final; pre-trial proceedings start with the opening of investigation or with the execution of urgent or unrepeatable procedures (section 158 paragraphss (4) and (6)) and end with the filing of indictment, reference of the case, suspension or staying of criminal prosecution before laying indictment.

## **CHAPTER TWO**

# **THE COURT AND PERSONS TAKING PART IN THE PROCEEDINGS**

## **Title One**

### **Jurisdiction and Competence of the Courts**

#### **Section 13**

##### **Exercise of Criminal Jurisdiction**

The system of courts that exercise the jurisdiction over criminal cases shall be laid down under separate legislation.

##### **Jurisdiction of Military Courts**

#### **Section 14**

/1/ Military courts have the jurisdiction over

a/ soldiers on active duty,

b/ members of armed corps or other corps for whom, if they are on active duty, the jurisdiction is set out under separate legislation,

c/ persons called to perform a special duty and who thus became members of the armed forces,

d/ persons called to carry out special tasks for the needs of armed forces,

e/ prisoners of war.

/2/ Soldiers and members of the corps listed in paragraph (1) subparagraph b/ shall be subject to the jurisdiction of military courts even if they are not on active duty if they committed a crime of military nature while wearing a uniform.

/3/ The jurisdiction of military courts extends also to civilian persons who committed

a/ criminal offences of war treason (section 114, Penal Act), serving in a foreign army (section 115, Penal Act), and failure to comply with the conscription order (sections 269 through 271, Penal Act),

b/ criminal offences of espionage (section 105, Penal Act) and endangering the State secrecy (sections 106, 107, Penal Act) if this resulted in a threat to vital interests of the defence of the country.

## **Section 15**

/1/ The jurisdiction of military courts under section 14 paragraph 1 shall extend only to criminal offences that were committed while the relationship that gives grounds for such jurisdiction lasted.

/2/ If the criminal offence subject to the jurisdiction of a military court and committed by a person covered by the jurisdiction of such court under section 14 paragraph (1) is exposed after the termination of the relationship that gives grounds for such jurisdiction and if the offence is not of military nature or one of the offences set out under section 14 paragraph 3, the military court may hand the case over to a competent district or regional court, or a prosecutor may lay indictment directly to a competent district or regional court; such shall not have the right to refer the case back to a military court.

## **Substantive Jurisdiction**

### **Section 16**

Unless the present Act provides otherwise, the proceedings shall be conducted in the first instance by a district court.

### **Section 17**

A regional court shall act as a first-instance court in respect of criminal offences punishable by imprisonment sentence of minimum eight years or by exceptional

punishment. A regional court shall also act as a first-instance court in respect of criminal offences of terrorism, diversion, sabotage, tax evasion under section 148 paragraph (5) of the Penal Act, criminal offences under separate legislation<sup>2/</sup> and criminal offences under the law on the safeguarding of peace even if the minimum imposable sentence is lower.

## **Territorial Jurisdiction**

### **Section 18**

/1/ The proceedings shall be held by the court in whose district the crime was committed.

/2/ If the place of crime cannot be identified or if the criminal offence was committed in a foreign country, the proceedings shall be held by the court having jurisdiction over the accused's domicile, workplace or place of residence; if such places cannot be identified or are located outside of the territory of the Slovak Republic, the proceedings shall be held by a court that has jurisdiction over the place in which the criminal offence was exposed.

**19 - deleted**

## **Joint Proceedings**

### **Section 20**

/1/ All criminal offences committed by the same accused and all the persons accused of interrelated criminal offences shall be tried in joint proceedings.

/2/ Joint proceedings held in respect of a criminal offence to be tried by a single judge or a criminal offence to be tried by a panel of judges shall be held by a panel of judges.

/3/ If a person subject to the jurisdiction of a military court is prosecuted for a concurrent offence related to the offence subject to the jurisdiction of the military court, the case shall be tried by the military court which shall also rule on the related

criminal offence. The provision of section 20 paragraph (1) shall not apply to the relationship between a district and a regional court on the one hand and military courts on the other hand.

## **Section 21**

/1/ A regional court shall hold joint proceedings if it has jurisdiction over at least one of the criminal offences involved.

/2/ Joint proceedings shall be held by that court which has jurisdiction over the offender or the most serious criminal offence.

## **Section 22**

### **Jurisdiction of Several Courts**

If more than one court have jurisdiction under the preceding provisions, the proceedings shall be held by that court to which the prosecutor laid the indictment or to which the case was referred by a court that does not have the requisite jurisdiction.

## **Section 23**

### **Exclusion and Joinder of Cases**

/1/ To expedite the proceedings or because of other serious reasons certain criminal offences or certain accused persons may be excluded from joint proceedings.

/2/ The competence of the court which excluded a case shall not be affected; if, however, a regional court excludes a case which is otherwise under the competence of a district court, it may refer the case to the latter.

/3/ If the circumstances warrant joint proceedings, the court may join cases, the indictments for which were filed separately, hold joint proceedings and make a joint decision.

## **Section 24**

### **Competence Disputes**

Any dispute concerning the competence of courts shall be settled by that court which is immediately superior to the courts involved.

## **Section 25**

### **Change of Venue**

Because of serious reasons, a case may be withdrawn from the competent court and assigned to a different court of the same type and level; the withdrawal and assignment order shall be issued by that court which is immediately superior to the courts involved.

## **Section 26**

### **Competence of Courts for Pre-trial Procedures**

/1/ The courts competent to hold pre-trial proceedings shall be the courts in whose district sits the prosecutor who filed the motion.

/2/ In cases set out in section 17, pre-trial proceedings shall be held under the competence of the district court which operates in the seat of the regional court and a military district court.

## **Title Two**

### **Assisting Persons**

## **Section 27**

## **Recording Clerk**

As a rule, a sworn-in clerk shall be appointed to take minutes on procedures carried out by the bodies active in criminal proceedings. In the absence of such a clerk, the minutes shall be taken by the person who carried out the procedure.

## **Interpreter**

### **Section 28**

If there is a need to translate the content of a statement or a written document or if the accused declares that he does not speak the language of the proceedings, he shall be assigned an interpreter; the interpreter may also act as the clerk.

### **Section 29**

/1/ Assignment of an interpreter, his qualifications for and disqualification from this function, the right to refuse serving as interpreter and reimbursement of cash expenses and fee for interpreter's services shall be governed under separate regulations.

/2/ The amount of interpreter's reimbursement and fee shall be determined by the body who recruited the interpreter and, in judicial proceedings, by the presiding judge of a panel. If this body or the presiding judge of a panel do not agree with the amount of interpreter's reimbursement and fee, they adopt a ruling on its amount. This ruling shall be liable for complaint having a suspensive effect.

## **Title Three**

### **Disqualification of Bodies Active in Criminal Proceedings**

### **Section 30**

/1/ Judges, assessors, prosecutors, investigators, police bodies or clerks shall be disqualified from a criminal case whenever there are reasonable grounds to question their impartiality with respect to the case under consideration or to persons directly involved in the proceedings, their defence counsels, legal representatives and proxies, or another body involved in the same proceedings.

/2/ A judge or an assessor shall also be disqualified from criminal proceedings if he had served as a prosecutor, investigator, member of the police body, representative of civil association, defence counsel or proxy of a participating person or the injured in the same matter. After the indictment has been filed, the judge who - in pre-trial proceedings - issued a house search warrant, an arrest warrant or custody ruling in respect of the person against whom an indictment was subsequently filed shall also be disqualified.

/3/ Moreover, a judge or assessor who took part in the decision of a lower-instance court shall be disqualified from deciding at a higher-instance court and vice-versa. The judge who was deciding on the case as a judge of a court of different instance shall be disqualified from deciding on the complaint alleging the breach of law in the same matter. The prosecutor who issued the contested decision or gave his approval or instruction for that decision shall be disqualified from the decision on that matter by a superior body.

/4/ If a judge or assessor to be disqualified agrees, the court president may appoint a different judge or assessor to replace him.

### **Section 31**

/1/ The disqualification decision shall be made by the immediately superior body on the basis of announcement by the person to be disqualified or objection raised by one of the parties. Pending the disqualification decision, the person concerned shall perform only those procedures that are urgent.

/2/ The decision concerning the disqualification of a judge or assessor shall be made by the panel of judges at the superior court. The decision concerning the disqualification of a supreme court judge shall be taken by a panel of judges of that court. If the disqualification decision is made in respect of a judge or an assessor, he shall be replaced by a different judge or assessor by the president of the court.

/3/ Objection of bias raised by a party to the proceedings and based on the same grounds as a previous objection on which a decision had already taken shall not be considered.

## **Title Four**

### **Accused**

#### **Section 32**

### **Accused**

Any person suspected of having committed a crime shall be considered as accused and the measures provided for under the present Act shall be used in respect of such person only after he was charged with the crime (section 160).

#### **Section 33**

### **Rights of the Accused**

/1/ The accused shall have the right to give his opinion on any allegation of his guilt and the supporting evidence without, however, having the obligation to testify. He may state the circumstances and give evidence for his defence, file motions and petitions and apply for legal remedies. He shall have the right to elect and consult a counsel also in the course of procedures carried out by the bodies active in criminal proceedings. The accused, however, shall not have the right to consult his counsel about his answers to questions asked during the interrogation. He may ask to be interrogated in the presence of his counsel and to have the counsel present also at other stages of pre-trial proceedings (section 165). If he is in custody detention or serves an imprisonment sentence, he may speak with his counsel in the absence of a third person. The accused shall have these rights also if he is deprived of legal capacity or if his legal capacity is restricted.

/2/ The accused who cannot afford to pay the defence costs shall have the right to a free counsel or to the defence for a reduced legal fee.

/3/ All the bodies active in criminal proceedings shall at any moment advise the accused of his rights and give him a possibility to fully exercise his rights.

## **Section 34**

### **Legal Representative of the Accused**

/1/ The legal representative of the accused deprived of legal capacity or having a restricted legal capacity shall have the right to represent the accused; he shall, in particular, choose a counsel, file motions, petitions and apply for legal remedies on behalf of the accused; he shall also have the right to participate in all the procedures in which an accused may lawfully participate. The legal representative may exercise these rights even against the will of the accused.

/2/ If the legal representative of an accused may not exercise his rights under section 34 paragraph (1) and there is a danger of omission, the presiding judge of a panel or, in pre-trial proceedings, a prosecutor may appoint a guardian to exercise these rights on behalf of the accused. The decision on appointing a guardian is liable for complaint.

## **Title Five**

### **Defence Counsel**

## **Section 35**

### **Defence Counsel**

/1/ Only a lawyer may serve as a defence counsel in criminal proceedings. During different stages of criminal proceedings, except for judicial proceedings, a defence counsel may be represented by his lawyer clerk.

/2/ No person summoned to appear at the main hearing and open court hearing as a witness, expert or interpreter may act as a defence counsel therein.

## **Mandatory Defence**

### **Section 36**

/1/ The accused shall have a counsel already during pre-trial proceedings if he

a/ is remanded in custody, serves an imprisonment sentence or is held for observation at a medical institution (section 116 paragraph (2)),

b/ is deprived of legal capacity or his legal capacity is restricted,

c/ is a juvenile or

d/ is an escaped prisoner.

/2/ A counsel shall be mandatory also if the court or a prosecutor in pre-trial proceedings deem it necessary because they are in doubt whether, in view of his physical or mental handicap, the accused is capable of proper defence.

/3/ If the proceedings is held in respect of an offence punishable by the sentence of a minimum five years of imprisonment, the counsel shall be mandatory already at the pre-trial stage of the proceedings.

/4/ A defence counsel shall be mandatory also in the proceedings held in respect of extradition and imposition of protective treatment, except for protective alcohol abuse treatment.

### **Section 36a**

/1/ A counsel shall be mandatory in the sentence enforcement proceedings in which the court decides in open court hearing when the accused

a/ is deprived of legal capacity or has a restricted legal capacity,

b/ is a juvenile released on parole who, at the time of open court hearing, was younger than 18 years of age,

c/ is remanded in custody or

d/ if there are any doubts concerning the ability of the accused to properly defend himself.

/2/ In the proceedings held in respect of complaints alleging the breach of law and proceedings involving the motion for a new trial, the counsel shall be mandatory

a/ if any of the section 36 paragraph (1), subparagraphs a/ or b/ applies,

b/ if the criminal offence is punishable by a maximum sentence of more than five years of imprisonment,

c/ if he is a juvenile who, at the time when the complaint alleging the breach of law or the motion for a new trial is heard in open court hearing, is less than eighteen years old, or

d/ if there is any doubt concerning the accused's ability to properly defend himself,

e/ if the proceedings is conducted against a sentenced person who died.

### **Section 37**

#### **Elected Defence Counsel**

/1/ If the accused does not exercise his right to choose a counsel and if a counsel is not chosen for him by his legal representative, a counsel may be chosen for him by a relative in the direct line of descent, his sibling, adopter, adoptee, spouse, common-law spouse or a participating person. If the accused is deprived of legal capacity or has a restricted legal capacity, the aforesaid persons may do so even against his will.

/2/ The accused may choose a different counsel than the one appointed to him or chosen for him by an authorized person.

#### **Assigned Defence Counsel**

### **Section 38**

/1/ If the accused has no counsel in a case where the counsel is mandatory (sections 36 and 36a), he shall be given a time limit to elect one. If he fails to elect a counsel within this time limit, he shall be promptly assigned a counsel during the period in which the grounds for mandatory defence apply.

/2/ If there are several accused persons, a common defence counsel shall be, as a rule, assigned to those accused whose interests in criminal proceedings are not in conflict.

### **Section 39**

/1/ The counsel shall be assigned and, if the grounds for mandatory defence cease to exist, recalled by the presiding judge of a panel or, in pre-trial proceedings, by a judge.

/2/ If there is a joinder of cases to be tried and decided in joint proceedings and if a counsel was assigned for the accused in each case, the presiding judge of a panel or a judge in pre-trial proceedings shall recall those defence counsels who were assigned at a later date. If the counsels were assigned at the same time, he shall recall those counsels who were appointed to deal with a less serious offence.

### **Section 40**

The assigned counsel shall have to accept the appointment. However, if serious reasons exist, the counsel may be relieved of this duty at his own application or application of the accused and replaced by a substitute. Such decision shall be made by the presiding judge of a panel in judicial proceedings or by a judge in pre-trial proceedings.

### **Section 41**

#### **Responsibilities and Rights of a Counsel**

/1/ A counsel shall give the accused appropriate legal assistance, effectively apply lawful means and ways of defence for protecting the latter's interests, mainly with the

aim of proper and timely clarification of facts proving the innocence of the accused or alleviating his guilt and thereby contribute to a proper clarification and decision of the case.

/2/ Already at the stage of pre-trial proceedings, the counsel shall have the right to file motions and petitions and to apply for legal remedies on behalf of the accused, to have access to the files (section 65) and to participate in the investigation pursuant to the provisions of the present Act. The counsel shall have the right to speak with the accused remanded in custody pursuant to section 33 paragraph (1).

/3/ In the course of judicial proceedings, the counsel shall have the right to participate in all the procedures open to the participation of the accused.

/4/ If the accused is deprived of legal capacity or if his legal capacity is restricted, the counsel may exercise his rights pursuant to section 42 paragraphs (2) and (3) even against the former's will.

/5/ Unless the power of attorney given to the counsel at the moment of his election or appointment states otherwise, it shall become void at the closure of prosecution. Even after the power of attorney has become void, the counsel shall have the right to file a petition demanding pardon and petition for suspending the execution of the sentence.

/6/ At any stage of criminal proceedings, the counsel shall have the right to request an advance copy or transcript of the minutes (section 55) on each procedure of criminal proceedings. The bodies active in criminal proceedings (section 12 paragraph (1)) shall have to grant such request; it may only be refused on technical grounds. He shall indemnify the State for the costs involved.

## **Title Six**

### **Participating Person**

#### **Section 42**

/1/ A person whose property was seized or is to be seized as a result of a pending motion (the participating person) shall be given an opportunity to give an opinion on the matter; he may participate in the main hearing and open court hearing, have access to the files (section 65) and file application for legal remedies in cases set out in the present Act.

/2/ The bodies active in criminal proceeding shall have to advise the participating person of his right and to enable the exercise of these rights.

/3/ If the participating person is deprived of legal capacity or has a restricted legal capacity, this person's rights pursuant to the present Act shall be exercised through a legal representative.

## **Title Seven**

### **Injured**

#### **Injured's Rights and Claims**

### **Section 43**

/1/ The injured is a person who suffered bodily injury, property damage, moral or other damage as a result of a criminal offense or whose legal rights or freedoms were violated or threatened. In cases set out under the present Act the injured shall have the right to give his consent with criminal prosecution, to claim damage compensation, to file motions for taking of evidence or for providing supplementary evidence, to have access to the files and get acquainted with the content thereof, to attend the main hearing and open court hearing on the appeal, to give his opinion on the submitted evidence, to have the right of a closing speech and to apply for legal remedies within the scope defined under the present Act.

/2/ The injured who has the legal right to claim damages from the accused in respect of damage caused by a criminal offense shall also have the right to submit a motion asking the court to impose, in its sentencing judgment, the accused a duty to compensate such damage. He shall have to submit such motion not later than at the main hearing before the taking of evidence (section 206 paragraph (2)). In such motion he shall clearly state the grounds and the amount of the damage claim.

### **Section 44**

/1/ The rights of the injured shall not be exercised by a person who is prosecuted as a co-accused in criminal proceedings.

/2/ In the proceedings held in respect of crimes subject to the jurisdiction of regional courts (section 17 paragraph (1)), the courts shall rule on the participation of the injured on the basis of the nature of the case being heard.

/3/ A motion pursuant to section 43 paragraph (2) shall not be filed if the claim has already been settled in a civil or other proceedings.

## **Section 45**

/1/ If the injured is deprived of legal capacity or has a restricted legal capacity, his rights under the present Act shall be exercised by his legal representative.

/2/ If the legal representative of the injured cannot exercise his rights set out in paragraph (1) and if there is a danger of omission, the presiding judge of a panel or a prosecutor in pre-trial proceedings shall appoint a guardian to exercise such rights. The decision on the appointment of a guardian shall be liable for complaint.

/3/ The rights granted under the present Act to the injured in a damage claim proceedings (section 43 paragraph (2)) shall be also assigned to his legal representative.

## **Section 46**

The bodies active in criminal proceedings shall advise the injured of his rights and enable their full exercise.

## **Securing the Claim of the Injured**

### **Section 47**

/1/ If there are reasonable grounds to believe that the settlement of the injured person's claim for damage inflicted as a result of a crime will be impeded or frustrated,

it shall be possible to secure the claim by issuing an attachment order on the corresponding part of the accused's property.

/2/ The attachment order shall give the description of property securing the claim, and the accused shall be prohibited to dispose with it. Movable items shall be, as a rule, deposited at the court. The attachment order on immovable property shall be delivered to the competent land register. If the accused is entitled to debt repayments, the debtor shall be ordered to place his installments on deposit at the court instead of paying them to the accused.

/3/ A claim that is inadmissible in criminal proceedings shall not be placed under an attachment order pursuant to paragraph (2). A claim may not be secured with items on which a civil law decision cannot be imposed, with remuneration from employment or a similar relationship, support allowances or sickness and social security benefits pending to the accused.

/4/ The attachment order shall be issued by a court, on application by a prosecutor or the injured or, in pre-trial proceedings, by a prosecutor on application by the injured. In pre-trial proceedings, a prosecutor may secure the claim even without application by the injured if the protection of the latter's interests calls for it and, in particular, if there is a danger of omission.

/5/ The injured shall always be notified of the securing of his claim and of the grounds on which the attachment order may be lifted under section 48 paragraph (1).

## **Section 48**

/1/ The attachment order shall be withdrawn

a/ if the reasons for it are no longer present,

b/ if the criminal prosecution was legally stayed or ended in a final acquittal judgment,

c/ if two months have elapsed from the date on which a sentencing judgment became final or on which the ruling by means of which the case was handed over to a different body became final.

/2/ If the attachment order is excessive, its scope shall be limited. If the attachment order covers items that belong to a different person than the accused, such items shall be precluded from the order.

## **Section 49**

An order under sections 47 and 48 shall be liable for complaint which has a suspensive effect in relation to the lifting of the attachment order, its restriction or preclusion of items.

## **Title Eight**

### **Proxy of the Participating Person and of the Injured**

## **Section 50**

/1/ The participating person and the injured may be represented by a proxy.

/2/ The proxy of a participating person and of an injured shall be a person with full legal capacity; no person summoned as a witness, expert or interpreter to the main hearing and open court hearing may act as a proxy therein.

/3/ The proxy of a participating person and of the injured in criminal proceedings held in respect of matters subject to State secrecy shall always be a lawyer or a person with the authority to deal with State secrecy matters in the area concerned.

## **Section 51**

The proxy of a participating person and of an injured shall be entitled to file motions on behalf of the participating person or the injured and to file petitions and claim legal remedies on their behalf; he shall also be entitled to participate in all the procedures in which the participating person or the injured may participate.

## **CHAPTER THREE**

### **GENERAL PROVISIONS CONCERNING PROCEDURES IN CRIMINAL PROCEEDINGS**

#### **Section 52**

##### **Carrying out Procedures in Criminal Proceedings**

The persons involved in individual procedures of criminal proceedings shall be treated in conformity with the importance and educational purpose of criminal proceedings; their personal integrity and constitutional rights shall always be respected.

#### **Title One**

##### **Letters Rogatory**

#### **Section 53**

/1/ Courts, prosecutors, investigators and police bodies shall, as a rule, perform individual procedures of criminal proceedings within their district under their own competence. As regards the procedures of criminal proceedings to be carried out outside of their district, they shall address a letters rogatory to a district court, prosecutor, investigator or police body in whose district the procedure is to be performed and, when applicable, to a military court or a military prosecutor; however, in urgent cases and if proper examination of the matter makes it absolutely necessary, they shall perform the procedure even outside of their district.

/2/ In performing individual procedures, the supreme court and a regional court may also address letters rogatory to the district court within whose jurisdiction the procedure is to be performed; to this effect, the supreme court may address letters rogatory also to a regional court.

/3/ Military courts and military prosecutors may carry out individual procedures of criminal proceedings also by means of addressing letters rogatory to the district court or district prosecutor in whose jurisdiction the procedure is to be performed.

## **Section 54**

/1/ Letters rogatory shall include the data from the files that are necessary for the proper performance of the procedure. Whenever necessary, the requesting body shall enclose the files and point to those sections thereof that give the necessary information. Depending on the nature of the case and facts ascertained through the procedures concerned, the body that was addressed the request shall have the right and the duty to perform other procedures that could contribute to a rapid and proper hearing of the case, in particular to interrogate other persons and inquire about facts not specified in the letters rogatory.

/2/ At the court addressed the letters rogatory, the procedures shall be carried out by a professional judge; he shall have the rights and duties of the presiding judge of a panel.

## **Title Two**

### **Report**

## **Section 55**

### **Drawing up the Report**

/1/ A report shall be drawn up in respect of each procedure of criminal proceedings; as a rule, it shall be drawn up in the course of the procedure or immediately thereafter and shall give

a/ the name of the court, prosecutor or other body carrying out the procedure,

b/ place, time and subject of the procedure,

c/ names and surnames of officials and their official titles, names and surnames of the parties present, names and surnames of legal representatives, counsels and proxies who took part in the procedure and, for the accused, also the mailing address (sections 62, 63),

d/ brief yet concise description of the procedure showing that the procedure was carried out in conformity with the respective legal provisions, outline of decisions made in the course of the procedure and, if a duplicate of the decision was served directly in the course of the procedure, also a certificate of its service,

e/ motions filed by the parties, the note that the persons present had been advised of the law and statements of the advised persons, if any,

f/ objections raised by the parties or interrogated persons against the content of the report.

/2/ The statements of persons who had already been interrogated shall be entered into the report on the main hearing or open court hearing only insofar as they are at variance with or supplement previous statements.

/3/ The report on the statement of a person who does not speak Slovak shall be drawn up in Slovak; if a statement needs to be taken down verbatim, a clerk or an interpreter shall enter the respective statement into the report also in the language in which the statement was made.

/4/ In important cases, a stenographic record may be taken in addition to drawing up the report; its transcript shall be attached to the report. If necessary, another suitable device may be used to record the course of the proceedings. The device used shall be marked and securely deposited; the deposit place shall be noted in the report.

## **Section 56**

### **Signing the Report**

/1/ The report from the main hearing and open court hearing as well as and a closed hearing shall be signed by the presiding judge of a panel and by a clerk; other reports shall be signed by whoever carried out the procedure concerned and by the person affected by the procedure and, when applicable, by a clerk, interpreter, expert or persons taken up for the procedure. If the interrogation report has more than one page, the interrogated person shall sign each page of the report. If the interrogated person or

any other person assigned to take part in the procedure refuse to sign the report, a statement to this effect and the grounds for refusal shall be entered into the report.

/2/ If an impediment of longer duration prevents the presiding judge of a panel from signing the report on the main hearing, open court hearing or closed hearing, it shall be signed by another member of the panel. If such impediment also exists for another person or a single judge, reasons for the omission of signature shall be given in the report.

## **Section 57**

### **Correction of the Report**

/1/ The decision on correcting or making additions to a report on the main hearing, open court hearing or closed hearing, and on the objections to such report shall be made by the court concerned. Such decision shall be liable for complaint.

/2/ The person who conducted the hearing or the respective procedure may order or make the correction of typing errors or other evident irregularities even after the report had been signed. The correction shall be made so as to preserve the legibility of the original entry; the correction shall be signed by the person who ordered it.

## **Section 58**

### **Voting Report**

/1/ The voting report shall include, besides general particulars (section 55 paragraph 1)

a/ voting procedures, result and statement of the decision,

b/ opinion which is at variance with majority opinion, verbatim with a short summary of the grounds for such opinion.

/2/ The report on all the votes taken within the same hearing shall be entered into a single voting report.

/3/ The voting report shall be signed by all the judges of a panel and the recording clerk.

/4/ The voting report shall be sealed and attached to the report on the hearing. It may only be opened by the presiding judge of a panel at a higher-instance court when deciding about legal remedy, by the presiding judge of a panel of the supreme court when deciding about the complaint alleging violation of the law, and by the judge entrusted the drawing up of the judgment; the report shall then be resealed and whoever opened it shall confirm its opening with his signature.

/5/ No voting report shall be drawn up with respect of simple decisions unanimously adopted by a panel of judges who conferred in the courtroom without breaking for recess; an entry shall be then made into the report on the hearing stating that the decision was taken without adjourning the hearing.

### **Title Three**

#### **Petitions**

#### **Section 59**

/1/ Petitions shall always be judged on the merits of their content even if not properly marked. They may be submitted in writing, by means of oral deposition, by telegraph, telefax or telex. Petitions filed by telegraph, telefax or telex shall be subsequently confirmed in writing or by oral deposition. There shall be no prejudice to the provisions of section 158.

/2/ If a criminal charge is brought in the form of oral statement, the person reporting a criminal act shall be questioned about the circumstances of the act, personal situation of the person charged with the act, evidence on and the extent of damage resulting from the act concerned; if the informant is at the same time an injured or his proxy, he shall also be heard as to whether he demands that the court tries his claim within the criminal proceedings. The questioning shall be conducted with the aim of obtaining the an input for further proceedings.

/3/ If the report on a complaint filed orally is drawn up before a court, the court shall promptly submit such complaint to the prosecutor.

### **Title Four**

## **Time Limits**

### **Section 60**

#### **Counting Time Limits**

/1/ The time limit fixed as a number of days shall not include the day on which the event that determines the commencement of the time limit took place.

/2/ The time limit fixed as a number of weeks, months or years shall expire on the day whose name or numerical designation corresponds to the day on which the event which determines the commencement of the time limit took place. If there is no such day in the last month of the time limit, the time limit shall expire on the last day of that month.

/3/ If the time limit is due to expire on a weekend day or a holiday, the closest working day shall be considered as the day of the expiration of the time limit.

/4/ The time limit shall also be deemed complied with if, within such time limit, a petition was

a/ posted and addressed to the court, prosecutor, investigator or police body competent to accept the petition or to decide the case,

b/ submitted to the court or prosecutor competent to decide on the case,

c/ submitted by a member of the armed forces or the armed corps on active duty to his commanding officer,

d/ submitted to the director of the correctional facility in which the person filing the petition is detained or serving an imprisonment sentence, or

e/ made as an oral deposition before any district court or district prosecutor.

### **Section 61**

#### **Renewal of the Time Limit**

/1/ If, because of serious reasons, the accused or his counsel fail to meet the time limit for filing legal remedy, the body competent to rule on legal remedy shall renew the time limit. The renewal of the time limit shall have to be requested within three days after the above reasons ceased to exist. If the application for legal remedy has not been filed, it shall have to be attached to the request. If lodging an appeal against a sentence, the justification for the appeal may be submitted within eight days from the date on which the ruling on the renewal time limit was served.

/2/ If a legal remedy has already been denied on the grounds of belated filing and the body concerned grants the renewal of the time limit, it shall nullify its denial ruling at the same time.

/3/ The provisions of paragraphs 1 and 2 shall also apply, as appropriate, when it is established that the failure to meet the time limit, given as the justification for denial, did not actually occur.

## **Title Five**

### **Service of Process**

#### **Section 62**

##### **General Provisions**

/1/ If a written communication has not been served during a procedure, it shall be served, as a rule, by mail. If it is addressed to the accused it shall be served to the address he stated for such purpose (section 55 paragraph (1), subparagraph c/).

If it is necessary to repeat a procedure or to adjourn the main hearing or open court hearing, it shall suffice if the present persons concerned are announced the new date. The content of such announcement and the acknowledgement of the new date by the persons concerned shall be entered into the report.

/2/ If necessary, in particular in connection with compelling attendance, if other attempts at personal service of a summons that is barred from being put on deposit failed, or if the delay in the service could impede the hearing, a police body or municipality may be asked to secure the service.

/3/ If the addressee has not been reached even though he stays at the place of service, the written communication shall be served on another adult person residing in

the same place or house, or on a person employed at the same workplace provided the latter is willing to accept the written communication and deliver it to the addressee.

/4/ In the absence of such person, a written communication shall be deposited with the body serving it, and the addressee shall be duly informed of the time and place for its retrieval. The summons shall be considered served as from the date it was put on deposit, even if the addressee may not have learned about such deposition.

/5/ Written communications to be served on the persons that enjoy privileges and immunities under international law or persons staying in the residences thereof shall be submitted to the Ministry of Interior that shall provide for their service.

/6/ The bodies active in criminal proceedings shall have the right to ensure the service of process using their own means and at their own costs.

## **Section 63**

### **Personal Service**

/1/ Personal service shall be secured in respect of

a/ indictment and summons served on the accused,

b/ the copy of a decision served on persons entitled to appeal such decision,

c/ other written communications on the order issued on serious reasons by the presiding judge of a panel, prosecutor, investigator or police body.

/2/ If the addressee of a written communication subject to personal service has not been reached even though he is known to stay at the place of service, the communication shall be deposited with the body which is in charge of the delivery and the addressee shall be duly notified of the time and place of its retrieval. If the addressee fails to retrieve the communication within three days from its deposition, the last day of this time limit shall be considered as the service date even if the addressee may not have learned about such deposition.

/3/ A written communication shall not be put on deposit pursuant to paragraph (2) if

a/ the accused is being served the notice of appearance at the main hearing or open court hearing, indictment, penal order or a judgment liable for appeal,

b/ a written communication is being served on the basis of an order issued on serious grounds by the presiding judge of a panel, prosecutor or investigator.

/4/ If the communication served is barred from being put on deposit, the sender shall visibly mark this fact on the envelope.

## **Section 64**

### **Refusal to Accept Service of Process**

/1/ If the addressee refuses to accept a written communication, this fact shall be noted on the service receipt together with the date and reason for the refusal and the communication shall be returned.

/2/ If the presiding judge of a panel, prosecutor, investigator or police body who dispatched the written communication establish that the refusal was unwarranted, the communication shall be considered as having been served on the day on which the service was refused; the body in charge of the service shall bring this fact to the attention of the addressee.

## **Title Six**

### **Access to the Files**

## **Section 65**

/1/ The accused, the injured and the participating person, their counsels and proxies as well as the civil association representative shall have the right of access to the files except for the voting report and those sections of the report that contain data on the identity of an undercover agent, to make excerpts and notes therefrom, and to have duplicates of the files and the parts thereof made at their own expense. The same right shall be granted to the legal representatives of the accused, the injured and the participating person who are deprived of legal capacity or whose legal capacity is restricted. Other persons may do so with the authorization by the presiding judge of a

panel (a prosecutor, an investigator or a police body in pre-trial proceedings) only if this is necessary for the exercise of their rights.

/2/ If they have serious reasons, a prosecutor, an investigator or a police body shall have the right to deny access to the files and the exercise of other rights set out in paragraph (1) in the course of pre-trial proceedings. On application by the person denied such access, the prosecutor shall have the duty to expeditiously review the seriousness of reasons given by the investigator or police authority for such denial. These rights shall not be denied to the accused and the counsel once these persons have been notified of the possibility to look into the files.

/3/ No person who has the right to be present at the procedure concerned, can be denied access to the report on that procedure. The accused and his counsel shall not be denied access to the ruling on laying the charges (section 160). Access to the files in judicial proceedings shall not be denied to the accused and his counsel, the injured, the participating person and the proxies thereof.

/4/ The provisions of the preceding paragraphs shall not prejudice the rights of the State bodies to have access to the files under separate legislation.

/5/ In granting access to the files it is necessary to secure the protection of State, business and official secrets. If looking into the files might could the proceedings, the police authority, investigator or prosecutor in pre-trial proceedings and the presiding judge of a panel in judicial proceedings shall have the right to set an appropriate time limit.

## **Title Seven**

### **Disciplinary Fines**

#### **Section 66**

/1/ Any person who, in spite of a previous admonition, disturbs the proceedings or behaves in a manner insulting the court, a prosecutor, an investigator or a police body, and any person failing to comply with an order or instruction issued under the present Act, may be imposed a disciplinary fine of up to 50,000 Slovak crowns by the presiding judge of a panel (by a prosecutor, an investigator, or a police body in pre-trial proceedings).

/2/ If a member of the armed forces or armed corps on active duty behave in the manner described in paragraph (1), he may be imposed a disciplinary punishment by his

commanding officer or director. If a person remanded in custody or serving an imprisonment sentence behaves in such a manner, the director of the penitentiary or correctional facility concerned may be given the right to impose a disciplinary measure or punishment. The commanding officer or director concerned shall have to notify a body active in criminal proceedings of the result.

/3/ If a prosecutor behaves in the above-described manner during judicial proceedings, he shall be referred to the competent body for disciplinary punishment. This body shall have to notify a body active in criminal proceedings of the result.

/4/ The decisions made under paragraphs (1) to (3) shall be liable for complaint having a suspensive effect.

## **CHAPTER FOUR**

### **DETAINING PERSONS AND THINGS**

#### **Title One**

#### **Custody**

#### **Section 67**

#### **Grounds for Custody**

/1/ The accused shall only be remanded in custody when there are reasonable grounds to believe that

a/ he would escape or go into hiding to avoid prosecution or punishment, in particular if his identity cannot be immediately established and if he does not have a permanent residence,

b/ he will try to influence the witnesses or co-accused or otherwise frustrate the investigation of facts relevant for criminal prosecution or

c/ he will continue in his criminal activity, accomplish the attempted crime or commit the crime he had prepared or had threatened to commit.

/2/ The accused may also be placed under custody detention if criminal prosecution has been initiated against him for a crime punishable by imprisonment sentence of at least eight years even if no grounds for custody under paragraph (1) are present.

## **Section 68**

### **Custody Decision**

Only a person against whom a charge has been lodged may be placed in custody detention (section 160). The custody decision shall always be substantiated by the facts of the case. The decision on the detention shall be made by a court or, in pre-trial proceedings, by a judge on application by a prosecutor.

## **Section 69**

### **Arrest Warrant**

/1/ If any of the grounds for custody detention (section 67) are present and if it is not possible to summon, bring in or detain the accused and thus secure his presence at the interrogation during pre-trial proceedings, a judge shall issue a warrant for the arrest of the accused on application by a prosecutor or, in judicial proceedings, such warrant shall be issued by the presiding judge of a panel.

/2/ The arrest warrant shall contain, in addition to data preventing the confusion of the accused with another person, a brief description of the act that is the ground for the prosecution, legal nomenclature for the alleged criminal offence, and exact description of the grounds on which the arrest warrant was issued.

/3/ The arrest shall be made by the police on the basis of the warrant; if the execution of the warrant requires it, the police shall also track down the accused.

/4/ The police body that made the arrest of the accused shall have to bring the accused without delay, not later than within 24 hours, before the court whose judge issued the warrant; in this is not possible due to the considerable distance between the place of arrest and the seat of the court whose judge issued the warrant, the accused shall have to be brought before another competent court not later than 24 hours after the arrest. If this does not happen, the accused shall have to be released.

/5/ The judge before whom the accused person was brought shall have to hear the accused without delay, issue the decision concerning the custody and notify the accused of the decision not later than 24 hours after the accused was brought before him. If another competent judge conducts the interrogation, he shall inform the judge of the competent court who issued the arrest warrant of the result. Upon receiving the interrogation report, the latter judge shall issue the decision on the custody and notify the accused of such decision through the court which conducted the interrogation. If the accused is not informed of the decision within 24 hours after he was brought before a court or a judge for questioning, he shall have to be released.

/6/ The decision on custody in judicial proceedings shall be issued by a judge.

/7/ The accused taken into custody shall be brought to the place of custody by a police body.

## **Section 70**

### **Notification on the Remand in Custody**

A notification on the remand in custody shall be served without delay to a relative of the accused or another person designated by the accused, and to his proxy; the notification may be served on the person designated by the accused only if this does not prejudice the purpose of the custody. The notification on taking a member of the armed forces or army corps in custody shall be served on his commanding officer or chief. The notification on the custody of a job applicant shall be delivered to the respective employment office.

## **Section 71**

### **Length of Custody**

/1/ The length of custody in pre-trial and judicial proceedings shall be limited. If the custody in pre-trial proceedings lasts more than six months and if the release of the accused could frustrate or prejudice the purpose of criminal proceedings a judge, on application by a prosecutor, may decide to extend the custody up to one year; the decision on any further extension, but not to more than two years altogether, shall be

taken by a panel of judges. The decision on the extension of custody shall be served on the accused not later than 10 days after the date of the decision.

/2/ Custody in judicial proceedings combined with custody in pre-trial proceedings shall not exceed two years. If, because of the complexity of the case or other serious reasons, it was not possible to complete criminal prosecution by that time and if the release of the accused could frustrate or seriously prejudice the purpose of criminal proceedings, the decision on extending the custody by a maximum of another year shall be made by the Supreme Court.

/3/ The motion to extend the time limit under paragraph (2) shall be submitted in pre-trial proceedings by the Prosecutor General and, in judicial proceedings, by the presiding judge of a panel.

/4/ The motion to extend the time limit under paragraphs (1) and (2) shall have to be delivered to the court not later than 10 days prior to the expiration of the time limit concerned. If the motion is not submitted as prescribed, the presiding judge of a panel or, in pre-trial proceedings, a prosecutor shall release the accused not later than one day after the expiration of the time limit for the remand in custody.

/5/ In keeping with conditions set out in paragraph (2), the Prosecutor General shall have the duty to file a motion to extend the custody as prescribed in paragraph (4) also if an indictment is to be laid less than 10 days before the expiration of the time limit for the remand in custody.

/6/ Time limits set out in paragraphs (1) and (2) shall be calculated from the time of arresting or detaining the accused or, if no arrest or detention was made, from the time when the accused's personal freedom of movement was restricted as a result of the custody decision. If the matter is returned to the prosecutor for additional investigation, the time limit under subsection (1) shall start to lapse on the day of receipt of the file by the prosecutor.

/7/ Time limits under paragraphs (1) and (2) do not include the time during which the accused was unable to take part in the procedures connected with criminal proceedings because he was remanded in custody or detained in a foreign country, because of an injury he deliberately inflicted on himself or because he deliberately caused other impediments preventing him from such participation. The decision to this effect shall be made by a court or, in pre-trial proceedings, by a judge on application by a prosecutor. The decision shall be liable for complaint.

/8/ The length of the remand in custody fixed in conformity with section 275 paragraph (3) or section 287 shall be considered separately and independently on the custody in the initial proceedings.

/9/ The motion on the remand in custody or extension of custody shall always contain the entire documentation obtained up to that point.

## **Section 72**

/1/ An investigator, a prosecutor and a judge shall have to verify, at every stage of criminal proceedings, whether the grounds for custody are still present or if there was any change. A judge shall do so in pre-trial proceedings only when deciding about an application by a prosecutor to extend the custody (subsection 71 paragraph (1)), when deciding about an application by a prosecutor to change the grounds for custody, and when deciding about an application by the accused to be released pursuant to paragraph (2). If the grounds for the remand in custody are no longer present, the accused shall have to be immediately released. In pre-trial proceedings, a prosecutor may also issue the release decision. If a prosecutor in pre-trial proceedings establishes that there has been a change in the grounds for custody he shall submit an application to the competent judge to issue a decision on the change in the grounds for custody.

/2/ The accused shall have at any time the right to apply for release. If a prosecutor in pre-trial proceedings denies such application, he shall immediately submit it to the court. The court shall rule on such application without any delay. If the application is denied, the accused may not submit it again, unless he states other grounds, earlier than fourteen days after the decision became final.

/3/ If the prosecutor agrees with releasing the accused, the decision on the release from custody during judicial proceedings can be made by the presiding judge of a panel.

## **Section 73**

### **Replacing Custody with a Guarantee or Pledge**

/1/ If any of the grounds for custody set out in section 67 paragraph (1) subparagraphs a/ or c/ are present, a court or a judge may decide not to arrest the accused or to release him if

a/ the association described in section 4 paragraph (1) or a trustworthy person capable of exerting a positive influence on the accused person's conduct offer to assume

a guarantee for the conduct of the accused and his appearance before the court, prosecutor or investigator when summoned, for giving advance notice of leaving the place of residence and provided that the court or, in pre-trial proceedings, a judge considers such guarantee to be sufficient in view of personal characteristics of the accused and of the nature of the tried case and accepts it, or if

b/ the accused makes a pledge in writing that he shall lead a decent life and, in particular, that he shall refrain from criminal activities, fulfill the obligations and comply with restrictions imposed on him, and if the court or the judge in pre-trial proceedings considers the pledge sufficient in view of personal characteristics of the accused and of the nature of the tried case and accepts it.

/2/ The court or, in pre-trial proceedings, a prosecutor shall acquaint whoever offers to assume a guarantee under paragraph (1) subparagraph a/ and meets the conditions for its acceptance with the nature of the charges and the facts of the case including the grounds for custody.

/3/ If the accused is prosecuted because of a criminal offence set out in section 62 paragraph (1) of the Penal Act no guarantee or pledge may be accepted.

## **Section 73a**

### **The Bail**

/1/ If there are grounds for custody under section 67 paragraph (1) subparagraphs a/ or c/ the court or, in pre-trial proceedings, a judge may also issue a decision not to arrest the accused or to release him if the accused deposits a pecuniary pledge and if the court or the judge accepts it. No bail may be accepted if the accused is prosecuted for a crime set out in section 62 paragraph (1) of the Penal Act. If the accused agrees, the bail can be paid by another person; before accepting the bail, however, such person shall be informed of the nature of the charges, the facts of the case including the grounds for custody.

/2/ In deciding about the amount of bail money and the manner of deposit, the court or a judge shall consider the personality characteristics and property status of the accused or of the person offering to pay the bail for the accused, nature of the offence and the extent of inflicted damage.

/3/ The court and, in pre-trial proceedings, a judge on application by a prosecutor shall decide to forfeit the bail to the State if the accused

a/ flees, is in hiding or fails to announce the change of residence and thus prevents the service of summons or other written communication from the court, prosecutor or investigator,

b/ intentionally avoids to appear when summoned to participate in a procedure of criminal proceedings in which his presence is imperative,

c/ continues in criminal activities or tries to accomplish the crime he did not previously complete or he had prepared or threatened to commit, or

d/ avoids serving an imprisonment sentence or paying a pecuniary punishment, or a substitute imprisonment sentence in lieu of pecuniary punishment.

The accused and the person who deposited the bail money shall be informed in advance of the grounds on which the bail money may be forfeited by the State.

/4/ The bail shall be lifted, on application by the accused or person who deposited it or, in the absence of such application, by the court or the judge who issued the bail decision, if the grounds for its acceptance are no longer present. If the accused was finally sentenced to an unconditional prison term or to a pecuniary punishment, the court may rule that the bail shall be deposited until the day on which the convicted person starts serving his imprisonment sentence or pays the pecuniary penalty. The accused who was finally sentenced to a pecuniary punishment may also ask that the bail he had deposited be used to pay the pecuniary punishment.

## **Section 74**

### **Appealing a Custody Decision**

/1/ An appeal may be lodged against a custody decision (sections 68, 69, 72, 723, 73a), with the exception of the decision on its extension (section 71 paragraphs (1),(4)).

/2/ Only an appeal lodged by a prosecutor against the decision on the release of the accused from custody (sections 72, 73, 73a) and appeal of a party against forfeiture of the bail money by the State have a suspensive effect. If, however, the prosecutor was present when the decision on the release was announced, his appeal has a suspensive effect only if it was lodged immediately after the announcement of the decision; if the release from custody is linked to the announcement of an acquittal judgment, a

prosecutor's appeal shall have a suspensive effect only provided that the prosecutor also lodged an appeal against the judgment.

## **Section 74a**

### **Restrictions on the Accused Serving an Imprisonment Sentence**

/1/ If criminal prosecution is conducted against the accused serving an imprisonment sentence and if any of the grounds for custody under section 67 are present, the decision on the grounds for, on the nature and duration of restrictions placed on the accused shall be taken by the court or, in pre-trial proceedings, by a judge upon application by a prosecutor.

/2/ Restrictions placed on the accused shall not be more severe than those which would otherwise be imposed on the accused remanded in custody.

/3/ Proceedings concerning restrictions and their duration shall be governed, as appropriate, by the provisions of sections 71, 71 and 74.

## **Title Two**

### **Detention**

#### **Section 75**

##### **Detention of an Accused by an Investigator**

If any of the grounds for custody are present (section 67) and if the matter is urgent and the custody decision cannot be obtained in advance, an investigator may place the accused under preliminary detention. He shall, however, have the duty to promptly inform a prosecutor of the detention and to hand him over a duplicate of the report he drew up upon the detention of the person and other documents the prosecutor needs to file a motion for the remand in custody. The prosecutor shall have to file the motion so as to be able to bring the accused before a court within 24 hours from the detention; otherwise the accused shall have to be released.

## **Section 76**

### **Detention and Restriction of Personal Freedom of a Suspect**

/1/ If any of the grounds for custody are present (section 67), an investigator may detain a person suspect of crime even before any charge has been lodged against the person. To make the detention he shall need a prior authorization by a prosecutor. Without such authorization the detention shall only be possible if the matter is urgent and it was not possible to secure the authorization in advance, in particular if the person concerned was caught in the act of committing a crime or attempting to escape.

/2/ Anyone may restrict personal freedom of a person caught in the act of committing a crime or immediately thereafter if this is necessary for establishing the person's identity, preventing escape or securing evidence. Such person, however, shall have to be handed over to an investigator or police; a member of the armed forces may be handed over to the closest military unit or garrison commander. If such person cannot be immediately handed over, one of the above bodies shall have to be promptly notified of the restriction of personal freedom. If such person has been taken over by a body different than the investigator, this body shall have the duty to immediately hand the person over to the investigator.

/3/ The investigator who carried out the detention or to whom a person caught committing a crime was handed over under paragraph (2) shall promptly notify the prosecutor of the detention and draw up a report giving the place, time and detailed description of the circumstances of the detention as well as essential grounds for it, and personal data of the detained person. He shall promptly deliver a duplicate of the report to the prosecutor.

/4/ The investigator who detained the person or to whom a person caught committing a crime was handed over under paragraph (2), shall promptly inform such person about the grounds for detention and conduct the questioning: if the suspicion is cleared or if the grounds for detention disappear because of other reasons, the person shall be immediately released. If the detained person is not released, the investigator shall submit a prosecutor the interrogation report including the ruling on laying the charges (section 160) and other evidence so as to enable the prosecutor, if appropriate, to file a motion for taking the person into custody. Such motion shall be filed without any delay so as to hand the detained person over to the court not later than within 24 hours from the detention or taking over; otherwise the person shall be released.

/5/ Provisions of section 33 paragraph (1), sections 91, 92, 93 and 95 shall be applied, as appropriate, even if the detained person had been questioned before any charges have been laid against him.

/6/ The detained person shall have the right to choose a counsel and to consult him already at the moment of detention, and to request the presence of the counsel at the interrogation under paragraph (4), unless the counsel cannot be reached within the time limit specified therein.

## **Section 77**

### **Decision on the Detainee**

/1/ If, on the basis of the file received and/or further questioning of the detainee, a prosecutor does not issue the order to release such person, he shall have to hand the detainee over to a court within 24 hours from the moment of detention or the taking over, with a motion to place the person in custody. He shall attach to the motion any evidence collected up to that point.

/2/ The judge shall have to interrogate the detainee (paragraph (1)) and, within 24 hours after receiving a motion from a prosecutor, to decide on the release or the remand in custody of the person. If the elected or assigned counsel can be reached and if the detainee asked for his presence, the judge shall immediately notify the counsel and the prosecutor in the prescribed manner of the time and place of interrogation. The counsel and the prosecutor may take part in the interrogation and ask questions, but only with the permission of the judge. If the 24-hour time limit between receiving the prosecutor's motion for the remand in custody is exceeded, this shall always be the reason for releasing the accused.

## **Title Three**

### **Surrender and Seizure of a Thing**

## **Section 78**

### **Duty to Surrender a Thing**

/1/ Whoever is in the possession of a thing relevant for criminal proceedings shall have the duty to hand it over, when requested, to the court, prosecutor, investigator or police authority; if the purpose of criminal proceedings requires it, he shall have the duty to surrender, when requested, such thing to these bodies.

/2/ The duty under paragraph (1) shall not apply to a written document whose content deals with questions barred from interrogation unless the confidentiality or non-disclosure obligation has been lifted (section 99).

/3/ The authority to request that a thing be surrendered shall be vested with the presiding judge of a panel or, in pre-trial proceedings, a prosecutor, an investigator or a police body.

## **Section 79**

### **Seizure of a Thing**

/1/ If a thing relevant for criminal proceedings is not surrendered upon request by the person who has it in his possession, it may be seized upon an order issued by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor, investigator or police authority. An investigator or a police body shall issue such order only upon a prior authorization by a prosecutor.

/2/ If the body having issued the seizure order does not seize the object concerned itself, the seizure shall be effected by the police on the basis of an order.

/3/ Without a prior authorization under paragraph (1) an investigator or a police body may issue an order only if such prior authorization cannot be obtained and if the matter is urgent.

/4/ Whenever possible, a person who is not involved in the case shall be present during the seizure of a thing.

/5/ The report on the surrender and seizure of a thing shall give also an accurate description of the thing surrendered or seized which is sufficient to identify such thing.

/6/ The person who surrendered or was seized a thing shall be immediately issued the certificate on the taking over of the thing or a copy of the report.

## **Section 79a**

### **Safe-keeping of Surrendered and Seized Things**

If a body active in criminal proceedings cannot ensure the safe-keeping of a surrendered or seized thing (sections 78 and 79), it shall provide for it through an appropriate legal entity or natural person which conducts business in the given field under separate regulations.

## **Section 79b**

### **Placing the Account on Hold**

/1/ If money held on a bank account<sup>9/</sup> is relevant for criminal proceedings held in respect of crimes specified under separate legislation<sup>2/</sup>, the presiding judge of a panel or, in pre-trial proceedings, a prosecutor may issue an order to place the account on hold.

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<sup>9/</sup> Section 1 paragraph (1), section 2, section 3 paragraph (1) of Banking Act No. 21/1992 Coll. in the wording of later regulations.

/2/ In cases of emergency, a prosecutor may issue the order pursuant to paragraph (1) also outside of pre-trial proceedings. Unless such order is confirmed not later than within three days by a judge it becomes null and void.

/3/ The order pursuant to paragraphs (1) and (2) shall be issued in writing and shall give the justification. It shall always specify the financial amount placed on hold and its currency. As regards the orders issued under paragraphs (1) and (2) and unless the presiding judge of a panel or prosecutor decide otherwise the financial amount placed on hold shall be barred from any disposition orders.

/4/ If it is no longer necessary to keep the account on hold for the purposes of criminal proceedings, the order is withdrawn. If the surety is lower than the originally specified amount, the amount placed on hold shall be reduced. The ruling on cancelling

or reducing the surety shall be made by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor.

/5/ An order under paragraph (1) and (2) shall always be delivered to the bank concerned<sup>9/</sup>. It shall be served on the owner of the account only if the presiding judge or the prosecutor issued a ruling to this effect.

## **Restituting the Thing**

### **Section 80**

/1/ If the thing surrendered under section 78 or seized under section 79 is no longer needed for the purpose of the proceedings and if its forfeiture or confiscation is not considered, it shall be restored to the person who surrendered it or from whom it has been seized. If it is claimed by another person, it shall be restored to that person whose title to the thing is uncontested. When in doubt, the thing is deposited at the court and the person claiming the title to the thing shall be notified to lodge its claim through civil action. If the person having an unquestionable right to the thing fails to reclaim it when requested to do so, the thing shall be sold and the amount obtained shall be deposited at the court. The sale shall abide, as applicable, by the rules on the judicial sale of movable things obtained by execution.

/2/ If a thing that cannot be restored or surrendered under paragraph (1) is perishable and there is a danger of spoilage, it shall be sold and the amount received shall be deposited at the court. As applicable, the sale shall be governed by the rules on judicial sale of movable things obtained by execution.

/3/ Rulings made under paragraphs (1) and (2) shall be made by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor, an investigator or a police authority. The ruling on the restitution and surrendering of a thing and on its safe-keeping shall be liable for complaint having a suspensive effect.

### **Section 81**

/1/ If the accused surrendered or was seized a thing obtained or probably obtained by means of crime and if the owner of the thing is not known or if the whereabouts of the injured are not known, the description of the thing shall be publicly

announced. The announcement shall be made in the manner that is most likely to lead to reaching the injured and shall ask the injured to claim the object within six months from the announcement.

/2/ If a different party than the accused claims the thing within the time limit under paragraph (1), the section 80 paragraph (1) shall apply. If no other party has claimed the thing, the thing or the amount obtained for the sale of a perishable thing shall be surrendered to the accused on his request, unless he gained possession of the thing through crime. If the thing was obtained through crime or if the accused did not claim it, the thing shall be handed over to the body competent under separate prescriptions that will proceed with its sale. This shall not prejudice the right of the owner to claim the amount received for the sale of the thing.

/3/ If the thing is worthless it can be destroyed and, if it has a trifle value, it may be handed over to the body competent under separate legislation for the sale; in either case, no previous announcement of its description shall be required.

/4/ The measures and rulings under paragraphs (1) to (3) shall be made by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor, an investigator or a police body. The ruling on surrendering a thing, on handing a thing over to the body competent under separate legislation for the sale or for the destruction of the thing shall be liable for complaint having a suspensive effect.

## **Title Four**

**House search and search of a person, search of other premises and property, right of entering a dwelling, other premises and property.**

### **Section 82**

The grounds for conducting the search of a house and of a person, search of other premises and property:

/1/ House search may be conducted if there are reasonable grounds to believe that a thing relevant for criminal proceedings may be found or a person suspect of crime is hiding in that house or other places used for residential purposes or premises attached to them (dwellings).

/2/ In the presence of grounds under paragraph (1) it shall be possible to search also premises that do not serve residential purposes (other premises) and property that is not open to the public.

/3/ Search of a person may be conducted if there are reasonable grounds to believe that the person concerned has on him a thing relevant for criminal proceedings.

/4/ A detained person, an arrested person or a person being taken into custody may also be searched if there are reasonable grounds to believe that he carries a weapon or other thing which constitutes a threat to the life or health of that or another person.

## **Section 83**

### **House Search Warrant**

/1/ A house search warrant shall be issued by the presiding judge of a panel or, in pre-trial proceedings, by a judge on application by a prosecutor. In cases of emergency, such warrant may be issued by the presiding judge of a panel or a judge of the court in whose district the search is to be conducted rather than the competent presiding judge of a panel or a judge (section 18). The house search warrant shall be in writing and contain the justification. It shall be served on the person whose home is to be searched at the time of the search and, if this is not possible, not later than 24 hours after the impediment that prevented the service was lifted.

/2/ House search ordered by the presiding judge of a panel or a judge shall be conducted by a police body or, in pre-trial proceedings, it may also be conducted by an investigator.

## **Section 83a**

### **Warrant for Searching Other Premises and Property**

/1/ A warrant for searching other premises or property shall be issued by a judge or the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor, investigator or a police body. An investigator or a police body shall need a prior authorization by a prosecutor. The warrant shall be issued in writing and shall contain the justification. It shall be served on the owner or the user of premises or property, or an employee thereof, at the time of the search and, if this is not possible, immediately after the impediment that prevented the service was lifted.

/2/ The search of other premises or property shall be conducted by the body which issued the warrant or, at its order, by a police body.

/3/ In the absence of a warrant or authorization pursuant to paragraph (1), an investigator or a police body may conduct the search of other premises or property only if such warrant or authorization could not be secured in advance and in cases of emergency, or if it involves a person caught in the act of committing a crime or a person in respect of which an arrest warrant was issued. Such procedure shall, however, be immediately reported to the body authorized to issue the warrant or to grant the authorization pursuant to paragraph (1).

## **Section 83b**

### **Warrant for the Search of a Person**

/1/ The warrant to conduct the search of a person shall be issued by a judge or the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor; upon the authorization by the latter it may be issued by an investigator or a police body.

/2/ The search of a person shall not be conducted by the body that issued the warrant; on its order, it shall be carried out by a police body.

/3/ The search of a person shall always be conducted by a person of the same sex.

/4/ In the absence of a warrant or authorization pursuant to paragraph (1), an investigator or a police body may conduct the search of a person only if such warrant or authorization could not be secured in advance and in cases of emergency, or if it involves a person caught in the act of committing a crime or a person in respect of which an arrest warrant has been issued. The search of a person may also be conducted without a warrant or authorization in cases set out in section 82 paragraph (4).

## **Section 83c**

### **Entry upon a Dwelling, Other Premises and Property**

/1/ An investigator or a police body may enter a dwelling, other premises or property only in cases of emergency when the entry is necessary to protect the life or health of persons or to safeguard other rights and freedoms, or to avert serious threat to public safety and, in particular, if the dwelling, other premises or property belong to a person caught committing a crime.

/2/ They may enter the places set out in paragraph (1) also if an arrest warrant was issued in respect of a person who stays there, if an order was issued to bring such person in for serving an imprisonment sentence or if an accused who stays in such places is to be brought in.

/3/ Upon entering the places set out in paragraph (1) it shall only be possible to conduct the procedures that cannot be delayed and that are necessary for bringing a person in.

## **Section 84**

### **Previous Summons**

House search, search of a person or search of other premises or property shall be undertaken only if a previous summons addressed to the person whose house or person is to be searched did not result in a voluntary surrender of the thing being sought or in the elimination of any other reason for the search.

## **Section 85**

### **Conduct of the Search and Entry upon a Dwelling, Other Premises and Property**

/1/ The body conducting the search of a house or of a person or the search of other premises or property shall enable the person whose dwelling is being searched, or an adult member of the household thereof, or an employee if other premises are being

searched, to be present at the search. It shall advise such persons of the right to be present at the search.

/2/ An uninvolved person shall be invited to be present at the house search or search of a person. The body conducting the search shall show its authorization.

/3/ The search record shall state also whether the provisions concerning prior interrogation had been observed and, if not, give the reasons. If the search results in the surrender or seizure of a thing, the record shall include also the data set out in section 79 paragraph (5).

/4/ The body that conducted the search shall issue the person subjected to the search a written protocol on the result of the search and on the receipt of the things that were surrendered or seized, or a copy of the record; it shall do it either immediately or, if this is not possible, not later than within 48 hours after the search.

/5/ Provisions of paragraphs (1) to (4) shall apply, as appropriate, to the entry upon a dwelling, other premises and property. The presence of persons under subsection (1) and of the person under paragraph (2) may, however, be waived if it could constitute a threat to their life or health.

### **Section 85a**

/1/ The person whose house, other premises and property are to be searched, who is to be subjected to the search of a person or whose home is to be entered, shall have the duty to endure such procedures.

/2/ If the person in respect of whom a procedure under subsection (1) is to be conducted does not make it possible, the bodies conducting such procedure shall have the right, after a previous unproductive summons, to overcome the resistance of such person or the impediment he created. Such action shall be noted down in the record (section 85 paragraph (3)).

### **Section 85b**

#### **Securing Evidence in a Home, Dwelling,**

## **Other Premises and on the Property**

/1/ The provisions of subsections 83, 83a, 84, 85 and 85a shall also apply if the inspection of the scene, reconstruction, recognition or investigation are to be conducted in the places set out in them and if such procedures cannot, in view of their nature, be conducted elsewhere and the person concerned did not give his consent.

## **Intercepting and Opening Mail Consignments**

### **Section 86**

#### **Title Five**

### **Intercepting Mail Consignments**

/1/ If the clarification of facts relevant for criminal proceedings makes it necessary to ascertain the content of undelivered telegrams, letters or other private communications dispatched by or addressed to the accused, the presiding judge of a panel or, in pre-trial proceedings, a prosecutor or an investigator shall issue an order to the post office or the mail delivery organisation to surrender such private communications; the investigator may do so upon a prior authorization by a prosecutor.

/2/ In criminal proceedings carried out in respect of criminal offenses set out in Chapter One of a separate section of the Penal Act and under separate legislation<sup>2/</sup>, a prosecutor or an investigator, upon a prior authorization by a prosecutor, may order the post office or the mail delivery organisation to surrender the mail consignment in respect of which there are reasonable grounds to believe that it was used to commit a criminal offense or is related to a criminal offense, and that the clarification of facts in criminal proceedings requires the determination of the content thereof.

/3/ The delivery of a mail consignment may be withheld on the order of an investigator or a police body even in the absence of the order pursuant to subsections (1) and (2), but only if such order cannot be obtained in advance, and in cases of emergency. If, in such a case, the post office or the mail delivery organisation does not receive within three days an order from the presiding judge of a panel, a prosecutor or an investigator to surrender the mail consignment, the post office or the mail delivery organisation shall not withhold the delivery of the communication any longer.

## **Section 87**

### **Opening Mail Consignments**

/1/ Mail consignments surrendered under section 86 paragraphs (1) or (2) may be opened only by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor, an investigator or a police body; the investigator or the police body shall have to obtain a prior authorization by a prosecutor.

/2/ The opened mail consignment shall be delivered to the addressee or, if his whereabouts are unknown, to a person close to him. If, however, there is a reason to believe that the delivery of a mail consignment could prejudice the proceedings, the mail consignment shall be attached to the files if its size and character make this possible; otherwise it shall be placed in safe-keeping. If appropriate, the addressee shall be informed of the contents of a letter or a telegram. If his whereabouts are not known, a person close to him shall be notified of the contents thereof.

/3/ The mail consignment that was not deemed necessary to open shall be handed over to the addressee without any further delay or returned to the post office or organisation having surrendered it.

## **Section 87a**

### **Supplanting the Content of Consignments**

To identify the persons involved in the handling of a consignment that contains narcotics, psychotropic substances, poisons, nuclear or similar radioactive materials, counterfeit money and public papers, firearms or mass destruction weapons, ammunition and explosives, a prosecutor or an investigator with a prior authorization by a prosecutor may order that the content of such consignment be surrendered pursuant to sections 86 paragraphs (1) and (2), that a different content be supplanted and that the altered consignment be released for the delivery. The substitution shall be done by a police body that shall draw up a protocol and secure the safe-keeping of the supplanted items or materials.

## **Title Six**

## **Interception and Recording of Private Communications**

### **Section 88**

/1/ If the criminal proceedings are held in respect of an intentional and exceptionally serious criminal offense or an intentional criminal offense the prosecution of which is mandatory under a promulgated international treaty, or a criminal offense set out in a separate legislation<sup>2/</sup>, the presiding judge of a panel or, in pre-trial proceedings, a prosecutor or an investigator may order the wiretapping of telephone lines and the recording of private communications if there are reasonable grounds to believe that important facts for criminal proceedings may thus be revealed. It shall not be allowed to intercept and record the private communications between the counsel and the accused.

/2/ The order to intercept and record private communications shall be issued in writing and shall contain a justification. The order shall also specify the time limit for intercepting and recording telecommunication messages. The time limit for intercepting and recording shall not exceed 6 months. The presiding judge of a panel or, in pre-trial proceedings, a prosecutor may extend this time limit by another six months. The organisation which is in charge of the operation of the telecommunication network and in whose district the interception and recording of private communications is to be effected shall be always informed of the order and of the time limit for interception and recording. Interception and recording of private communications shall be conducted by a police body.

/3/ In criminal proceedings held in respect of other offenses than those listed in paragraph (1), the body active in criminal proceedings shall issue an order to intercept and record private communications or carry it out itself only with the consent of the telephone subscriber concerned.

/5/ If the interception and recording did not produce any facts relevant for criminal proceedings, the body active in criminal proceedings shall have to destroy the obtained records pursuant to the shredding regulations applicable to the body active in criminal proceedings.

### **Title Seven**

#### **Controlled Delivery**

## **Section 88a**

/1/ A controlled delivery means that a consignment being imported, exported, or transported is subjected to surveillance if there are reasonable grounds to believe that it is an illegal consignment containing narcotics, psychotropic substances, poisons, nuclear and other similar radioactive materials, counterfeit money and public papers, firearms or mass destruction weapons, ammunition and explosives, in order to identify the persons who took part in the handling of such consignment.

/2/ The order to proceed pursuant to paragraph (1) shall be issued by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor.

/3/ In cases of emergency, a prosecutor may issue an order pursuant to paragraph (2) also outside of pre-trial proceedings. Such order shall be confirmed by a judge not later than within three days; otherwise it shall become void.

/4/ The surveillance of a consignment shall be conducted by the competent bodies of the Police Corps in conjunction with the Customs Administration bodies which shall be given an advance notice of any such procedure.

/5/ When proceeding pursuant to paragraph (1) it shall be possible to use, under conditions set out in separate prescriptions, information technology and operational and searching devices<sup>10/</sup> and to duly record the procedure also in other ways (section 55, Code of Criminal Procedure).

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<sup>10/</sup> Sections 35 and 39, Act of the National Council of the Slovak Republic No. 171/1993 Coll. on the Police Corps.

## **Title Eight**

### **Agent**

## **Section 88b**

/1/ When investigating criminal offenses set out under separate legislation<sup>2/</sup> and identifying their perpetrators, it shall be possible to use an agent. The use of an agent

shall only be admissible if the disclosure of criminal offenses and identification of their perpetrators would otherwise be much more difficult.

/2/ An agent shall be a member of the Police Corps who operates under a temporary or a permanent legend. The legend of an agent shall consist of a set of cover personal data, in particular data on his identity, birth, birth certificate, education, family status and employment. In the framework of his assignment pursuant to subsection (1), an agent may use his cover in legal relations.

/3/ If the construction or preservation of the legend make it necessary, cover documents may be produced, altered and used in keeping with the provisions of a separate legislation.<sup>11/</sup>

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<sup>11/</sup> Section 40, Act of the National Council of the Slovak Republic No. 171/1993 Coll. on the Police Corps.

/4/ The order to use an agent shall be issued by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor. If the use of an agent involves entering the home of another person, the order for using an agent in criminal proceedings shall be issued by a judge on application by a prosecutor.

/5/ In cases of emergency, and if the use of an agent does not involve entering the home of another person, the order under paragraph (4) may be issued also outside of pre-trial proceedings. Such order shall be confirmed by a judge not later than within three days; otherwise it shall become void.

/6/ The warrant issued under paragraphs (4) and (5) shall be in writing and shall specify the time period during which the agent will be deployed.

/7/ Written materials obtained in connection with the use of an agent shall be included into the file only after a prosecutor has made a motion in the indictment that the evidence be taken on the basis of facts ascertained by the agent.

/8/ When acting under a legend, an agent may enter a home with the consent of an entitled person. Such consent, however, may not be obtained on the basis of pretending to have the right of entry.

/9/ The true identity of an agent shall have to remain secret even after the termination of his deployment. Upon request, the true identity of an agent shall be disclosed to the presiding judge of a panel, a prosecutor and a judge competent to decide

pursuant to paragraphs (4) and (5) and to the presiding judge of a panel in judicial proceedings.

/10/ In pre-trial proceedings, the facts ascertained by an agent shall be reported by a Police Corps officer appointed by the President of the Police Corps; the same officer shall personally serve the summons to appear at the main hearing on the agent. In the course of judicial proceedings, the presiding judge of a panel shall order the defendant to leave the courtroom while the agent is being examined as a witness; however, upon returning to the courtroom, the defendant shall have to be informed of the content of the agent's statement and given a chance to comment on it. The true identity of the agent shall, however, not be disclosed to the accused.

/11/ The facts related to criminal offences that are not linked to the case to which the agent was assigned may be used as evidence in other proceedings only if such proceedings are held in respect of a criminal offence set out under separate legislation.<sup>2/</sup>

## **CHAPTER FIVE**

### **TAKING THE EVIDENCE**

#### **Section 89**

##### **General Provisions**

/1/ In criminal proceedings, evidence shall have to be taken on, in particular:

- a) whether the act which has the particulars of a criminal offence has really occurred,
- b) whether the act was committed by the accused and on what motives,
- c) essential facts relevant for assessing the danger represented by the act,
- d) essential facts enabling to assess the personal situation of the perpetrator,
- e) essential facts enabling to establish the consequences of and the extent of damage caused by a criminal offence,
- f) circumstances that preceded criminal act or enabled its commission.

/2/ Anything that may contribute to properly clarifying the case and that has been obtained in a lawful manner can be used as evidence, especially statements by the accused, witnesses, experts, expert opinions, recognizance, inspection, video and audio recordings, objects and documents relevant for criminal proceedings.

/3/ The fact that a piece of evidence has been presented by one of the parties to the proceedings rather than a body active in criminal proceedings shall not be deemed as the ground for dismissing it. The costs of procuring and securing such evidence shall be borne by the party who submitted it.

/4/ Evidence obtained by means of unlawful duress or threat of duress cannot be used in the proceedings with the exception of the case when it is to be used as evidence against a person who has used duress or threat of duress.

## **Title One**

### **Statement by the Accused**

#### **Section 90**

### **Appearance Notice and Compelling Attendance of the Accused**

/1/ A duly summoned accused who fails to appear for interrogation without a valid excuse may be brought in; the appearance notice shall also contain a statement that it is an offence to fail to appear as required and describe the consequences of failing to appear (section 66).

/2/ The accused may be brought in without a previous summons also if this is necessary for the smooth conduct of criminal proceedings, in particular if the accused is in hiding or has no permanent residence.

/3/ The competent police body shall be asked to bring the accused in; if, however, the accused is a juvenile, he shall be brought in by a police officer only if he cannot be brought in by a staff member of a court, prosecutors' office or body which is in charge of juveniles. A member of the armed forces or armed corps on active duty shall be brought in with the consent of his commanding officer.

## **Section 91**

/1/ Interrogation of the accused shall be conducted so as to obtain, to the extent possible, a complete and clear picture of facts relevant for criminal proceedings. The accused shall not be coerced in any way to make the statement or confession and his human integrity shall be respected during interrogation. The bodies active in criminal proceedings shall corroborate the truthfulness of the confession of the accused on the basis of other evidence.

/2/ If there is more than one accused, they shall be interrogated separately.

## **Section 92**

/1/ Prior to the first interrogation, the identity of the accused, his family status, property status and income situation, and previous convictions shall be ascertained; he shall be informed of the substance of the charge against him and advised of his rights. The content of such advice shall be noted down in the record. If the identity of the accused cannot be established immediately, evidence that prevents to mistake the identity of the accused shall have to be attached to the interrogation record.

/2/ The accused shall be given an opportunity to make a detailed comment on the charges and, in particular, to give a coherent description of the facts with which he is charged and to present the circumstances which attenuate or reverse the charges and to submit evidence supporting his statement.

/3/ The accused may be asked questions aimed at supplementing his statement or eliminating incompleteness, ambiguities and contradictions. The questions shall be formulated clearly and intelligibly and shall not contain any deceptive and false facts; no leading questions shall be asked.

## **Section 93**

/1/ Before answering a question the accused may be allowed to consult his written notes; upon request he shall present them to the interrogator for inspection; such fact shall be noted down in the record.

/2/ If the purpose of the interrogation is to establish the identity of a person or a thing, the accused shall be asked to give the description thereof; only then shall the person or the thing be shown to him, as a rule, in the line-up of several persons or things of the same kind.

/3/ If the authenticity of handwriting is to be ascertained, the accused may be asked to write the necessary number of words; he shall, however, be in no way forced to do so. On the other hand, the accused shall have the obligation to endure the identity check procedures.

#### **Section 94**

/1/ If the statement of the accused differs in important facts from the testimony of a witness or a co-accused and there is no other explanation for the disparity, a face-to-face confrontation of the accused with these persons may be held.

/2/ In a face-to-face confrontation, its participants may ask questions one another only with the consent of the interrogator.

/3/ Provisions of paragraphs (1) and (2) shall not apply to the agents (section 88b).

#### **Section 95**

/1/ The statement of the accused shall be taken down on the record; it shall be, as a rule, dictated by the interrogator, using direct speech and as far as possible, verbatim.

/2/ Upon the termination of the interrogation, the record, other than that of the main hearing or open court hearing, shall be made available to the accused for reading or shall be read to him upon request; the accused shall have the right to request that the record be supplemented or corrected to be in conformity with his statement. The accused shall be advised of this right.

/3/ Before the interrogated person signs the record on interrogation conducted in the absence of a recording clerk, the record shall be read to him or given to him to read in the presence of an uninvolved person. If the interrogated person has any objections to the content of the record, these shall be discussed in the presence of an uninvolved person and the result of the discussion shall be entered on the record.

## **96 - repealed**

### **Title Two**

#### **Witnesses**

##### **Section 97**

###### **Obligation to Testify**

Every person has the obligation to appear when summoned and to give a witness testimony about his knowledge of the crime and the offender, or of the circumstances relevant for criminal proceedings.

##### **Section 98**

###### **Notice of Appearance and Compelling Attendance**

If a witness, duly summoned, fails to appear without a valid excuse, he may be brought in. The appearance notice shall also contain a statement about this possibility and other consequences of failing to appear as required (section 66). If a member of armed forces or of armed corps on active duty fails to appear, his commanding officer shall be asked to give the reason why the summoned person did not appear or to bring the person in.

##### **Section 99**

###### **Ban on Witness Examination**

/1/ The witness shall not be asked to testify on the matters that are subject to State secrecy regulations and are confidential except when the competent body waives the confidentiality obligation; such waiver may only be refused if the testimony would cause a serious damage to the State.

/2/ The witness shall not be requested to testify if his testimony could infringe on his non-disclosure obligation imposed by the State, except when the competent body or the person in whose interest he has such obligation waives the non-disclosure obligation.

/3/ The ban on interrogation pursuant to paragraph (2) shall not apply to the testimony given in respect of an offence that the witness has the obligation to report under the Penal Act.

## **Section 100**

### **The Right to Refuse to Testify**

/1/ A relative of the accused in the direct line of descent, the accused person's sibling, adopter, adoptee, spouse and common-law spouse shall have the right to refuse to testify as a witness; if such relationship exists between the witness and only one of several accused, the witness shall have the right to refuse to give a testimony concerning the other accused only if such testimony could incriminate the accused to whom the witness is related.

/2/ A witness has the right to refuse to testify if his testimony could bring the danger of criminal prosecution to himself, his relative in the direct line of descent, his sibling, adopter, adoptee, spouse or common-law spouse or other persons to whom he is related by family or similar ties and whose prejudice he would justly perceive as his own.

/3/ However, the testimony shall not be refused by a person who, under the Penal Act, has the obligation to report the crime in respect of which a witness testimony is to be given.

## **Examination of Witnesses**

### **Section 101**

/1/ Before the examination of a witness, his identity and his relation to the accused shall be established; he shall be advised of his right to refuse the testimony and, if applicable, of the ban on the examination or the possibility to proceed according to paragraphs (3) and (6); he shall be advised of his duty to tell the truth and not to withhold

any evidence. In the examination of an agent (section 88 paragraph (10)), the court shall note down the respective cover personal data instead of the true data of the agent.

/2/ The examination shall open with questions concerning the witness's relationship to the case being heard and the parties and, as the need may be, other circumstances relevant for establishing the credibility of the witness. The witness shall be given a possibility to make a coherent statement about the case and the source of the facts he states.

/3/ If there are reasonable grounds to believe that giving the witness's home address could put the witness or a person close to him in danger, the witness may be allowed to give the address of his workplace or another address to which the summons can be served. If the witness ascertained the facts relevant for criminal proceedings in the line of duty, his official capacity or function, he shall have the right to give the address of his workplace rather than his home address.

/4/ If there is a justified fear that disclosing the identity or the domicile and/or the whereabouts of a witness could put his life, health, bodily integrity in danger or if such danger exists for a person close to him, the witness may be allowed not to give his personal data. At the main hearing, however, he shall make a statement as to how he gained the knowledge of the facts he reports. The materials that make it possible to establish the identity of such a witness shall be deposited at the prosecutors' office and, in judicial proceedings, with the presiding judge of a senate. They shall be included into the file only after the danger no longer exists. If necessary, such witness may also be asked questions concerning the facts related to his credibility, in particular questions about his relation to the accused or to the injured.

/5/ Before examining a witness whose identity is not to be disclosed the court shall exclude the public from the hearing or take other measures to provide for the witness's safety.

/6/ The authorization to proceed pursuant to paragraphs (3) and (4) shall be issued by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor.

/7/ In exceptional cases, when investigating criminal acts set out under separate legislation<sup>2/1</sup>, the provision of section 88b paragraph (2) may be applied in respect of a witness.

/8/ A witness may be asked questions to supplement his statement or to clear any incompleteness, ambiguity, and contradiction. A witness shall not be asked questions containing the facts which are to be ascertained from his statement.

/9/ If it is necessary to verify the authenticity of handwriting, the witness may be asked to write the necessary number of words.

### **Section 101a**

If an investigator does not deem that it is substantiated to apply provisions of section 101 paragraphs (3) and (4) even though the witness claims their application stating concrete facts which he believes justify such procedure, the investigator shall submit the matter to a prosecutor to verify the correctness of the investigator's actions. If there is no danger of omission, he shall postpone the examination of the witness until the prosecutor has decided on the matter. If there is the danger of omission, he shall hear the witness and, until the prosecutor has made his decision, he shall handle the interrogation record so as to ensure that the identity of the witness be kept confidential.

### **Section 101b**

/1/ A witness who cannot appear for examination because of his age, illness, bodily, sensory or mental handicap or because of other serious reasons, may be examined using technical devices for the transmission of sound or images.

/2/ The provision of paragraph (1) shall apply, as appropriate, if the witness resides abroad and cannot or does not want to appear for examination but is ready to testify and the competent authority of the foreign state provides the necessary legal assistance.

### **Section 102**

/1/ If the person examined as a witness is under 15 years of age and the examination concerns matters whose recollection could, given the witnesses's age, have a negative influence on his mental and moral development, the examination shall be conducted with utmost consideration and the care shall be taken not to have to repeat, if possible, the examination in further proceedings; an education specialist or a person with expertise in juvenile education shall be invited for the examination to contribute to the proper conduct of examination, accounting for the subject of examination and the degree of mental development of the interrogated person. If their presence could contribute to the proper conduct of the interrogation, the parents may also be invited.

/2/ In further proceedings, such person shall be examined only if it proves to be absolutely necessary. In judicial proceedings, the court may rule on securing the evidence by reading the record even if conditions pursuant to section 211 are not fulfilled. If necessary, the person invited to attend the examination shall be questioned about the accuracy and completeness of the record, the manner in which the examination was conducted and the way in which the examined person testified.

### **Section 103**

The provisions of section 93 paragraphs (1) and (2), sections 94 and 95 shall also apply, as appropriate, to the examination of witnesses.

### **Section 104**

/1/ A witness shall be entitled to the reimbursement of his expenses and lost earnings (witness allowance). The entitlement shall lapse if the witness fails to claim the allowance within three days after the examination or after having been notified that the examination would not take place; the witness shall be duly advised thereof.

/2/ The amount of witness allowance shall be set by the entity who summoned the witness or, in judicial proceedings, by the presiding judge of a panel.

## **Title Three**

### **Experts**

#### **Calling in the Experts**

### **Section 105**

/1/ If expert knowledge is required to clarify the circumstances relevant for criminal proceedings, except for the examination of mental condition of a person accused of a criminal offence, a body active in criminal proceedings or, in judicial proceedings, a judge or the presiding judge of a panel shall issue the decision to call in an expert; a written order of the court shall always be required in such case. In simple

cases, rather than calling in an expert, a certificate or expert opinion issued by a competent body whose accuracy is beyond any doubt shall be sufficient.

/2/ If the fact to be clarified is of special significance, the appointment of two experts shall be necessary. Two experts shall always be called in for a post-mortem and autopsy of a dead body (section 115) or the assessment of mental condition (section 116). The physician who treated the deceased for the illness which immediately preceded the death shall not be called in for a post-mortem and autopsy of the body.

/3/ The decision on calling in an expert shall be liable for complaint.

## **Section 106**

In the notice of appearance, an expert shall be advised of the consequences of failing to appear (section 66) and his duty to report without delay the facts that would disqualify or otherwise prevent him from serving as an expert on the case. The expert shall also be advised of the importance of the expert certificate as a matter of public interest and of his criminal liability for false testimony and deliberately false expert opinion. The same procedure shall apply, as appropriate, also if the expert opinion has been secured by one of the parties pursuant to section 89 paragraph (3).

## **Section 107**

### **Drawing up Expert Opinion**

/1/ The expert assigned with carrying out a procedure shall be provided all the necessary information from the files and his task shall be defined. It shall be ensured that the expert does not evaluate the evidence and does not resolve legal issues. If it is necessary for preparing expert opinion, the expert shall be given access to the files or the files shall be lent to him. He may also be allowed to be present during the interrogation of the accused and the witnesses and to ask them questions related to the subject of expert assessment. The expert may also propose to first clarify, by means of other evidence, the circumstances needed for giving his opinion.

/2/ An expert shall be required, as a rule, to submit his opinion in writing. The expert opinion shall also be served on the defence counsel at the costs of the defence.

## **Section 108**

### **Examination of Experts**

/1/ If the expert produced a written opinion, he may simply refer to it when questioned and confirm it. If the opinion is not prepared in writing, it shall be dictated by the expert during the examination into the record.

/2/ If several experts were appointed and they reached, in joint consultation, identical conclusions, the opinion shall be presented by the expert they assign; if expert opinions differ, each expert shall be questioned separately.

## **Section 109**

### **Errors in the Opinion**

If the accuracy of the opinion is contested or if the opinion is unclear or incomplete, the expert shall be asked to clarify it. If this fails, another expert shall be called in.

## **Section 110**

### **Opinion of an Institution**

/1/ In exceptional cases of great complexity that call for a special scientific assessment, a body active in penal proceedings may decide to request a State authority or a State institute to give their opinion or to review the opinion submitted by an expert.

/2/ The State authority or the State institute shall submit their opinion in writing. The opinion shall give the name of the person who prepared it and who, if necessary, may serve as expert witness. If the case calls for two experts (section 105 paragraph (2)), the opinion of a State authority or institute shall give the names of two persons.

/3/ The decision pursuant to paragraph (1) shall be liable for complaint.

## **Section 111**

### **Application of Special Regulations on Experts**

/1/ The appointment of an expert, his qualifications for and disqualification from such assignment, the right to refuse serving as expert, the pledge and advice on his duties given before he starts carrying out his assignment, the reimbursement of cash expenses and remuneration for drawing up the opinion (the expert's fee) shall be specified under separate regulations.

/2/ The amount of the expert's fee shall be fixed by the entity who called in the expert or, in judicial proceedings, by the presiding judge of a panel. If the entity that called in the expert or the presiding judge of a panel do not agree with the amount of the invoiced expert's fee, it shall make a ruling to this effect. The ruling shall be liable for complaint which has a suspensive effect.

## **Title Four**

### **Material and Documentary Evidence**

## **Section 112**

/1/ Material evidence shall consist of items which served for committing the crime or on which the crime was committed, other items that either support or refute the alleged facts and may serve as a means to reveal and expose a crime and the offender and the clues to a criminal offence.

/2/ Documentary evidence shall consist of papers whose content either supports or refutes the alleged facts related to the criminal offence or the accused.

## **Title Five**

### **Inspection**

## **Section 113**

### **Purpose of Inspection and Inspection Record**

/1/ An inspection shall be carried out if direct observation is necessary to clarify facts relevant for criminal proceedings. As a rule, an expert shall be called in for the inspection.

/2/ Inspection record shall give a full and truthful picture of the object of inspection and, consequently, it should contain photographs, sketches and other aids.

## **Section 113a**

### **Inspection of the Crime Scene**

/1/ Inspection of the crime scene shall be carried out if direct observation is to clarify the facts relevant for criminal proceedings, in particular if any clues could be secured at the scene.

/2/ Responsibility for the proper conduct of inspection and for drawing up the records shall be vested with the police body: if a criminal offence or an alleged criminal offence is punishable by a maximum imprisonment sentence of more than three years, an investigator shall also be present at the inspection.

## **Section 114**

### **Bodily Inspection and Similar Procedures**

/1/ Every person shall have the duty to subject himself to a bodily inspection if it is necessary to establish whether his body shows traces or consequences of a crime. If the bodily inspection is not done by a physician, it may be performed only by a person of the same sex.

/2/ If a blood test or a similar procedure is necessary for obtaining evidence, the person concerned shall have to let a physician or a medical practitioner take a blood sample or perform another procedure provided that this does not put the person's health in danger.

/3/ If taking evidence makes is necessary to establish the identity of the person who was present at the scene of the crime, the person concerned shall have to subject himself to the procedures connected with such identification.

/4/ The person concerned shall have to be advised of the duties pursuant to the foregoing subsections and of the consequences of non-compliance (section 66).

## **Section 115**

### **Post-Mortem Examination, Autopsy and Exhumation of a Dead Body**

/1/ If there is a suspicion that a person's death was caused by a crime, the body shall be subjected to a post-mortem examination and autopsy. In such cases the body may be buried only with the authorization by a prosecutor or an investigator. The prosecutor or the investigator shall decide the matter with utmost urgency.

/2/ The exhumation of a body may be ordered by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor.

### **Examination of Mental Condition**

## **Section 116**

/1/ If there is a need to examine mental condition of the accused, the court shall issue a written order requesting two experts from the field of psychiatry to make the assessment.

/2/ If mental condition cannot be assessed in a different way, the court or, in pre-trial proceedings, a judge on application by a prosecutor may order to place the accused under observation in a medical institution or, if he is in custody, in a special ward of a correctional facility. This decision shall be liable for appeal which has a suspensive effect.

/3/ If the experts establish that the accused shows signs of insanity or reduced soundness of mind they shall also give their opinion as to whether allowing the person to stay at liberty is not dangerous.

## **Section 117**

The assessment of mental condition should not extend over more than two months within which the opinion shall be given. The court or, in pre-trial proceedings, a judge on an application by a prosecutor may extend this time limit on the basis of a substantiated request of the experts by a maximum of one month. The extension of the time limit is appealable.

## **Section 118**

If there are serious grounds to believe that a witness whose statement is of special relevance for the decision has a substantially reduced comprehension or ability to testify, the court may also issue the order to assess mental condition of the witness. However, a witness shall not be subjected to observation of his mental condition pursuant to section 116 paragraph (2).

## **CHAPTER SIX**

### **DECISIONS**

## **Section 119**

### **Forms of Decision-making**

/1/ In cases expressly set out in the law, the court shall decide by issuing a judgment; in all other cases, unless the law provides otherwise, it shall decide by a ruling.

/2/ Prosecutors, investigators and police bodies shall decide by a ruling, unless the law provides otherwise.

## **Title One**

## **Judgment**

### **Content of the Judgment**

#### **Section 120**

/1/ After the opening words "In the name of the Republic" the judgment shall give

/a/ the name of the court issuing the judgment, and the names and surnames of judges who took part in the decision,

/b/ date and place of pronouncing the judgment,

/c/ verdict stating legal provisions applied,

/d/ grounds, unless the law provides otherwise, and

/e/ instruction concerning legal remedy.

/2/ The defendant shall be referred to in the judgment by his name and surname, date and place of birth, employer and domicile and/or other data necessary for preventing a mistaken identity. If the person concerned is subject to the jurisdiction of military courts, the defendant's rank and unit shall also be given.

/3/ The verdict of guilty or acquittal verdict shall exactly define the criminal offence to which it applies; in addition to giving the legal nomenclature and listing legal provisions applied, it shall also specify the place, time and manner in which the offence was committed and/or other facts necessary to prevent confusing the act with some other act, as well as all legal particulars of the crime including those that warrant the imposition of a certain sentence.

#### **Section 121**

In the convicting judgment, the court shall also include the verdict on

a/ the damages if a claim was lodged within the time limit prescribed (section 43 paragraph (2)),

b/ a protective measure if the court decides to take such measure when considering an appeal at the main hearing or at open court hearing.

### **Section 122**

/1/ A convicting judgment shall contain the verdict of the punishment and specify legal provisions on the basis of which the defendant was sentenced or the punishment was waived and, where applicable, it shall refer to the deposited bail. If the court imposes a punishment whose execution may be suspended on probation, the judgment shall also state whether the probation has been granted and/or the conditions to which it is linked. The judgment imposing an unconditional imprisonment shall determine the mode of the execution of the sentence (sections 39a, 81 of the Penal Act). If the convicted person is an especially dangerous habitual criminal, this fact shall also be stated in the judgment.

/2/ An acquittal judgment shall specify on which of the grounds set out in section 226 the acquittal is based.

### **Section 123**

The court which decides again on a case, a part of the earlier judgment on which was quashed on the basis of an appeal, of a complaint alleging the breach of law or of a motion for a re-trial, shall include into the new judgment only those verdicts in respect of which it has issued a new decision. In doing so it shall refer to the connection with the unaffected parts of the earlier judgment.

### **Section 124**

In the judgment imposing a cumulative sentence the court shall specify those earlier judgments for which the new judgment abrogates the determination of the sentence replacing it with the determination of the cumulative sentence.

### **Section 125**

If the judgment contains a justification, the court shall briefly state in it the facts which it acknowledged as proven, evidence on which it established the facts of the case as well as its reasoning in the examination of evidence, especially if the evidence was contradictory. The justification shall clearly show how the court responded to the defence, give the reasons for dismissing additional evidence and present legal considerations used in the assessment of the established facts according to applicable legal provisions on the matters of guilt and punishment. If other verdicts were included into the judgment, such verdicts shall also be justified.

## **Conferring and Voting on the Judgment**

### **Section 126**

When conferring on a judgment which decides on the conviction and punishment, the court shall examine, in particular

- a/ whether the act for which the defendant is being prosecuted really took place,
- b/ whether the act has all the particulars of a criminal offence,
- c/ whether the act was committed by the accused,
- d/ whether the accused is criminally liable for the act,
- e/ whether the crime does not fall under the statute of limitation,
- f/ whether they accept the guarantee of reforming the defendant offered by a civil association,
- g/ whether and what punishment should be imposed on the defendant,
- h/ whether and what amount of damages should be imposed on the defendant,
- i/ whether and what protective measures should be imposed.

### **Section 127**

/1/ No one else but the judges and assessors who took part in the proceedings which immediately preceded the passing of the judgment and a recording clerk shall be present at the conference and the vote. The deliberations at the conference shall be confidential.

/2/ The vote shall be taken by a simple majority. If no majority is obtained, the votes least favourable for the accused shall be added to the next more favourable votes until a majority is obtained. If in doubt which opinion is more favourable for the accused, a vote shall be taken.

/3/ Every member of the panel shall take part in the voting even if he had been outvoted on a previous issue. However, when voting on the punishment, those judges who voted for acquittal may abstain from voting; their votes shall be added to the most favourable vote for the defendant.

/4/ The assessors' vote shall precede the judges' vote. The vote of assessors and younger judges precedes the vote of senior judges and, at military courts, lower-ranking assessors or judges shall vote before higher-ranking assessors or judges. The presiding judge of the panel shall be the last to vote.

/5/ A special report shall be drawn up on the voting (section 58).

## **Section 128**

### **Pronouncement of the Judgment**

/1/ Every judgment shall be pronounced; it shall be pronounced by the presiding judge of a panel.

/2/ The pronouncement shall include the opening words "In the name of the Republic", complete verdict and at least the core of the justification as well as instructions for using legal remedy. The pronouncement shall be in full conformity with the content of the judgment such as it was adopted by the vote.

/3/ The judgment shall be pronounced, as a rule, immediately after the termination of the proceedings that preceded it; if this is not possible, the proceedings may be adjourned by no more than three days for the pronouncement of the judgment.

## **Section 129**

### **Drawing up a Written Copy of the Judgment**

/1/ Each judgment shall be drawn up in writing. The wording of the judgment shall be identical with the content of the judgment pronounced.

/2/ The judgment shall be issued in writing not later than 30 days from the date of its pronouncement; if this time limit cannot be observed because of serious reasons, the president of the court may authorize its extension.

/3/ If the presiding judge or other members of the panel are prevented from drawing up a written copy of the judgment by an impediment of longer duration, the judgment shall be drawn up by another judge on the order of the court president. If such impediment is encountered by a single judge, the written copy of the judgment shall be drawn up by a judge appointed by the president of the court.

/4/ The written copy of the judgment shall be signed by the presiding judge of a panel and the judge who drew it up. If the presiding judge of the panel cannot sign the written copy of the judgment because of an impediment of longer duration, it shall be signed on his behalf by another member of the panel; the reason for such action shall be noted down in the written copy of the judgment.

## **Section 130**

### **Service of the Judgment**

/1/ The duplicates of the judgment shall be served on the defendant, prosecutor, participating person and the injured who submitted a claim even if these persons were present when the judgment was pronounced.

/2/ If the defendant has a counsel or a legal representative, a duplicate of the judgment shall be also served on the latter.

/3/ If the participating person or the injured have a legal representative, a duplicate of the judgment shall only be served on the legal representative; if they have an attorney, it shall only be served on the attorney.

/4/ If a representative of civil association appeared at the main hearing, a duplicate of the judgment shall also be served on the civil association he was appointed to represent.

## **Section 131**

### **Correcting the Written Copy and Duplicates of the Judgment**

/1/ The presiding judge of a panel may issue a special ruling at any point to correct typing errors and other apparent irregularities in the written copy of the judgment and the duplicates thereof, so as to make the text identical with the wording of the pronounced judgment. A superior court may also order such correction.

/2/ A duplicate of the correction ruling shall be served on all the persons on which a duplicate of the judgment was served.

/3/ A correction ruling pursuant to paragraph (1) shall be liable for complaint having a suspensive effect.

/4/ After the correction ruling becomes final, the corrections shall be entered into the written copy of the judgment and into its duplicates that shall be requested for this purpose from the persons on which they had been served.

## **Section 132 - deleted**

## **Section 133**

### **Effects of the Correction**

If any of the verdicts contained in the judgment were substantially altered as a result of the correction of the written copy of the judgment or a duplicate thereof, the prosecutor and the person directly affected by the corrected judgment shall have the right to lodge an appeal within the time limit that starts on the day of the receipt of a copy of the correction ruling or, if a complaint was filed against the ruling, on the day of

the receipt of the ruling on the appeal. Any person directly affected by the ruling shall be advised of the above.

## **Title Two**

### **Ruling**

#### **Section 134**

##### **Contents of the Ruling**

- /1/ A ruling shall give
  - a/ the name of the body that made the decision,
  - b/ date and place of the decision,
  - c/ verdict of the ruling and legal provisions applied,
  - d/ justification, unless the law stipulates otherwise and,
  - e/ advice about legal remedy.

/2/ The justification shall, if applicable given the nature of the case, state especially the facts acknowledged as proven, evidence on which the facts of the case were established, the reasoning of the decision-making body in the examination of evidence, as well as legal considerations on the basis of which it assessed the established facts according to the applicable legal provisions.

/3/ In the sentence enforcement proceedings, a first-instance court may draw up a simplified ruling if the accused or another entitled person and the prosecutor waived the right to appeal after the ruling was pronounced at open court. A simplified ruling shall not give the justification.

#### **Section 135**

##### **Pronouncement of the Ruling**

Only the rulings made in the course of a procedure performed in the presence of the person affected by the ruling and rulings made at the main trial, open court hearing or closed session shall be pronounced.

## **Section 136**

### **Drawing up the Ruling**

/1/ It is not necessary to draw up a written copy of those rulings which simply determine the course of the proceedings or the method of examining the evidence or which order or prepare judicial proceedings.

/2/ It is not necessary to draw up those rulings which are recorded verbatim in the report from the procedure, unless a duplicate of such ruling is to be served on one of the parties. If it is to be served only on a prosecutor, it shall be possible to serve him a duplicate of the report.

## **Section 137**

### **Notification of the Ruling**

/1/ The ruling shall be notified to the person directly concerned and the person on whose motion the ruling was made; the prosecutor shall also be notified of a court ruling.

/2/ If the person to be notified of the ruling has a counsel or an attorney, it is sufficient to notify only that person or his counsel or attorney; if the notification is done using a duplicate, the duplicate shall be served only on the counsel or the attorney. The ruling adopted in respect of a person deprived of legal capacity or having a restricted legal capacity who does not have a counsel or an attorney shall be announced to that person's legal representative.

/3/ If, however, an accused deprived of legal capacity or having a restricted legal capacity is notified of a ruling he intends to challenge, the notification shall be served, besides the person concerned, also on his counsel and legal representative. If the accused is in custody, serves an imprisonment sentence or is held for observation in a medical institution, such ruling shall be notified both to the accused and to his counsel even if the accused person's legal capacity is not restricted.

/4/ A duplicate of the ruling having decided on a legal remedy shall always be served on the prosecutor, the person directly concerned by it and the person on whose motion the ruling was issued.

## **Section 138**

### **Application of the Provisions on Judgments**

Unless this Title lays down separate provisions, the provisions of Title One of this Chapter shall apply, as appropriate, to the judgments.

## **Title Three**

### **Effectiveness and Enforceability of Decisions**

## **Section 139**

### **Effectiveness and Enforceability of Judgments**

/1/ A judgment shall become effective and, unless the present Act stipulates otherwise, enforceable if

- a/ the law does not make it liable for appeal,
- b/ the law makes it liable for appeal but
  - aa/ no appeal was lodged within the prescribed time limit,
  - bb/ the entitled persons explicitly waived the right of appeal, withdrew the appeal or
  - cc/ the appeal was denied.

/2/ The appeal lodged by the injured alone, and the appeal lodged by the participating person alone shall not prevent the remainder of the judgment from

becoming effective and enforced. The appeal which applies only to one of several accused persons shall not prevent the judgment becoming effective and enforced with respect to other accused.

/3/ If the time limit for lodging an appeal expired but the entitled person asked for the renewal of the time limit, the judgment shall not be enforced before the decision on this request becomes final.

## **Section 140**

### **Effectiveness and Enforceability of Rulings**

/1/ A ruling shall become final and enforceable if

a/ the law does not make it liable for complaint,

b/ the law makes it liable for complaint but

aa/ no complaint was lodged within the prescribed time limit,

bb/ the entitled persons explicitly waived the right of complaint, withdrew the complaint or

cc/ the complaint was denied.

/2/ A ruling shall be enforceable even if it did yet not become effective when the law makes it liable for complaint which does not have a suspensive effect.

/3/ A complaint which concerns only one of several persons or one of several matters that were decided by the same ruling shall not make the remainder of the ruling lose effectiveness and enforceability and shall not prevent the execution of its remainder if it can be separated, even if the complaint has a suspensive effect.

/4/ If the complaint having a suspensive effect was not filed within the prescribed time limit but if the entitled person asked for the renewal of the time limit, the ruling shall not be enforced until a final decision was issued on such application.

## **CHAPTER SEVEN**

## **COMPLAINT AND COMPLAINT PROCEEDINGS**

### **Section 141**

#### **Admissibility and Effect**

/1/ The legal remedy to be used against a ruling shall be a complaint.

/2/ It shall be possible to lodge a complaint against any ruling made by an investigator or a police body. The ruling made by the court or a prosecutor may be challenged only by lodging a complaint in cases specifically provided for under the law and if the matter is decided in the first instance.

/3/ A complaint against a ruling by the Prosecutor General may only be lodged if the ruling concerns the forfeiture of property under section 146a. The decision on such complaint shall be taken by the Supreme Court.

/4/ A complaint shall have a suspensive effect only in cases expressly provided for under the law.

### **Section 142**

#### **Authorized Persons**

/1/ Unless the law provides otherwise, a complaint may be lodged by a person directly affected by the ruling or a person whose motion, filed in conformity with the law, initiated the ruling; a prosecutor may also file a complaint against a decision of the court, even if it is in favour of the accused.

/2/ A complaint against the ruling on custody or protective treatment may also be lodged for the benefit of the accused by persons authorized to lodge an appeal.

### **Section 143**

#### **Time Limit and the Filing Place**

/1/ The complaint shall be filed with the body whose decision it challenges within three days from receiving the notification of the ruling (section 137); if both the accused and his legal representative or counsel are notified of the ruling, the time limit shall start to lapse from the date on which the last notification was made.

/2/ The time limit within which persons may file a complaint under section 142 paragraph (2) for the benefit of the accused shall lapse on the same day as the time limit for the accused; the time limit for the prosecutor shall, however, lapse separately.

## **Section 144**

### **Waiver and Withdrawal of Complaints**

/1/ An authorized person may expressly waive a complaint.

/2/ An authorized person may withdraw a complaint on which no decision was yet made. A superior prosecutor shall also have the right to withdraw the complaint filed by a prosecutor.

/3/ A *ex parte* complaint filed for the benefit of the accused by another authorized person, or by a counsel or legal representative on behalf of the accused, may only be withdrawn with an express consent of the accused. A prosecutor may, however, withdraw such complaint even without the consent of the accused. In such a case, a new time limit for filing a complaint shall start to lapse for the accused on the day he was announced that the complaint has been withdrawn.

/4/ If there are no impediments, the withdrawal of a complaint shall be acknowledged, in the form of a ruling, by the body competent to decide on the complaint or, if the case was not yet submitted to such a body, by the body against the decision of which the complaint was filed; in judicial proceedings, the decision on the above shall be taken by the presiding judge of a panel.

## **Section 145**

### **Grounds for the Complaint**

/1/ A ruling may be challenged because of

a/ an error in any statement of the ruling or

b/ the breach of provisions governing the proceedings that preceded the adoption of the ruling if such breach could have resulted in an error in any verdict of the ruling.

/2/ New facts and evidence may be used to support the complaint.

## **Section 146**

### **Proceedings before the Body against Whose Ruling the Complaint Was Lodged**

/1/ The body against whose ruling a complaint is lodged may grant the complaint in its own competence provided the change in the original ruling does not impinge on the rights of any other party to criminal proceedings. If the ruling was made by an investigator or a police body with a prior authorization by or on the order of a prosecutor, the investigator or the police body may accept the complaint in its own competence only with a prior authorization by a prosecutor.

/2/ If the time limit for filing a complaint expired for all entitled persons and the complaint was not accepted pursuant to paragraph (1), the matter shall be submitted for decision

a/ by an investigator or a police body to the prosecutor who is in charge of pre-trial proceedings or, if the complaint is filed against a ruling to which the prosecutor concerned gave his approval or instruction, by such prosecutor to his superior prosecutor,

b/ by a prosecutor to his superior prosecutor or court,

c/ by the presiding judge of a panel at a district court to the superior regional court, by the presiding judge of a panel at a regional court to the supreme court; if necessary, the presiding judge shall submit a copy of the complaint to the prosecutor and to the person who could be affected by the ruling on the complaint.

## **Section 146a**

### **Decision about a Complaint against Decisions on the Attachment of Property**

The complaint against a decision by means of which

a/ the prosecutor secured the property of the accused to secure the claim of an injured party (section 47),

b/ the prosecutor secured the property of the accused (section 347)

shall be considered, within five days as a rule, by the court in whose district sits the prosecutor who issued the contested decision.

## **Decision by a Superior Body**

### **Section 147**

/1/ In deciding on the complaint, a superior body shall examine

a/ correctness of all the verdicts of the contested ruling that the complainant may challenge by filing a complaint and

b/ proceedings that preceded the adoption of the contested ruling.

/2/ If the complaint is lodged only against one of several persons or one of several matters on which a joint ruling was issued, the superior body shall examine only the correctness of verdicts related to such person or matter, and the proceedings which preceded the adoption of the contested part of the ruling.

## **Section 148**

/1/ A superior body shall deny the complaint

a/ if it is not admissible,

b/ if was filed after the time limit, by other than an authorized person, person that expressly waived it or that filed the complaint after having expressly withdrawn it before or

c/ if it is not based on sufficient grounds.

/2/ It shall not be possible to deny a complaint which was filed after the time limit due to the fact that the authorized person followed incorrect instructions received at the time of being notified of the ruling.

### **Section 149**

/1/ If the superior body does not dismiss the complaint, it shall reverse the contested ruling and, if the case calls for a new decision, it shall either

a/ decide on the case in its own competence, or

b/ instruct the body whose decision is contested by the complaint to re-examine the matter and make a new decision.

/2/ If the court which decides on a complaint against the ruling on the stay of proceedings reverses that ruling it may, if the clarification of the matter requires it, return the case to the prosecutor for additional investigation even if the prosecution was stayed only after the main hearing was ordered (sections 223 and 231). The provision of section 191 shall also apply.

/3/ If only one part of the contested ruling is defective and it is possible to separate it from the rest of the ruling or if the complaint only concerns one part of the ruling (section 147 paragraph (2)), the superior body shall limit its decision pursuant to paragraph (1) only to the part concerned.

/4/ If the error consists in the omission or incompleteness of one of the verdicts of the ruling, the superior body may -- without cancelling the contested ruling -- either complete the ruling in its own competence or instruct the body whose decision is contested to decide on the omitted verdict or to complete it.

/5/ The court which decides on the complaint may, if it deems it necessary, order that the matter be re-examined in the first instance by a different panel of judges or by a different court of the same kind and instance within its district.

/6/ The body to which the matter was returned for re-examination and decision shall be bound, in issuing a new decision, by the legal opinion on the matter expressed by its superior body and it shall have the duty to perform the procedures ordered by such superior body.

## **Section 150**

/1/ The body deciding on the complaint shall not change the ruling on the basis of such complaint to the detriment of the person who filed it or the person who was to benefit from the complaint.

/2/ If a superior body changes a ruling to the benefit of the accused on the grounds which are also favourable for one of the co-accused, it shall change the ruling to benefit also the co-accused concerned.

/3/ The provision of paragraph 1 applies, as appropriate, also to the body which was assigned the case for re-examination and decision.

## **CHAPTER EIGHT**

### **COSTS OF CRIMINAL PROCEEDINGS**

#### **Section 151**

##### **Costs of Criminal Proceedings Borne by the State**

/1/ The costs of criminal proceedings, including sentence enforcement proceedings, shall be borne by the State; the latter, however, shall not bear the costs of the accused, the participating person and the injured, and the costs of the counsel and proxy. The State, however, shall bear the costs of mandatory defence incurred by the accused as a result of filing the complaint for the breach of law.

/2/ The counsel appointed for the accused shall be entitled to receive a fee and reimbursement of cash expenditures from the State in accordance with the list of legal fees.

/3/ The amount of the fee and reimbursement of cash expenditures shall be determined, on a motion by the counsel, by the body active in criminal proceedings which issued the final decision on the stay of proceedings. In judicial proceedings, the decision shall be issued by the presiding judge of a panel of a first-instance court.

/4/ The decision pursuant to paragraph (3) shall be liable for complaint having a suspensive effect.

### **Section 151a**

/1/ If the unjustified absence of the accused prevents the execution of a procedure in pre-trial proceedings or if it was necessary to postpone the main hearing or open court hearing, the accused shall have to bear the costs incurred by the repetition of the procedure or by a new main hearing or open court hearing. The accused shall be advised thereof.

/2/ The Ministry of Interior of the Slovak Republic and the Ministry of Justice of the Slovak Republic shall issue a generally binding regulation to fix the amount and the method of reimbursement of increased costs of criminal proceedings pursuant to paragraph (1).

/3/ The decision pursuant to paragraph (1) shall be liable for complaint having a suspensive effect.

### **Duty to Reimburse the Costs of Criminal Proceedings**

### **Section 152**

/1/ If the defendant was found guilty in a final sentence, he shall have to reimburse the State

a/ the costs incurred by his remand in custody,

b/ the fee and cash expenditures of the counsel assigned by the State unless the defendant is entitled to a free defence counsel,

c/ the costs incurred by serving an imprisonment sentence and

d/ a lump sum for other costs borne by the State.

/2/ The reimbursement of the costs incurred by serving the imprisonment sentence shall be regulated under a separate decree.

/3/ The amount of the lump sum under paragraph (1) subparagraph d/ shall be fixed by the Ministry of Justice by means of a generally binding legal regulation.

4/ The reimbursement of the of costs incurred by serving an imprisonment sentence shall be regulated by the act on the execution of imprisonment sentence.

### **Section 153**

/1/ Any person who filed an unsuccessful motion for a re-trial shall have to reimburse the State the costs of hearing held in respect of such motion with a lump sum to be fixed by the Ministry of Justice in a generally binding regulation. When applicable, he shall also have to reimburse the State the fee and cash expenditures of the counsel appointed for him in connection with such motion, unless the accused is entitled to a free counsel or a counsel at a reduced fee.

/2/ The reimbursement obligation pursuant to paragraph (1) shall not apply to a prosecutor or a body entrusted with care for juvenile persons.

### **Section 154**

#### **Duty to Reimburse the Costs of the Injured**

If the claim of the injured was granted, at least partly, the convicted person who was imposed the payment of damages shall have the duty to reimburse the costs incurred by effective enforcement of the injured persons's claim through criminal proceedings, including the costs of taking a proxy.

#### **Decision Concerning the Duty to**

## **Reimburse Criminal Proceeding Costs and Their Amount**

### **Section 155**

/1/ The decision on the duty to reimburse the costs of the injured and their amount (section 154) as well as the obligation to reimburse the costs incurred by the remand in custody and the obligation to reimburse the fee and cash expenditures of the assigned counsel (section 152 paragraph (1), subparagraphs a/, b/) shall be made by the presiding judge of a panel at a first-instance court after the judgment became final.

/2/ The decision pursuant to paragraph (1) shall be liable for complaint having a suspensive effect.

### **Section 156**

If the costs fixed as a lump sum (subsection 152(1) paragraph d/ and subsection 153 paragraph 1) were not paid by means of duty stamps, the presiding judge of a panel at a first-instance court shall decide on the obligation of their reimbursement after the judgment became final.

## **PART TWO**

### **INVESTIGATION OF CRIMINAL OFFENCES**

### **Section 157**

#### **General Provision**

/1/ A prosecutor, an investigator or a policy body shall have the duty to organize their activities so as to effectively contribute to the timely and justified criminal prosecution.

/2/ A prosecutor shall have the right to entrust an investigator and a police body with procedures for which they have the necessary powers and which are necessary for the clarification of the case or identification of the offender. An investigator shall have the same rights in relation to a police body.

## **CHAPTER NINE**

### **PROCEDURE PENDING CRIMINAL PROSECUTION**

#### **Section 158**

/1/ A prosecutor, an investigator and a police body shall have the duty to accept information concerning circumstances that indicate the commission of a criminal offence and to act on it without unnecessary delay; they shall also advise the informer of his criminal liability for giving deliberately false information and, on the informer's request, they shall notify him of the effected measures, not later than one month after he laid in his information.

/2/ The police bodies shall have the duty to take all the measures that are necessary to expose criminal activities and identify their perpetrators; they shall also have the duty to take any necessary measure to prevent criminal acts.

/3/ To verify information concerning the facts that indicate the commission of a criminal offence and other motions for criminal prosecution, a prosecutor, an investigator or a police body shall secure the necessary materials and explanations, and identify and secure the clues of criminal offences; investigator shall perform procedures pursuant to this provision in respect of those criminal offences that are punishable by a maximum imprisonment sentence of more than three years. Legal review of a criminal offence made by the investigator shall be binding for the police body.

/4/ If criminal prosecution pursuant to section 160 cannot be initiated because the person to be charged is not yet known, an investigator or a police body may perform only urgent and unrepeatable procedures set out in Chapters Four and Five. It shall send a copy of the report on such procedures to a prosecutor not later than within 48 hours. This procedure shall not relieve the police body of its duty to hand the case over to the prosecutor if there are grounds to lay charges against a person, and does not relieve the investigator of the duty to arraign the person to be prosecuted in accordance with section 160.

/5/ An official report shall be drawn up with respect to explanations that do not have an urgent or unrepeatable nature. The report shall serve the prosecutor and the accused to consider the proposal to hear the person having filed such information as a witness at the trial, and it shall serve the court to consider whether it will admit such evidence. The report itself shall not be used as evidence in judicial proceedings. If the person who gave an explanation is later examined as a witness or an accused, he may not be submitted the report.

/6/ An urgent procedure pursuant to paragraph (4) shall be a procedure which, because of the danger of its suppression, destruction or loss, cannot be postponed until the commencement of criminal prosecution. An unrepeatable procedure pursuant to paragraph (4) shall be a procedure that cannot be performed before a court.

/7/ Explanation pursuant to paragraph (3) cannot be requested from a person if this violated a non-disclosure obligation laid down or stipulated by the law, unless such person is relieved of such obligation by a competent body in whose interest it was imposed. Explanation may be denied by a person who would run the risk of criminal prosecution against himself or persons under section 100 paragraph (2).

## **Section 159**

/1/ If no suspicion of crime is present, a prosecutor, an investigator or a police body shall issue a ruling suspending the case unless no other settlement of the case may be reached. Such settlement may include, in particular:

a/ handing the case over to a body competent to examine the misdemeanour  
or

b/ handing the case over to another body for disciplinary proceedings.

/2/ Prior to the commencement of criminal prosecution, a prosecutor, an investigator or a police body shall adopt a ruling suspending the case if criminal prosecution is inadmissible pursuant to section 11 paragraph (1).

/3/ Prior to the commencement of criminal prosecution, a prosecutor, an investigator or a police body may issue a ruling suspending the case if criminal prosecution is irrelevant because of the circumstances set out in section 172 paragraph (2).

/4/ If no facts were established to justify the commencement of criminal prosecution (section 160), an investigator or a police body shall issue a ruling on setting the case aside. Prior to setting a case aside, all the steps necessary to ensure the completion of criminal prosecution shall be taken. If the reasons for setting a case aside cease to exist, the procedure pursuant to section (159 paragraphs (2) or (3) or to section 160 shall apply. The ruling on suspending a case or setting a case aside shall be served on the injured. The ruling on suspending the case pursuant to paragraphs (2) and (3) or on setting a case aside pursuant to paragraph (4) shall be served on the prosecutor within 48 hours. The informant shall be notified about suspending the case at or setting the case aside if he asked for it under section 158 paragraph (1).

## **CHAPTER TEN**

### **COMMENCEMENT OF CRIMINAL PROSECUTION AND RELATED PROCEDURES**

#### **Part One**

#### **Commencement of Criminal Prosecution**

#### **Section 160**

/1/ If the established facts indicate that a criminal act was committed and if it there are reasonable grounds to believe that it was committed by a particular person, the investigator shall immediately proceed with criminal prosecution, unless section 159 paragraphs (2) and (3) apply. Criminal prosecution shall be initiated with the adoption of the ruling on laying the charges which will be served on the (section 137) accused within three days or not later than at the beginning of the first interrogation. The investigator shall send a copy of the ruling on laying the charges to the prosecutor within 48 hours.

/2/ The ruling on laying the charges shall give the description of the act being investigated, the place, date and/or other circumstances of such act so as to prevent confusion with another act; it shall specify which criminal offence was committed through such act giving its legal nomenclature and the applicable provisions of the Penal Act as well as the charges on which the accused is being prosecuted.

/3/ An investigator or a police body shall perform all the procedures that are urgent or unrepeatable and an investigator shall initiate criminal prosecution if it is not possible to make a competent body perform these procedures; the investigator then

refers the case to such a body within no more than three days after performing the procedures and the competent body continues in the proceedings.

/4/ If the investigation shows that the accused committed another offence which was not included among the charges, in relation to the other offence the investigator shall proceed pursuant to paragraph (1).

/5/ If the investigation shows that the criminal offence in respect of which the charges were laid is different than the act legally defined in the ruling on laying the charges, the investigator shall notify the accused of this fact and enter such notification into the report.

## **Title Two**

### **Investigation**

#### **Section 161**

##### **Investigation Bodies**

Investigation shall be conducted by Police Corps investigators.

#### **Section 162**

##### **Handing the Case over to the Investigator**

If the investigator who was handed the case by another body does not consider himself to be competent for the case, he shall immediately submit the file with his position to the prosecutor; otherwise he shall continue in the proceedings.

#### **Section 163**

/1/ Criminal prosecution held in respect of criminal offences of false accusation under section 174, violence against a group of people and against an individual under section 197a, defamation under section 206, failure to give assistance

under sections 207 and 208, violation of other people's rights under section 209, bodily injury under sections 221, 223 and 224, constituting the threat of spreading venereal disease under section 226, restriction of personal freedom under section 231 par. 1, extortion under section 235 par. 1, forcible entry under section 238, par. 1, larceny under section 247, embezzlement under section 248, unauthorized use of other person's property under section 249, unauthorized use of other person's motor vehicle under section 249a, fraud under section 250, being accessory to crime under sections 251 and 251a, usury under section 253, concealment of a thing under section 254, breach of duties in the administration of other person's property under section 255, damaging the interests of a creditor under section 256a, damaging a thing of another persons under section 257 and damaging and misusing a record on an information carrier under section 257a of the Penal Act conducted against a person who - in relation to the injured - is a person with respect to which the injured has the right to refuse to testify (section 100 paragraph (2)), criminal prosecution in respect of the criminal offence of rape under section 241 paragraph (1) conducted against a person who, at the time the offence was committed, was the spouse or common-law spouse of the injured party, and criminal prosecution in respect of the criminal offence of drunkenness under section 201a of the Penal Act if it shows the particulars justifying a charge for one of the above criminal offences may be initiated and, if already initiated, continued only with the consent of the injured. If as a result of one act there are more than one injured, the consent of only one of them shall be sufficient.

/2/ The provision of paragraph (1) shall, however, not apply if such act resulted in a death.

/3/ If the injured does not submit his statement to the prosecutor, the investigator or the police body in writing, the content of his statement shall be noted down in the report. The injured may withdraw his consent with criminal prosecution at any time by making an explicit statement to this effect, but not after the appeals court meets for the final conference. However, once he expressly refuses to give a consent, he shall not be able to give it again.

### **Section 163a - repealed**

## **Section 164**

### **Investigation Procedures**

/1/ An investigator shall normally conduct the investigation himself. The investigator needs not repeat the procedures performed prior to laying the charges and

procedures performed after the charges have been laid by police bodies on investigator's instructions provided they were performed in conformity with the provisions of the present Act. The provisions of sections 158 paragraph (3) and (4) shall similarly apply to the execution of investigation procedures.

/2/ In conducting an investigation, an investigator shall act on his own initiative with the aim of clarifying, without delay and in the extent required, all the facts relevant for the examination of the case, including the person of the perpetrator and consequences of the criminal act (section 89 paragraph (1)).

/3/ The investigator secures evidence irrespective of whether it is beneficial or detrimental to the accused. Unless completely irrelevant, the defence of the accused and the evidence proposed by the accused shall have to be examined and corroborated. The accused may be in no way forced to make a statement or confession.

/4/ Except for cases which, under the present Act, call for the authorization by a prosecutor, the investigator shall make in his own competence all the decisions concerning the process of investigation and investigation procedures, and shall take full responsibility for their lawful and timely execution. If the investigator does not agree with the prosecutor's instructions concerning the charges, the definition of the criminal offence and the scope of the charges, or with instructions concerning the settlement of the case in pre-trial proceedings, he shall have the right to submit written objections to the latter; if the prosecutor turns down these objections, the investigator shall submit the case to the superior prosecutor who shall either void the instructions issued by a subordinate prosecutor or shall assign the case to a different investigator. In all other cases, instructions issued by the prosecutor shall be binding for the investigator.

## **Section 165**

### **Defence Counsel Participation in the Investigation**

/1/ A defence counsel shall have the right to be present in all investigation procedures already from the moment the charges have been laid; he shall have the right to pose questions to the accused and to other interrogated persons, but only after the body concerned has completed interrogation and handed him the floor.

/2/ If a defence counsel informs an investigator of his intention to take part in an investigation procedure, the investigator shall have the obligation to give him an advance notice of the time and place of the procedure except when such notice cannot be ensured and the procedure cannot be postponed.

## **Section 166**

### **Closure of Investigation**

/1/ If an investigator deems investigation completed and its results sufficient to file indictment, he shall make it possible for the accused and the counsel, for the injured or his proxy to examine, within a reasonable time, the files and to submit motions for additional investigation. He shall advise the accused and his counsel of such a possibility at least three days in advance. If the accused and the counsel agree, the above time limit may be reduced. If the investigator does not consider the proposed additional investigation necessary, he shall reject the motion. The investigator shall note down these procedures in the file and he shall notify the accused or his counsel and the injured of having rejected the motion for additional investigation.

/2/ If the accused, his counsel or the injured do not take advantage of the possibility to examine the files even though they had been duly advised of it, the investigator shall note this fact down in the file and continue in the proceedings as if such procedure had been performed.

/3/ After closing the investigation, the investigator shall submit the prosecutor the file with the motion to lay indictment, the list of proposed evidence and the reasons for rejecting the motion to take additional evidence, or shall execute one of the decisions pursuant to sections 171 through 173.

## **Section 167**

### **Motion to Review Actions of an Investigator**

The accused and the injured shall have the right to file application to a prosecutor to eliminate the delays in the investigation or irregularities in the actions of an investigator. The application shall be subject to no time limit. The prosecutor to whom such application shall have to be immediately submitted shall have to deal with it without delay. The applicant shall be notified of the result of the review.

## **Title Three**

## **Search**

**Section 168** - deleted

**Section 169** - deleted

**Section 170** - deleted

## **Title Four**

### **Decision in Pre-trial Proceedings**

#### **Section 171**

##### **Transfer of Case**

/1/ The investigator shall transfer the case to another body if the findings of the pre-trial proceedings indicate that it is not a criminal offence but an act which another pertinent body would evaluate as offence or disciplinary offence.

/2/ The accused and the injured party shall be notified of the ruling to transfer the case; a copy of investigator's ruling has also to be delivered to the prosecutor within 48 hours. A complaint against a ruling pursuant to paragraph 1 is admissible and it has a suspensive effect.

#### **Section 172**

##### **Stay of Criminal Prosecution**

/1/ The investigator shall stay criminal prosecution,

a) if it is beyond any doubt that the act, on the grounds of which the criminal prosecution shall be instituted, did not occur,

b) if this act is not a criminal offence and there are no grounds to transfer the case,

c) if it is not proved that the act was committed by the accused,

d) if criminal prosecution is inadmissible (Art. 11 para 1),

e) if the accused bore no criminal liability for unsound mind while committing the act  
or

f) the culpability of the act expired.

/2/ The investigator may stay criminal prosecution:

a) if the sentence in which the prosecution may result, is fully insignificant compared with the sentence for another act the accused has already been charged with or

b) if the act committed by the accused has already been ruled by another body in a disciplinary, reprimand way or a foreign court or agency and this decision may be considered satisfactory.

/3/ The ruling of criminal prosecution stay shall be served both on the accused and the injured party. Investigator's ruling shall be served on the prosecutor within 48 hours. A complaint against a ruling pursuant to paragraph 1 and 2 is admissible and it has a suspensive effect.

/4/ The criminal prosecution which was stayed for some of the reasons stipulated in paragraph 2 shall be continued if the accused states his/her insistence on the trial of the case, within three days from the notice of the ruling to stay criminal prosecution. The accused shall be instructed about this.

## **Section 173**

### **Suspension of Criminal Prosecution**

/1/ The investigator shall suspend criminal prosecution,

a) if the case cannot be duly clarified for the absence of the accused or the injured party,

b) if the accused cannot appear before a court for a severe disease,

c) if the accused is unable to understand the meaning of the criminal prosecution due to his/her mental disease occurring after committing the act, or

d) if the accused is under extradition to a foreign country or expulsion.

/2/ Prior to criminal prosecution suspension everything necessary for the arrangement of a successful criminal prosecution shall be done. If the reason for suspension is not existing anymore criminal prosecution shall be continued.

/3/ The ruling of criminal prosecution suspension shall be delivered to the injured party. Investigator's ruling shall be delivered to the prosecutor within 48 hours.

## **Title Five**

### **Supervision by Prosecutor**

#### **Section 174**

/1/ The prosecutor shall perform supervision over observance of the law in the pre-trial proceedings.

/2/ During the performance of this supervision the prosecutor shall be authorized:

a) to give binding instructions for criminal offences investigation,

b) to request, from the investigator or a police body, files, documents, materials and reports on committed criminal acts for reviewing investigator's early commencement of criminal prosecution and due procedure,

c) to participate in the performance of procedures by investigator or police body, to conduct individual procedures or the whole investigation personally and to issue decision in any case; while acting pursuant to the provisions valid for the investigator herein, and a complaint against his/her decision is admissible as it is against investigator's decision,

d) to return the case with instructions for additions to the investigator,

e) to cancel unlawful or unjustified decisions and measures by investigator, police body, which he/she may replace with own decisions; in rulings on stay and suspension of criminal prosecution or a transfer of the case he/she may do so within fifteen days from delivery; if the decision by investigator and police body was replaced with an own decision different from the complaint by the authorized person and against a decision by investigator or police body, a complaint against his/her decision is admissible in the same scope as against the decision by an investigator or police body,

f) to take any case from a particular investigator and to take measures to have the case assigned to another investigator.

#### **Section 175**

The prosecutor only shall be authorized:

a) to file indictment,

b) to order seizure of accused person's property and to determine to which means and things this seizure shall not apply or to cancel such a seizure,

c) to secure injured party's title to damage compensation and to restrict or cancel such security or to exclude the thing,

d) to order a corpse exhumation,

e) to file a request for extradition of the accused from a foreign country,

f) to perform preliminary investigation in the proceedings of extradition from a foreign country.

## **Title Six**

### **Indictment**

#### **Section 176**

/1/ If investigation findings are sufficiently strong to justify the accused to be brought before a court the prosecutor shall file an indictment and attach files and their annexes to it. He/she shall notify the accused and the defence counsel of filing the indictment.

/2/ The indictment shall be filed only for the act against which the charges were laid (Art. 160). If the prosecutor wants to view this act as a criminal offence different from the opinion of the investigator he/she shall notify the accused and his/her defence counsel prior to filing indictment and he/she shall also find out whether they file a motion to extend the investigation with respect to the intended change.

#### **Section 177**

##### **The Indictment Shall Include**

a) Prosecutor's sign and the day of indictment writing,

b) the name and family name of the accused, the day and place of his/her birth, his/her employment and place of residence, and/or any other data needed to prevent confusion for another person; if the accused is a person falling under the jurisdiction of military courts, the rank of the accused and the unit he/she is a member of shall also be identified,

c) the accusation motion which shall contain an exact description of the act for which the accused is being prosecuted together with the identification of the place, time and way of perpetration and/or mention of other facts if they are needed to prevent confusion with another act and to justify the application of a particular penal sanction; it shall also include the criminal offence the prosecution finds in this act and its legal

term, mention of the pertinent legal provisions and all legal signs including those which justify a particular legal sanction,

d) the justification of the accusation motion which shall contain the description as to the facts of the case with the identification of evidence on which this description is based, the defence of the accused and prosecutor's opinion to it with the mention of the facts based which the prosecutor considers the defence to be rebutted or undecided as well as legal considerations the prosecutor followed when evaluating the facts against the relevant legal provisions and

e) a list of evidence proposed by the prosecutor to be developed during the main hearing.

### **Section 178**

1) In the indictment the prosecutor shall petition the court to order a protective treatment or protective education or thing seizure if he/she sees legal conditions for it to be satisfied.

2) The prosecutor may make the motion in paragraph 1 also separately.

### **Title Seven**

#### **Section 179 - cancelled**

### **Title Eight**

#### **Section 179a - 179f - cancelled**

## **PART THREE**

## **PROCEEDINGS BEFORE A COURT**

### **CHAPTER ELEVEN**

#### **BASIC PROVISIONS**

## **Section 180**

1) A criminal prosecution before a court shall be held only upon an indictment filed and represented at the court by a prosecutor.

/2/ When filing and representing the state the prosecutor shall follow the law and his/her inner conviction based on the consideration of all aspects of the case.

## **Section 181**

/1/ An indictment filed at the court shall first be reviewed as to providing a reliable basis for further proceedings and as to the pre-trial proceedings being developed in a way which is in compliance with this act and as to the results being sufficient to justify bringing the accused before a court. For this a preliminary hearing of the indictment shall be held.

/2/ After filing the indictment the court shall decide separately all issues related to further continuation of the proceedings and shall have the duty - without waiting for other motions - to make all decisions and take all measures needed for processing the indictment, concluding the case and enforcing the court decision.

## **Section 182**

/1/ The prosecutor may withdraw the indictment till the opening of the main hearing; by doing so the case shall be returned to the pre-trial proceedings stage.

/2/ If after the main hearing commencement the prosecutor arrives to the conviction that the results of case hearing before the court do not confirm the indictment he/she

shall have the duty to withdraw the indictment and to notify the court of the reasons leading to it. However, this statement shall not relieve the court of the duty to rule - following the law and its inner conviction - in the indictment according to general principles.

### **Section 183**

/1/ Civil associations specified in Section 4 paragraph 1 may petition to have their legal representative present to exercise the right pursuant to Section 5 at the hearing of the case in the main hearing before the district court or in a public session on appeal held before the regional court. The presiding judge of panel and, in the pre-trial proceedings, the prosecutor shall have the duty to give the civil association the necessary information based on the file .

/2/ The court shall rule the motion pursuant to paragraph 1; the presiding judge of panel himself/herself may satisfy the motion. The representative of the civil association shall have the right of access to the files, to make motions as to the evidence or other issues, participate in the main hearing, ask questions to the persons examined there and participate in the final addresses, after the court ruled in favour of his/her participation in the proceedings. The court shall have the duty to provide every assistance to the association representative in the performance of his/her function.

/3/ At the court hearing the association representative shall present the opinion of the association on the heard case and the accused person based on direct knowledge of his/her person, his/her attitude to the constitutional system of the republic, attitude to work, family and citizens and is supportive as to enable the court to mainly

a) find every aspect, fully and impartially of all the circumstances of the case ,

- b) evaluate the person of the accused in a responsible way,
- c) decide correctly about the guilt and sentence,
- d) reveal causes that lead to criminal activity and to initiate their removal.

**Section 184 - deleted**

**CHAPTER TWELVE**

**PRELIMINARY HEARING OF THE INDICTMENT**

**Section 185**

**General Provisions**

/1/ The indictment filed at a court shall be reviewed by the presiding judge of panel and he/she shall assess based on the content of the file as to a preliminary hearing before a panel is needed or a main hearing shall be ordered.

/2/ To facilitate the decision he/she may examine the accused and procure necessary explanations.

**Section 186**

**Causes for Preliminary Hearing of the Indictment**

The presiding judge of panel shall order a preliminary hearing of the indictment if he/she thinks that

- a) the case falls under the jurisdiction of another court,
- b) the case shall be transferred pursuant to Section 171 paragraph 1,
- c) there are circumstances justifying to stay criminal prosecution pursuant to Section 172 paragraph 1 or to suspend it pursuant to Section 173 paragraph 1 letter a) through d) or circumstances justifying conditional stay of criminal prosecution pursuant to Section 307,
- d) the act constituting the case of the indictment should be judged pursuant to another provision of the Criminal Act than the one applied by the prosecution,
- e) the pre-trial proceedings was not executed according to the law and that especially the regulations guaranteeing the right to defence were violated or
- f) that the case is not clarified from the points of view the court needs for its decision.

## **Section 187**

### **The Manner of Indictment Preliminary Hearing**

/1/ A preliminary hearing of the indictment shall be held in a closed session. If the presiding judge of panel concludes a public session of the preliminary hearing of the indictment to be necessary in order for the court to arrive to a decision he/she shall order so.

/2/ In a preliminary hearing of the indictment the court shall always review the whole indictment; the presiding judge of panel shall always present a report from this aspect and with a focus on issues which need to be resolved.

/3/ Based on the file the court shall review justification of the indictment, completeness and lawfulness of the body of evidence.

## **Ruling**

### **Section 188**

/1/ After a preliminary hearing of the indictment the court shall

a) transfer the case to the competent court if they are not the competent court for the hearing,

b) transfer the case to another body if there are circumstances stipulated in Section 171 paragraph 1,

c) stay criminal prosecution if there are circumstances stipulated in Section 172 paragraph 1,

d) suspend criminal prosecution if there are circumstances stipulated in Section 173 paragraph 1, letters a) through to d),

e) return the case to the prosecutor for additional investigation if it is necessary in order to remove significant error of the pre-trial proceedings or for the clarification of facts important for decision,

f) stay criminal prosecution conditionally pursuant to Section 307 or

g) transfer the case to a single judge if he/she has competence to hear the case pursuant to Section 314a paragraph 1; single judge is bound by this decision.

/2/ After a preliminary hearing of the indictment the court may also stay criminal prosecution if there are circumstance stipulated in Section 172 paragraph 2.

/3/ The prosecutor as well as the accused may file a complaint against the decision pursuant to paragraph 1 letters a) through f) which has a suspensive effect provided it does not concern suspension of criminal proceedings.

### **Section 189**

The court which was transferred the case pursuant to Section 188 paragraph 1 letter a) by a superior court shall not transfer the case to another court except when the facts of the case have substantially changed as to the competence, meanwhile.

### **Section 190**

/1/ If the court concludes that correct application of the law to the act constituting the case of the indictment results in the application of a different provision of the law than the one applied by the prosecution, the court shall return the case to the prosecutor for additional investigation (Section 188 paragraph 1 letter e/) if there is need for a more detailed clarification of the case with respect to a different legal evaluation of the case.

/2/ If additional investigation is not needed the presiding judge of panel shall note the possibility of a different legal opinion of the act to the persons who are delivered a copy of the indictment (Section 196 paragraph 1).

## **Section 191**

/1/ If the court returns the case for additional investigation to the prosecutor then court's ruling shall state in which respect the pre-trial proceedings shall be complemented and which facts shall need clarification or which procedures shall be taken.

/2/ As soon as the ruling of case return for additional investigation became valid the case shall be returned to the pre-trial proceedings stage.

/3/ Pursuant to the ruling stipulated in paragraph 1 additional investigation shall usually be conducted within one month from the day the files with a valid ruling were returned to the prosecutor.

## **Section 192**

If the accused is in detention the court shall also always rule about further continuation of detention at the preliminary hearing of the indictment.

## **Section 193 and 194 - cancelled**

## **Section 195**

### **New Preliminary Hearing of the Indictment**

/1/ If the prosecutor again decides to file an indictment in the case that was returned to him/her for additional investigation he/she shall also consider the facts found by the

additional investigation in the indictment. Under the conditions stipulated in Section 186 the indictment shall again be preliminary heard at a court.

/2/ Under the conditions stipulated in Section 186 the indictment shall again be preliminary heard at the court which was transferred the case pursuant to Section 188 paragraph 1 letter a).

## **CHAPTER THIRTEEN**

### **MAIN HEARING**

#### **PART ONE**

#### **Preparation of the Main Hearing**

##### **Section 196**

##### **Indictment Serving**

/1/ If the court did not pass any of the decisions stipulated in Section 188 paragraph 1 and 2 the presiding judge of panel shall have a copy of the indictment served on the defendant and his/her counsel and the injured party, and if the defendant was deprived from the capacity for legal procedure or his/her capacity for legal procedure was restricted also to his/her legal representative; if an organisation suffered damage from the criminal offence it shall also be served a copy of the indictment on. If the indictment includes a motion for seizure of a thing belonging to another person than the defendant the presiding judge of panel shall have a copy of the indictment served also on this person. If a decision in favour of a civil representative presence at the main hearing was

already made the presiding judge of panel shall have a copy of the indictment served also on the relevant civil association.

/2/ Persons who are served a copy of the indictment on shall simultaneously also be called to present motions for other evidence to be taken at the main hearing, to the court in time and to specify circumstances this evidence should clarify.

/3/ A copy of the indictment shall be served together with the summons for the main hearing or the notice of it the latest.

## **Section 197**

### **Substitute Judge**

/1/ If expected that the main hearing shall last a longer period of time the chief judge of the court shall arrange the participation of one or two substitute judges or an assessor.

/2/ At the main hearing the substitute judge or the assessor shall have the status of a panel member. However, they shall participate in the conference and voting only in case he/she is invited instead of a judge or assessor impeded to continue the participation in the main hearing. The judge or assessor who was replaced by the substitute judge or assessor shall not participate in the main hearing anymore.

## **Section 198**

### **Order of Main Hearing**

/1/ The presiding judge of panel shall order the day of the main hearing in such a way that the defendant shall have from the day of summons delivery, and the prosecutor and defence counsel from the day of notice at least a five working day term for preparation. This term may be shortened only with their consent and in terms of the defendant only when he/she shall appear at the main hearing and explicitly require its execution. In other persons who are summoned to the main hearing or are given notification of it, usually, a three-day notice shall be observed.

/2/ The prosecutor, legal representative and defence counsel of the defendant as well as the injured party and participating person shall be notified of the main hearing. If the injured party or the participating person have a proxy then only their proxies shall be notified of the main hearing. The injured party shall be instructed in the notice of the fact that if not appearing at the main hearing his/her claim for damage compensation will be decided only on the basis of his/her own motions if contained in the file or submitted to the court prior to taking the evidence. If a civil representative was admitted to the main hearing, then also the civil association sending this representative shall be notified of the main hearing.

/3/ When ordering the main hearing the presiding judge of panel shall also take all measures necessary to provide for its successful course.

## **Title Two**

### **Public Nature of the Main Hearing**

#### **Section 199**

/1/ The court shall hold, as a rule, a public main hearing.

/2/ The rationale being the citizens shall be given the greatest possible opportunity to follow court hearing of the case and, thus, have the educational impact of a criminal proceedings on the broad public effectively and resulting in their active involvement in the efforts of prevention of criminal activity. Therefore, in appropriate cases the main hearing shall be held directly at the place where the criminal offence was committed or at the workplace or the residence of the defendant. In such case the court shall notify of the main hearing the civil association which may provide for citizens' participation and contribute effectively to the attainment of the objective pursued by a public main hearing.

### **Section 200**

/1/ The public may be excluded from the main hearing only if the public hearing were to jeopardize a secret protected by a special act, undisturbed course of the proceedings or morals or security or any other important interest of witnesses. The public shall be excluded during an examination of an agent (Section 88 para 10); in which case the provision of Section 201 para 2 shall not be applied. The public may also be excluded only for a part of the main hearing.

/2/ The judgement must always be pronounced publicly.

/3/ The court shall rule about excluding the public in a ruling which shall be publicly pronounced after hearing the parties.

### **Section 201**

/1/ Even if the public was not excluded pursuant to Section 200 the court may deny access to the main hearing to minors and those who give grounds for concern of

disturbing the main hearing dignity. The court may also take necessary measures to prevent crowding of the court room.

/2/ Even if the public was excluded pursuant to Section 200 the court may permit individual persons access to the main hearing for important reasons. Based upon a request of the defendant access to two his/her trustees must be permitted. If there are more defendants then each of them has the right to choose trustees. If the overall number of trustees shall be more than six and the defendants shall not arrive to an agreement among themselves the choice shall be made by the court. If the public was excluded on the grounds of jeopardy to a secret protected by a specific law or security or any other important interest of witnesses only such persons may be chosen for trustees against who the court has no objections.

/3/ Even if the public was excluded for jeopardy to state, business or service secret the presiding judge of panel shall advise the persons present of penal consequences resulting from disclosure of facts they learn in the hearing to unauthorized persons; the court may also order a ban on note-taking in writing.

### **Title Three**

#### **Opening of Main Hearing**

#### **Section 202**

#### **Presence at the Main Hearing**

/1/ A main hearing shall be held under a permanent presence of all members of the panel, court clerk and prosecutor.

/2/ The main hearing in absentia of the defendant shall be held only if the court is of the opinion it may rule beyond doubt and achieve the objective of the criminal prosecution also without the presence of the defendant, and at the same time

a) the indictment was served in the due way on the defendant and the defendant was early and duly summoned to the main hearing, and

b) the defendant was examined about the act constituting the matter of the indictment by one of the bodies acting in criminal proceedings and provisions on laying the charges (Art. 160) were observed and the defendant was advised of the possibility to review the file and to lodge motions for additional investigation (Art. 166 para 1)

/3/ The main hearing in absentia of the defendant shall not be held if the defendant is in custody or serves an imprisonment sentence or if it is a criminal offence for which the law stipulates an imprisonment sentence with an upper limit over five years. In case of mandatory defence (Art. 36) the main hearing shall not be held in the absence of the defence counsel.

/4/ The provision of the first sentence in paragraph 3 shall not be applied if the defendant requests the main hearing to be held in his/her absentia.

### **Chair of Main Hearing**

#### **Section 203**

/1/ The main hearing shall be chaired by the presiding judge of panel.

/2/ In doing so he/she shall have the duty to maintain the dignity and respect of the court hearing and to prevent delay of the main hearing due to explanations bearing no

relevance to the case on trial and to have the hearing focused most efficiently on the clarification of the case.

/3/ Those who feel to have suffered a detriment through the decisions of the presiding judge of panel during the main hearing shall lodge a motion for the panel to rule. Such a motion and its decision shall be noted in the report.

### **Section 204**

/1/ The presiding judge of panel may order persons disturbing the order leave the court room.

/2/ The defendant may be ordered out only upon a ruling of the panel after a previous warning and only for the necessary time. After permitting him/her enter the court room again the presiding judge of panel shall advise the defendant of the significant content of the hearing conducted in his/her absence so that he/she shall be able to present his/her opinion on it.

### **Commencement of the Main Hearing**

### **Section 205**

/1/ The presiding judge of panel shall open the main hearing by announcing the case on trial; then the presiding judge shall verify the presence of persons summoned to or notified of the hearing and shall take their identity. He/she shall also determine whether a preparation term was observed in persons who shall have it.

/2/ If any of the summoned persons did not appear the court shall decide after hearing the present parties whether the hearing shall be conducted despite these facts or whether it shall be adjourned.

## **Section 206**

/1/ After the performance of procedures stipulated in Section 205 the presiding judge of panel shall call the prosecutor to read the indictment.

/2/ After indictment presentation the presiding judge of panel shall ask the injured party whether they have motions as to impose the defendant a compensation duty for the damage caused by the criminal offence and in what scope. If the injured party does not appear to the main hearing and if this his/her proposal is contained in the file the presiding judge of panel shall read this motion from the file.

/3/ If a party exercises the right of the injured party and this right is evidently not appurtenant to this person then the court shall rule in the form of a ruling that this person is not admitted as an injured party to the main hearing. However, such a decision shall not prevent the enforcement of the title to damage compensation before an appropriate body.

/4/ The court shall proceed pursuant to paragraph 3 also when the circumstances stipulated in Section 44 paragraph 2 and 3 prevent the injured party to appear.

## **Title Four**

### **Developing Evidence**

#### **Examination of the Accused**

## **Section 207**

/1/ After the presentation of the indictment and the statement of the injured party the presiding judge of panel shall examine the defendant as to the content of the indictment, and if a title to damage compensation was exercised, also as to this title.

/2/ The report of a previous statement by the defendant shall be read only when the hearing is conducted in the absence of the defendant, when the defendant refuses to give a statement or when substantial discrepancies between an earlier statement and his/her facts during the main hearing emerge and if the examination was taken after laying the charges in a way complying with the provisions of this act. The defendant shall be advised of these discrepancies and asked as to their cause.

## **Section 208**

If there are several defendants the presiding judge of panel shall have the possibility to take measures not to have the defendant examined at the presence of co-defendants. However, the defendant shall always be advised on the content of the statements by co-defendants who were examined in his/her absentia, still in the course of developing the evidence.

## **Taking Other Evidence**

## **Section 209**

The presiding judge of panel shall observe not to have a witness not examined, yet, present at the examination of the defendant and other witnesses. Usually, after examining the defendant the court shall examine the injured party. If there is concern

that the witness shall not tell the truth in the presence of the defendant or if it is an examination of a witness who himself/herself and/or his/her close persons may suffer a detriment to their health, death or any other serious danger through the given testimony, or if the witness is a person whose identity must remain secret for serious reasons the presiding judge of panel shall take appropriate measures to guarantee security or identity cover of the witness and/or excludes the defendant, his/her trustees and the public from the court room during the examination of such a witness. After returning to the court room the defendant shall be advised of the content of witness' statement and may comment on it also without meeting the witness, he/she may ask the witness questions through the presiding judge of panel.

### **Section 210**

If an expert did not submit a written opinion in the case, yet, or if he/she deviates from it or complements it the presiding judge of panel shall order the expert to dictate the opinion or its supplement for the report or to write it himself/herself.

### **Section 211**

/1/ Instead of examining a witness during the main hearing reports from his/her statement may be read if the court does not consider a personal examination for necessary and the prosecutor and the defendant gave their consent to it.

/2/ The report of co-defendant or witness' statement shall also be read if the examination was taken in a way complying with the provisions of this act and such a person

a) died or is missing, is unreachable due to a long-term stay abroad or at an unknown place or has contracted a disease disabling him/her to stand an examination ever or in the nearest future,

b) during the main hearing refused to give a statement without justification or deviates from his/her earlier statement significantly.

/3/ The report of a statement by a witness who exercised his/her right to refuse a statement pursuant to Section 100 in a main hearing may be read only provided that before the examination which is in the report, the witness was duly advised as to his/her right to refuse a statement and he/she verbally stated a waiver of this right, and provided the examination was taken in the way as stipulated in the provisions of this act and the defence counsel had the possibility to participate in this examination.

/4/ The report of expert's examination or his/her written expert opinion may be read instead of examining the expert if he/she was instructed pursuant to Section 106 prior to giving the expert opinion and provided there are no doubts as to the correctness and completeness of the opinion and the prosecutor and the defendant gave their consent to it.

## **Section 212**

Audio or visual recording may be taken as evidence through its written transcription or in case of need, by playing it on the appropriate equipment. A report on how and by whom the deposit was made or acquired is a part of the procedure.

## **Section 213**

/1/ Expert opinions, reports by state and other bodies and other instruments used for taking evidence shall be read during the main hearing and the parties, and if necessary also the witnesses and experts, shall be enabled to have access to them.

/2/ Other material evidence shall be presented to the parties and if necessary also to the witnesses and experts.

### **Section 214**

After each taking of evidence the defendant and injured party shall be asked whether they want to comment and their comment shall be recorded.

### **Section 215**

#### **Participation of Parties in the Development of Evidence**

/1/ The prosecutor, civil representative, defendant, his/her defence counsel and legal representative, participating person, injured party and their proxies may, with the consent of the presiding judge of panel, ask the examined persons questions, and this usually after the presiding judge of panel completed his examination and when the members of the panel have no other questions.

/2/ The prosecutor, defendant, his/her defence counsel, injured party or his/her proxy may request a possibility to examine the witness. The presiding judge of panel shall satisfy their requirement especially if the witness was summoned upon their motion. In case of their motion denial, procedure pursuant to Section 203 paragraph 3 shall apply.

/3/ After taking all evidence the presiding judge of panel shall examine whether the parties have no motions as to supplement the development of evidence.

## **Title Five**

### **Closing of Main Hearing**

#### **Final Addresses**

##### **Section 216**

/1/ If there are no other motions for evidence development or if the court ruled that no other evidence will be taken the presiding judge of panel shall declare evidence development for closed and shall give the floor for final addresses.

/2/ After prosecutor's final address the injured party, the participating person, civil representative, defence counsel of the defendant and/or the defendant shall have the floor. If the injured or participating party have a proxy, than the proxy shall have the floor. If necessary the presiding judge of panel shall determine the order in which the individual authorized persons will have the floor after prosecutor's final address. However, the defence counsel of the defendant and/or the defendant shall always speak the last.

/3/ If the prosecutor or civil representative had the floor after defence counsel's address or the defendant's one then the defence counsel or the defendant shall have the right to answer.

/4/ The presiding judge of panel shall interrupt final addresses only if they evidently deviate from the trial case.

##### **Section 217**

After the final addresses are presented and prior to leaving for the final conference the presiding judge of panel shall grant the defendant the last word. During this presentation neither the court nor anyone else may ask the defendant questions.

## **Section 218**

### **Additional Development of Evidence**

/1/ If the court shall find, with respect to the final addresses or during the final conference, a need to clarify any of the circumstances it shall make a ruling that additional evidence shall be developed and the main hearing shall be continued.

/2/ After additional development of evidence the floor shall always be given for final address.

## **Title Six**

### **Main Hearing Adjournment**

## **Section 219**

/1/ The court shall adjourn the main hearing if an impediment for which the main hearing cannot be held or continued emerges. Prior to adjourning the main hearing the court shall examine whether the parties are not making motions for other evidence that should be taken for future hearing.

/2/ When an adjourned main hearing is continued the presiding judge of panel shall advise of the significant content of the hearing so far. However, if the composition of

the panel changed or if there is another reason for it the main hearing shall be conducted again.

## **Title Seven**

### **Court Ruling in the Main Hearing**

#### **Section 220**

##### **Grounds for Ruling**

/1/ The court shall rule only about the act which is identified in the accusation motion.

/2/ Its decision shall consider only those facts that were examined in the main hearing and shall be based on evidence which was developed during the main hearing.

/3/ The court shall not be bound by the legal qualification of the act in the indictment.

#### **Section 221**

##### **Return of the Case to the Prosecutor**

/1/ If the results of the main hearing indicate a substantial change of case circumstances and further investigation shall be needed for the clarification of the case the court shall return the case for additional investigation to the prosecutor.

/2/ The court shall also return the case for additional investigation to the prosecutor if the results of the main hearing indicate that the defendant also committed another act

which is a criminal offence and the prosecutor asked to return the case with respect to the need of a joinder of hearing.

/3/ Provision of Section 191 shall also apply for the return of the case pursuant to paragraph 1 and 2.

/4/ A complaint against the decision pursuant to paragraph 1 and 2 is admissible and it has a suspensive effect.

## **Section 222**

### **Transfer of the Case**

/1/ If the court finds a criminal offence in the act constituting the subject matter of the indictment it is not competent to try the court shall transfer the case to the competent court. However, the court shall have the duty to rule if only a territorial incompetence is concerned and the defendant is not challenging it; the court shall also have the duty to rule if the case were to be transferred to a court of the same type but a lower instance. A court which was transferred the case by a superior court shall not transfer the case to another court except for the case when the facts for competence evaluation significantly changed, meanwhile.

/2/ The court shall transfer the case to another body if it finds that the act constituting the subject matter of the indictment is not a criminal offence but could be viewed as an offence or disciplinary offence by another body which is competent to rule in such cases.

/3/ The prosecutor may file a complaint against the ruling on transfer pursuant to paragraph 2 and it shall have a suspensive effect.

## **Section 223**

### **Stay of Criminal Prosecution**

/1/ The court shall stay criminal prosecution if it finds during the main hearing that there is any of the circumstances stipulated in Section 11 paragraph 1 existing.

/2/ The court may also stay criminal prosecution if it finds during the main hearing that there is any of the reasons stipulated in Section 172 paragraph 2.

/3/ The decision pursuant to paragraph 1 and 2 may also concern only some of the acts that are included in the filed indictment.

/4/ The prosecutor may file a complaint against the decision pursuant to paragraph 1 and 2 and it shall have a suspensive effect.

## **Section 224**

### **Suspension of Criminal Prosecution**

/1/ The court shall suspend criminal prosecution if during the main hearing it finds that there is any of the circumstances stipulated in Section 173 paragraph 1 letter b) through to d) existing.

/2/ The court shall suspend criminal prosecution also when no summons for the main hearing may be served on the defendant.

/3/ If the cause of suspension ceases the court shall continue criminal prosecution.

/4/ The prosecutor may file a complaint against a decision with which the court suspended criminal proceedings or denied the motion for its continuation.

/5/ The court shall suspend criminal prosecution if it finds that another generally binding legal regulation the application of which is decisive for the decision about the guilt and sentence is in contradiction to the law and it lodges a motion to commence proceedings before the Constitutional Court. The finding of the Constitutional Court shall be binding for it and for other general courts.

## **Judgement**

### **Section 225**

/1/ If the case is not to be returned to the prosecutor pursuant to Section 221 nor transferred pursuant to Section 222 and if the criminal prosecution is not stayed pursuant to Section 223 or suspended pursuant to Section 224 then the court shall rule in a judgement as to find the defendant guilty or to acquit from the indictment.

/2/ The court may find the defendant to be guilty for a criminal offence pursuant to a stricter provision of the law than the one applied to the offence by the prosecution provided the defendant was advised of this possibility of stricter evaluation of the act pursuant to Section 190 paragraph 2. If it did not happen the defendant shall be advised of this possibility prior to judgement pronouncement, and if he/she requires a time period for defence preparation it shall be granted and the main hearing shall be adjourned for this purpose.

### **Section 226**

The court shall acquit the defendant if

- a) it was not proved that the act the defendant is prosecuted for, happened,
- b) this act is not a criminal offence,
- c) it is not proved that this act was committed by the defendant,
- d) the defendant bears no criminal liability for insanity or
- e) the culpability of the act expired.

### **Section 227**

If the criminal prosecution was stayed due to pardon, amnesty, prescription or any of the reasons stipulated in Section 172 paragraph 2 and the proceedings were continued only because the defendant insisted on the trial of the case (Section 11 paragraph 2, Section 172 paragraph 4) the court shall pronounce guilt but shall impose no sentence if it finds no other reason for acquitting the defendant.

### **Section 228**

/1/ If the court is sentencing the defendant for a criminal offence which caused property damage to another person the court shall usually stipulate in its judgement compensation for the damage to the injured party if the title is exercised in time (Section 43 paragraph 2).

/2/ The verdict of defendant's obligation to compensate the damage shall identify exactly the obligee and the title acknowledged to him/her. In justified cases the court

shall rule the claim be paid in installments which amount and terms of payment are stipulated at the same time.

### **Section 229**

/1/ If evidence developed found no grounds to pronounce a duty to compensate for damage or if additional evidence exceeding the needs of criminal prosecution were necessary for the decision on damage compensation duty and thus, the prosecution would be substantially prolonged, the court shall refer the injured party to civil proceedings or proceedings before another competent body.

/2/ The court shall also refer the injured party for a remaining term of his/her title to civil proceedings or proceedings before another competent body if the title was for any reason granted only partially.

/3/ If the court acquits the defendant it shall always refer the injured party with his/her title to damage compensation to civil proceedings or proceedings before another competent body.

### **Section 230**

/1/ If the court finds in the defendant a reason for imposing a protective measure it shall do so also without a motion by the prosecutor.

/2/ If the court needs to take further evidence to rule about the protective measure and this evidence cannot be taken immediately then it shall reserve the decision on protective measure for the public hearing.

/3/ Paragraph 2 shall also be applied when the prosecutor filed a motion for seizure of a thing not belonging to the defendant.

## **Title Eight**

### **Court Decision Outside the Main Hearing**

#### **Section 231**

/1/ The court shall waive or suspend criminal proceedings at a closed session if any of circumstances justifying waiver of criminal prosecution pursuant to Section 223 paragraph 1 and 2 or suspension of criminal proceedings pursuant to Section 224 paragraph 1 and 2 emerge outside the main hearing.

/2/ The prosecutor may file a complaint against the decision pursuant to paragraph 1 and this will have a suspensive effect provided the criminal prosecution is not suspended.

## **CHAPTER FOURTEEN**

### **PUBLIC SESSION**

#### **Section 232**

#### **General Provision**

The court shall make its decision in a public session whenever explicitly stipulated in the law.

## **Section 233**

### **Preparation of a Public Session**

/1/ The presiding judge of panel shall summon to the public session persons whose personal participation in it is indispensable. He/she shall also notify the prosecutor as well as the person who filed a petition initiating a public session and the person who may be directly affected by this decision, if these persons are not summoned to the public session; he/she shall also notify the defence counsel and/or proxy and legal representative of these persons. A copy of the motion initiating the public session shall be attached to the summons or notification.

/2/ If a civil representative acted before the court during the main hearing at a district court, the presiding judge of panel of the regional court shall notify the civil association which sent the civil representative, of the public session held on appeal.

/3/ The day of the public session shall be determined by the presiding judge of panel in such a way that the person filing the petition initiating the public session, the person who may directly be affected by the decision, the defence counsel or proxy of these persons, as well as the prosecutor have at least a five-day term for preparation from the delivery of the summons to or notification of the public session. This term shall be shortened only with the consent of that person in whose favour it was set, in other persons summoned to or notified of the public session usually a three-day notice should be observed.

## **Section 234**

### **Presence at the Public Session**

/1/ A public session shall be held under the constant presence of all members of the panel and the clerk.

/2/ If the law does not stipulate otherwise the presence of the prosecutor and defence counsel shall not be required at a public session.

## **Section 235**

### **Procedure of Public Session**

/1/ After opening the public session the presiding judge or a member of the panel appointed by him/her shall report, based on the file, about the state of the case with a focus on issues which should be resolved in the public session. Then the person who initiated the public session with his/her petition shall present the petition. The person that may be directly affected by the decision as well as the prosecutor shall present their opinion on the petition provided they themselves are not the petitioners.

/2/ If evidence shall be taken in the public session provisions on developing the evidence in a main hearing are shall be applied as appropriate. Restriction on taking evidence by reading the report of witness or expert statement (Section 211 paragraph 1) shall apply only to a public session held on an appeal.

/3/ The presiding judge of panel shall grant the floor for final motions after evidence taking. If the person who might directly be affected by the decision is the defendant he/she shall have the right to speak the last.

## **Section 236**

Court decision shall always be pronounced publicly.

## **Section 237**

### **Grounds for Decision**

In its decision the court shall consider only the facts that were presented during the public session and base it on the evidence developed in the public session.

## **Section 238**

### **Application of Provisions on the Main Hearing**

Provisions on main hearing shall be applied to the public presence, proceedings, opening and adjournment of a public session as appropriate.

### **Protective Therapy and Thing Seizure**

## **Section 239**

/1/ Provided it is not a case in which the court has reserved the right for decision on protective therapy or seizure of things pursuant to Section 230 paragraph 2 the court shall impose them at a public session only if the prosecutor makes such a motion.

/2/ A complaint against the decision on protective therapy and on thing seizure is admissible and it has a suspensive effect.

## **Section 239a**

/1/ If the owner of the thing which is to be seized cannot be identified with certainty or if his/her place of residence is not known during the seizure proceedings the presiding judge of panel shall appoint him/her a trustee. In the thing seizure proceedings the trustee shall have the same rights as the owner of the thing.

/2/ All written documents addressed to the owner of the thing are served only on the trustee. Summons of the owner of the thing to appear at the public session shall be published in an appropriate way. Public hearing shall then be held also in the absence of owner of the thing regardless whether the owner of the thing learned about it.

/3/ A complaint against the decision on trustee appointment is admissible.

## **CHAPTER FIFTEEN**

### **CLOSED SESSION**

#### **Section 240**

The court shall rule in a closed session in cases where the law does not stipulate a decision in a main hearing or public session.

#### **Section 241**

The presiding judge of panel shall notify the prosecutor of a closed session usually at least with a three day notice. If prosecutor's presence at the closed session is obligatory then the three day notice may be shortened only with his/her consent.

#### **Section 242**

/1/ A closed session shall be held under the permanent presence of all panel members and the clerk.

/2/ If not stipulated in this act otherwise prosecutor's presence at a closed session is not obligatory.

/3/ Other persons are excluded from the participation in a closed session.

### **Section 243**

/1/ If no taking of evidence is needed in a closed session then it shall be taken by reading the reports and other documents.

/2/ The presiding judge of panel shall give the floor to the prosecutor for a final opinion or motion before the court leaves for its final conference.

### **Section 244**

The decision shall always be pronounced.

## **CHAPTER SIXTEEN**

### **APPEAL AND APPELLATE PROCEEDINGS**

#### **Section 245**

##### **Admissibility and Effect**

/1/ A remedy against the judgement by a first instance court is an appeal.

/2/ An appeal shall have a suspensive effect.

## **Authorized Persons**

### **Section 246**

/1/ A judgement may be challenged with an appeal by

- a) the prosecutor on the grounds of incorrectness of any verdict,
- b) the defendant on the grounds of incorrectness of the verdict directly affecting him/her,
- c) the participating person on the grounds of incorrectness of the verdict on thing seizure,
- d) the injured party who claimed title to damage compensation for the incorrectness of the damage compensation verdict.

/2/ A person authorized to challenge a judgement for the incorrectness of any of its verdicts shall do so also when such a verdict was not made, as well as for the breach of provisions on proceedings which preceded the judgement if this breach could have caused the verdict to be incorrect or missing.

### **Section 247**

/1/ Only a prosecutor shall challenge a judgement to the detriment of the defendant with an appeal; the injured party provided he/she has exercised his/her title to damage compensation, shall have this right as to the obligation for damage compensation.

/2/ In addition to the defendant and the prosecutor, the relatives in a direct line of descendance, his/her brothers and sisters, adoptive parent, adoptive child, spouse and common-law spouse may also challenge the judgement in favour of the defendant with an appeal. Prosecutor may do so even against the will of the defendant. If the defendant was deprived from the capacity for legal procedure or his/her capacity for legal procedure is restricted then his/her legal representative and his/her defence counsel shall file an appeal in his/her favour also against the will of the defendant.

## **Section 248**

### **Term and Place of Filing**

/1/ An appeal shall be filed at the court the judgement of which is challenged within eight days from the delivery of judgement copy.

/2/ If the judgement is served as on the defendant so on his/her defence counsel and legal representative the term shall run from the delivery which was executed the latest.

/3/ The term shall expire for other persons stipulated in Section 247 paragraph 2, but the prosecutor, on the same day as for the defendant.

## **Section 249**

### **Content of Appeal**

/1/ An appeal filed by the prosecutor, appeal filed on behalf of the defendant by his/her defence counsel as well as appeal filed on behalf of the injured or participating person by their proxy shall also be justified in such a way that it is clear which part of the judgement is challenged and which errors are claimed in the judgement or the proceedings prior to the judgement, in the term stipulated in Section 248.

/2/ The appeal may be based on new facts and evidence.

## **Section 250**

### **Waiver and Withdrawal of Appeal**

/1/ The authorized person may waive explicitly his/her appeal after pronouncement of the judgement.

/2/ The person who filed an appeal may withdraw it with an explicit statement until the appellate court shall adjourn for final conference. Prosecutor's appeal may be withdrawn also by a superior prosecutor.

/3/ An appeal in favour of the defendant filed by another authorized person or by the defence counsel or legal representative instead of the defendant shall be withdrawn only with an explicit consent of the defendant. A prosecutor may withdraw such an appeal also without the consent of the defendant. In this case the defendant shall have a new term for filing an appeal starting as of the notice of appeal withdrawal.

/4/ If there are no impediments the presiding judge of panel of the appellate court shall note withdrawal of the appeal and if the case was not submitted to this court yet, then the presiding judge of panel of a first instance court shall do so.

## **Section 251**

### **Proceedings at a First Instance Court**

The presiding judge of panel shall have a copy of the appeal served on other parties who could be directly affected by the decision on appeal together with an advice of their possibility to submit their opinion on the appeal, as soon as the term for filing an appeal by all authorized persons expired, he/she shall submit the file to the appellate court.

## **Section 252**

### **Appellate Court**

The superior regional court shall rule on the appeal against the judgement by a district court. The supreme court shall rule on appeal against the judgement by a regional court acting as a first instance court.

## **Section 253**

### **Appellate Court Decision**

/1/ The appellate court shall deny the appeal if it was filed late, by unauthorized person or person who explicitly waived the appeal or filed the appeal again in the same case in which he/she explicitly withdrew it.

/2/ An appeal filed by the authorized person late only because he/she followed an incorrect instruction given by the court shall not be denied as late.

## **Section 254**

/1/ If the appellate court does not deny the appeal pursuant to Section 253 then it shall review the lawfulness and grounds of all judgement verdicts the appellant may challenge as well as the correctness of proceedings prior to the judgement while taking into account also the errors the appeal did not challenged.

/2/ If the appeal challenges a part of the judgement which affects only some of several persons on who decisions were made in the same judgement the appellate court shall review pursuant to paragraph 1 only that part of the judgement and of the previous proceedings which affects such a person.

### **Section 255**

The appellate court shall suspend criminal prosecution if the appellate proceedings reveal that any of the circumstances stipulated in Section 173 paragraph 1 letter b) through d) occurred after the pronouncement of the challenged judgement or if the defendant cannot be served the summons for a public session of the appellate court on..

### **Section 256**

The appellate court shall deny the appeal if it finds that it is not justified.

### **Section 257**

The appellate court shall cancel the challenged judgement and shall

a) transfer the case if the first instance court should have done so (Section 222 paragraph 1 and 2,

b) stay criminal prosecution if found that there is any of the circumstances which would justify to stay criminal prosecution by a first instance court (Section 223 paragraph 1 and 2),

c) suspend criminal prosecution if a first instance court should have done so (Section 224 paragraph 1 and 2).

### **Section 258**

/1/ The appellate court shall cancel the challenged judgement also

a) for substantial errors in the proceedings prior to the judgement especially as in this proceedings the provisions providing for the clarification of the case or the right of defence were violated,

b) for errors in the judgement especially for unclarity or incompleteness as to the establishment of the facts of the case or if the court did not settle all the circumstances important of the decision,

c) if doubts arise as to the correctness of the establishment of the facts of the case, and evidence shall have to be taken again or new evidence shall be taken for the clarification of the case and their taking before the appellate court would mean substitution of first instance court work,

d) if the challenged judgement violated Criminal Act provisions,

e) if the imposed sentence is inappropriate, or

f) if the decision on a claimed title of the injured party to damage compensation is incorrect.

/2/ If only a part of the challenged judgement is erroneous and it may be separated from others the appellate court shall cancel only this part of the judgement; however, if it cancels even only partially the verdict of guilt it always shall at the same time cancel the whole verdict on the sentence as well as other verdicts which are based on the verdict of guilt.

### **Section 259**

/1/ If there is a need for a new decision after the cancellation of the challenged judgement or of its part the appellate court shall usually return the case to the first instance court to try it again in the necessary scope and to rule on it.

/2/ If the error consists only in the absence of a verdict in the challenged judgement or if the judgement is incomplete then the appellate court shall return the case to the first instance court without cancelling the judgement and with an order only to rule on the missing verdict or to complement the incomplete verdict.

/3/ The appellate court shall rule the case with a judgement only if a new decision may be made based on the established facts of the case which were found in the challenged judgement correctly and/or complemented with evidence taken before the appellate court. Appellate court shall change the challenged judgement to the detriment of the defendant only upon prosecutor's appeal filed to the detriment of the defendant; in the verdict on damage compensation it shall do so also based on the appeal of the injured party exercising the title to damage compensation.

/4/ The appellate court itself shall not

a) find the defendant guilty of an act he/she acquitted of in the challenged judgement,

b) find the defendant guilty of a heavier criminal offence than the one for which he would be found guilty in the challenged judgement by the first instance court (Section 225 paragraph 2).

### **Section 260**

If the appellate court considers it necessary for a due clarification of the case it shall state in the cancellation of the judgement that the case is returned to the prosecutor for additional investigation. Provision of Section 191 and Section 264 paragraph 2 shall apply here, too.

### **Section 261**

If the are grounds based on which the appellate court ruled in favour of any of the defendants, are also in favour of another co-defendant or participating person then the appellate court shall also rule in their favour. Similarly, it shall rule in favour of that defendant who benefits from the grounds based on which the court ruled in favour of the participating person.

### **Section 262**

If the appellate court rules that the case shall be returned for new hearing and decision by a first instance court it may at the same time rule that a panel of a different composition shall try and rule the case. If there are important reasons it may also order another court of the same kind and the same instance in its district to try and rule the case.

## **Section 263**

### **Proceedings Before Appellate Court**

/1/ The appellate court shall rule on the appeal in a public session. It may also rule in a closed session

a) pursuant to Section 253, 255 and 257,

b) pursuant to Section 258 paragraph 1 if it is obvious that the failure cannot be removed in a public session.

/2/ The presence of the prosecutor in a public and closed session shall be obligatory.

/3/ In a public session on an appeal the defendant shall have a defence counsel in all cases in which he/she shall have him/her during the main hearing.

/4/ A public session of the appellate court may be held in the absence of the defendant who is in custody or serving an imprisonment sentence provided the defendant shall explicitly waive his/her presence in a public session.

/5/ After opening the public session the presiding judge of panel or a member of the panel appointed by him/her shall read first the challenged judgement, identify which errors in the judgement or proceedings are challenged and shall advise of the significant content of the proceedings so far.

## **Section 264**

## **Proceedings Before a First Instance Court After Judgement Cancellation**

/1/ The court which was returned the case for new hearing and decision shall be bound by the legal opinion pronounced by the appellate court in its decision and it shall have the duty to perform procedures, additional procedures the exercise of which was ordered by the appellate court.

/2/ If the challenged judgement was cancelled only as a consequence of an appeal filed in favour of the defendant then no change of the decision to his/her detriment shall be made during the new proceedings.

### **Section 265**

## **Consequences of the Cancellation of a Damage Compensation Verdict**

If the appellate court cancels the challenged judgment only in the verdict on damage compensation and does not decide in the case then it shall refer the injured party to civil proceedings or to proceedings before another relevant body.

## **CHAPTER SEVENTEEN**

## **COMPLAINT AGAINST LAW VIOLATION AND THE RESPECTIVE PROCEEDINGS**

### **Section 266**

/1/ The prosecutor general or the minister of justice may file, on the grounds of law violation, a complaint against a valid decision of the court which violates the law as well as against a valid decision of the court made on erroneous procedure in the proceedings.

The prosecutor general may file it also against such decision of a prosecutor, investigator or a police body.

/2/ A complaint against violation of law in the verdict of sentence may be filed only if the sentence is in an obvious disproportion to the level of danger of the act to the society or the conditions of the perpetrator or if the imposed kind of sentence is in an obvious contradiction to the purpose of the sentence.

/3/ If the decision stipulated in paragraph 1 concerns several persons the complaint against law violation may be filed also against that part of the decision which concerns some of these persons.

/4/ A complaint against a valid court decision based on the grounds of law violation to the detriment of the accused shall not be filed if the court decision became valid in the first instance or only for the reason that the court acted in compliance with Section 259 paragraph 4, Section 264 paragraph 2, Section 273 or Section 289 letter b).

/5/ Provision of paragraph 4 shall be applied as appropriate also to the decision of a court, prosecutor, investigator and police body made in compliance with Section 150 paragraph 1 or 3.

/6/ The prosecutor general or the minister of justice may withdraw the complaint against law violation they filed until the supreme court shall adjourn for the final conference. The presiding judge of the supreme court panel shall take note of complaint withdrawal in ruling.

/7/ No complaint against law violation is admissible against a decision on law violation complaint.

## **Section 267**

/1/ Based on the complaint against law violation the supreme court shall review the correctness of all statements of the challenged decision as well as of the proceedings preceding it.

/2/ If the law violation complaint was restricted pursuant to Section 266 paragraph 3 then only the correctness of the verdicts concerning the person affected by the law violation complaint as well as proceedings preceding this part of the decision shall be reviewed.

## **Section 268**

/1/ If the supreme court finds no law violation it shall deny the law violation complaint in a ruling.

/2/ If the supreme court finds a law violation then it shall pronounce through a judgement that the challenged decision or its part (Section 266 paragraph 3) or in the proceedings preceding such a decision, violated the law.

## **Section 269**

/1/ A verdict pursuant to Section 268 paragraph 2 shall not affect the validity of the decision concerned.

/2/ However, if the law was violated to the detriment of the accused the supreme court shall cancel together with the verdict stipulated in Section 268 paragraph 2 the challenged decision or its part and/or also the erroneous proceedings preceding it. If only some verdicts of the challenged decision are unlawful and they may be separated

from the others the supreme court shall cancel only the affected verdict. However, if it cancels the verdict of guilt or even only its part, at the same time it shall always cancel the whole verdict of sentence as well as other verdicts based on the verdict of guilt. It shall also cancel other decisions linked in their content to the cancelled decision provided they did not lose their grounds through the change caused by its cancellation. The provisions of Section 261 shall be applied in an appropriate way.

### **Section 270**

/1/ If a new decision is necessary after the cancellation of the challenged decision or any of its verdicts the supreme court shall usually order the body which decision is concerned to hear and rule in the case in the necessary scope.

/2/ If the law violation consists only in the absence or incompleteness of a verdict in the challenged decision the supreme court may, without cancelling the decision, order the body which decision is concerned to rule about the missing verdict or to complement the incomplete verdict.

/3/ If the supreme court orders a new hearing and decision of the case pursuant to paragraph 1 and 2, it may simultaneously order the court to hear and decide it in a different composition of the panel. For serious reasons it may also order the case for hearing and decision to another court or another prosecutor.

/4/ The body which was ordered the case shall be bound by the legal opinion pronounced by the supreme court in the case and it shall be obliged to exercise procedures the performance of which was ordered by the supreme court.

### **Section 271**

/1/ While cancelling the challenged decision the supreme court may rule in the case if the decision may be made based on the facts of the case which were correctly established in the challenged decision. However, the supreme court cannot

a) find the accused guilty of an act acquitted of in the challenged judgement or in which criminal proceedings were stayed,

b) find the accused guilty of a heavier crime than the one he would be found guilty for in the challenged judgement,

c) impose a sentence of imprisonment over fifteen to twenty five years or a life imprisonment of the accused.

/2/ If the supreme court cancels the judgement only in the verdict of damage compensation Section 265 shall be applied as appropriate.

## **Section 272**

If the law was not violated to the detriment of the accused the supreme court may act pursuant to Section 269 paragraph 2 through Section 271 only if such a motion by the prosecutor general or minister of justice was filed with the complaint against law violation within six months from the validity of the challenged decision and if the supreme court has ruled on this complaint within six months from its filing.

## **Section 273**

If the supreme court pronounced that the law was violated to the detriment of the accused no change of the decision to his/her detriment shall be taken in the new

proceedings. If another new decision is concerned the provision of Section 150 shall apply as appropriate.

### **Section 274**

/1/ The supreme court shall rule on the complaint against law violation in a public session under the presence of the prosecutor general. The supreme court shall rule pursuant to Section 268 paragraph 1 in a closed session, it shall do so also in a law violation complaint if the law was violated to the detriment of the accused and it is clear from the whole content of the law violation complaint that the challenged deficiencies shall result in the cancellation of the whole challenged decision and in a procedure pursuant to Section 270 paragraph 1.

/2/ The supreme court shall rule on law violation complaint in a closed session also if it was filed against a decision by one of the pre-trial proceedings body.

### **Section 275**

/1/ If the law was violated to the detriment of the accused his/her death shall not present an impediment to holding proceedings based on the law violation complaint; criminal prosecution shall no be stayed here because the accused died. If the law was violated only to the detriment of the accused the time which elapsed from the validity of the challenged decision to the decision on the law violation complaint is not included in the prescription term.

/2/ If the notification of a public session cannot be served on the person who may be directly affected by the decision on law violation complaint it is sufficient to notify his/her defence counsel and/or proxy of the public session. If such a person does not

have a defence counsel and/or proxy they should be appointed for this purpose. Provision of Section 39 shall be applied similarly.

/3/ If the accused is serving a sentence of imprisonment imposed by the original judgement and the supreme court cancels the verdict on this sentence on the grounds of the law violation complaint it shall at the same time rule on the custody.

/4/ The prosecutor general or the minister of justice may suspend or interrupt the enforcement of the decision they challenged in a complaint filed against law violation, till decision. After the complaint against law violation is filed the supreme court shall do so.

## **Section 276**

If a circumstance has to be clarified in order to rule on a law violation complaint the presiding judge of the supreme court panel or upon his/her request another body acting in criminal proceedings or a police body shall execute the necessary investigation. Provisions of Chapter Five shall apply to such investigation. Based on a ruling of the panel the tools stipulated in Chapter Four shall be applied to secure evidence in extremely urgent cases. However, the accused person may be arrested with a writ of arrest and detained in custody only when the prosecutor general or the minister of justice included such a motion in their law violation complaint filed to the detriment of the accused and, provided, the supreme court considers it for indispensable in view of the serious nature of the criminal offence and urgency of detention reasons.

## **CHAPTER EIGHTEEN**

### **RETRIAL OF PROCEEDINGS**

## **GENERAL PROVISIONS**

### **Section 277**

If criminal prosecution against a person ended in a final judgement or final ruling to stay criminal prosecution then the criminal prosecution of the same person for the same act may be continued only if a retrial of criminal proceedings was permitted. Prior to retrial permission, investigation action in order to secure evidence and to detain the accused shall be performed only in the limits of the provisions of this Chapter.

### **Conditions for Retrial**

#### **Section 278**

/1/ A retrial of proceedings which ended in a final judgement shall be permitted if facts or evidence unknown to the court before, emerge and these themselves or in combination with facts and evidence known before would justify another decision on guilt or grant title of the injured party to damage compensation or with respect to which the originally imposed sentence would be in an obvious disproportion to the level of danger of the act for the society or the circumstances of the perpetrator or the imposed type of sentence would be in an obvious contradiction to the purpose of the sentence.

/2/ A retrial of proceedings which ended in a final ruling by the court on staying criminal prosecution shall be permitted if facts or evidence unknown to the court before emerge and which themselves or in combination with facts and evidence known before result in the conclusion that the reasons for staying were not existing and that it shall be appropriate to continue in the proceedings on indictment.

/3/ A retrial of proceedings which ended in a final ruling by the prosecutor or the investigator to stay criminal proceedings shall be permitted if facts or evidence of the body which decision is concerned unknown before, emerge and which themselves or in combination with facts and evidence known before would result in the conclusion that the reasons for staying were not existing and that it shall be appropriate to file indictment against the accused.

/4/ A retrial of proceedings which ended in any of the ways stipulated in the preceding paragraphs herein shall be permitted also if the final judgement finds that the police body, investigator, prosecutor or judge in the original proceedings breached their duties by acting in a way which constitutes a criminal act.

### **Section 279**

A retrial to the detriment of the accused shall be excluded if

- a) the culpability of the act expired,
- b) a decision by the president of the republic ordering to discontinue criminal prosecution, applies, or
- c) the accused died.

### **Section 280**

#### **Persons Authorized to File a Motion for Retrial Permission**

/1/ The retrial shall be permitted only upon a motion by the authorized person.

/2/ The prosecutor only shall file a motion for renewal permission to the detriment of the accused.

/3/ In addition to the accused, also persons who could file an appeal in his/her favour, shall file a motion for renewal permission in favour of the accused. If they may do so also against the will of the accused they may file a motion for retrial permission also against his/her will. They may file such a motion also after the death of the accused.

/4/ If the court or any other state body learns about circumstances which would justify a motion for renewal permission they shall have the duty to notify the prosecutor of it. If it is a circumstance that would justify a motion for retrial permission in favour of the accused the prosecutor shall have the duty to notify the accused of it without any delay and if this is not possible, then another person authorized to file such a motion provided he/she him/herself is not filing such a motion.

## **Section 281**

### **Court Competence in Retrial Decision**

/1/ The motion on retrial permission of proceedings which ended in a final ruling to stay criminal prosecution made by the prosecutor or investigator shall be ruled by the court which would be competent to rule on the indictment.

/2/ The motion on retrial permission of proceedings which ended in a final judgement and of proceedings that ended in final ruling of the court to stay criminal prosecution shall be ruled by the court which ruled in the case in the first instance.

/3/ Though a district court ruled in the case in the first instance the regional court shall rule on the motion for retrial permission if the prosecutor includes in his/her

motion the justification that due to new fact or evidence which appeared it is a criminal act under the competence of the regional court.

## **Proceedings on Retrial Permission Motion**

### **Section 282**

/1/ If the decision on retrial permission motion requires clarification of any of the circumstances in advance in order to verify its justification such necessary investigation shall be performed by the presiding judge of panel or upon his/her request by one of the bodies acting in criminal proceedings or also a police body. The provisions of Chapter Five shall be valid for such investigation.

/2/ In especially urgent cases the instruments stipulated in Chapter Four may be used, based on a ruling by the panel, to secure evidence. However, prior to the retrial permission the accused person shall be detained upon a writ of arrest and put into detention only if the prosecutor filing the motion for retrial to the detriment of the accused includes it in the motion and if court considers it for unavoidable with respect to the nature of the new facts and evidence which emerged as well as to the serious nature of the criminal offence and the urgency of detention reasons.

/3/ If a motion for retrial permission was filed in favour of the accused and the nature of the facts and evidence which emerged newly justify it, the court may suspend or interrupt execution of the valid sentence imposed in the original proceedings.

### **Section 283**

The court shall deny the retrial permission,

- a) if it was filed by an unauthorized person,
- b) if it is targeted only against a decision or verdict in which no retrial is admissible,
- c) if retrial is excluded pursuant to Section 279 or
- d) if it does not find grounds for retrial pursuant to Section 278.

### **Section 284**

/1/ If the court satisfies the motion for renewal permission it shall cancel the whole challenged decision or only the part in which the motion is justified. If the court cancels even only a part of the verdict of guilt it shall always simultaneously cancel the whole verdict on sentence as well as other verdicts that are based on the guilt verdict. It shall cancel other decisions linked in their content with the cancelled decision unless these lost grounds due to the change ensuing from the cancellation.

/2/ If the court permits retrial of proceedings ended in a final court ruling on criminal prosecution waiver or if it permits proceedings retrial in the issue of guilt ended in a final judgement it may simultaneously return the case for additional investigation to the prosecutor together with the cancellation of the decision if it finds it necessary for the clarification of the case. The regional court which pursuant to Section 281 paragraph 3 permitted the retrial of the proceedings in which the district court ruled in the first instance shall always return the case to the prosecutor. Provision of Section 191 is also valid here.

/3/ If the court permits retrial only in the verdict on the granted title of the injured party to damage compensation it shall refer the injured party to civil proceedings and/or proceedings before another competent body when cancelling this verdict.

## **Section 285**

If the court permits retrial in favour of the accused for grounds which are also in favour of any of the co-accused or participating person it shall simultaneously permit the retrial in their favour, too.

## **Section 286**

/1/ The court shall rule on retrial permission motion in a public session.

/2/ It may also deny the motion for reasons stipulated in Section 283 letter a) through c) in a closed session. It shall deny the motion in a closed session for the reasons stipulated in Section 283 letter d) only in a case when the motion based on the same facts and evidence was denied in a valid way earlier and the motion newly filed is only its repetition.

/3/ A complaint against the decision on renewal permission motion is admissible and it has a suspensive effect.

## **Proceedings after Renewal Permission**

### **Section 287**

If the accused is serving a sentence of imprisonment imposed on him/her in the original judgement the court shall rule without delay on detention after its final ruling which, together with retrial permission, cancelled the verdict on this sentence.

### **Section 288**

/1/ If the retrial of proceedings ended in a final ruling to stay criminal prosecution by the prosecutor or investigator is permitted the pre-trial proceeding shall continue.

/2/ In other cases the court shall continue after the final permission of proceedings retrial based on the original indictment if it was not pronounced that the case shall be returned to the prosecutor for additional investigation (Section 284 paragraph 2).

/3/ If retrial was permitted only in some of the criminal offences for which a final aggregate or cumulative sentence was imposed and the court returned the case to the prosecutor for additional investigation it shall rule an appropriate sentence for the remaining criminal offences in its judgment, after the ruling permitting the retrial in a public session becomes valid.

### **Section 289**

If the retrial was permitted only in favour of the accused,

a) the time which elapsed from the validity of the original judgement to the validity of the ruling permitting the retrial shall not be included into the statute of limitation.

b) the new judgement shall not impose a more severe sentence than the one imposed in the original judgement.

c) his/her death shall not constitute an impediment to the performance of other proceedings and the criminal prosecution shall not be stayed on the grounds that the accused died.

## **CHAPTER NINETEEN**

## **SPECIAL PROCEEDINGS**

### **Section 290**

#### **General Provisions**

If this Chapter does not include special provisions general regulations shall also be applied to the proceedings pursuant to this Chapter.

### **Title One**

#### **Proceedings Against Juvenile**

### **Section 291**

#### **Defence of a Juvenile**

A juvenile shall have his/her defence counsel as of the charges were laid.

### **Section 292**

#### **Examination of the Situation of the Juvenile**

In proceedings against a juvenile, the level of intellectual and moral development of the juvenile, his/her nature, conditions and environment in which he/she lived and was brought up, his/her behaviour prior to committing the criminal offence and after it, and other circumstances important for the selection of means appropriate for his/her reform, especially as to the evaluation whether a protective education of the juvenile

should be imposed, shall be determined most thoroughly. The youth authority shall usually be ordered to examine the situation of the juvenile.

### **Section 293**

#### **Custody of the Juvenile**

Even if there are grounds for custody pursuant to Section 67 a juvenile shall be taken into custody only when the purpose of custody cannot be effected otherwise.

#### **Proceedings Before a Court**

### **Section 294**

The presiding judge of panel shall have a copy of the indictment served (Section 196 paragraph 1) also on the youth authority.

### **Section 295**

If for the well-being of the juvenile necessary, the competent court may transfer the case to the court in which district the juvenile is residing or to the court where it would be for other reasons the most expedient to hold criminal proceedings in view of the interests of the juvenile.

### **Section 296**

Joinder of proceedings against a juvenile and a person older than eighteen years of age shall be held only exceptionally if it is necessary for an all-round and impartial

clarification of the case or if the court has other important reasons for it. As to the juvenile, provisions of this Title shall also be applied in joinder of proceedings.

### **Section 297**

/1/ The main hearing shall not be held in the absence of the juvenile.

/2/ The youth authority shall also be notified of the main hearing and public session. The prosecutor shall always be present at the public session.

/3/ In a main hearing and public session against a juvenile,

a) the court will exclude the public also if it is in the interest of the juvenile,

b) the presiding judge of panel may order the juvenile to leave the court room during any part of the main hearing or public session if there is concern that this part of the proceedings could have an adverse effect on his/her moral development; after the juvenile returns to the court room he/she shall advise him/her of the significant content of the proceedings held in his/her absence to allow him/her to present his/her opinion,

c) the representative of the youth authority shall have the right to file motion and to ask the examined person questions; he shall have the final address after the juvenile.

### **Section 298**

#### **Notification of Decisions**

/1/ A copy of the judgement shall always be served also on the youth authority.

/2/ If the representative of the youth authority was not present at the pronouncement of the ruling against which a complaint is admissible or through which the criminal prosecution was stayed or suspended or the case was transferred then the youth authority shall be served on a copy of this ruling.

## **Section 299**

### **Persons Authorized to File Remedies**

/1/ Remedies in favour of the juvenile may be filed by the youth authority, even against his/her will; the term for to file a remedy shall run separately.

/2/ A complaint in favour of the juvenile may be filed also by his/her relatives in direct line of descendance, his/her brothers and sisters, adoptive parent, spouse or common law partner; the term to file a complaint shall expire for them on the same day as for the juvenile.

## **Section 300**

### **Protective Education**

/1/ Provided it is not a case in which the court reserved the decision on protective education pursuant to Section 230 paragraph 2 it shall impose it in a public session only if the prosecutor makes such a motion.

/2/ A complaint against a decision on protective education is admissible and it has a suspensive effect.

## **Section 301**

## **Common provisions**

/1/ In proceedings against juvenile care shall be given to the investigation as well as decision to be commissioned to persons whose life experience and knowledge of issues related to youth education guarantee the achievement of the educational purpose of the proceedings. Bodies acting in criminal proceedings shall act in the closest cooperation with facilities responsible for youth care or psychiatric care facilities. An expert on child or adolescent psychiatry shall usually be invited to the examination of the mental state of the juvenile.

/2/ Provisions of this Title shall not be applied

a) in proceedings on criminal offences committed by the accused prior to completing eighteen years of age and after completing this age if the law stipulates an equal or stricter sentence for the act after completing eighteen years of age, or

b) if the charges are laid after the accused completed nineteen years of age.

/3/ Provisions of this title on the participation of the body responsible for the care of youth are not applied

a) in the military court system,

b) in the enforcement proceedings if the procedure is executed after the juvenile completed nineteen years of age.

## **Title Two**

## **Proceedings against a Fugitive**

### **Section 302**

/1/ Proceedings pursuant to the provisions of this title shall be implemented against a person who avoids criminal proceedings by staying abroad or by hiding.

/2/ These proceedings shall not be applied against a juvenile.

### **Section 303 - cancelled**

### **Section 304**

The accused shall always have a defence counsel in such proceedings. He/she shall have the same rights as the accused.

### **Section 305**

Proceedings before a court shall be conducted pursuant to the provisions of this Title only upon prosecutor's motion. Motion may be already filed in the indictment.

### **Section 306**

/1/ All written document addressed to the accused shall be served only on the defence counsel.

/2/ The summons for main hearing and public session shall be published as appropriate. Main hearing or public session shall then be conducted also in the absence of the accused regardless of whether the accused learned about it.

## **Title Three**

### **Conditional Stay of Criminal Prosecution**

#### **Section 307**

/1/ In proceedings on a criminal offence for which the law stipulates a sentence of imprisonment with an upper limit below five years, the court, and in pre-trial proceedings after the completion of investigation the prosecutor, may conditionally stay criminal proceedings, with the consent of the accused, if

a) the accused admitted the criminal offence, and

b) compensated the damage, if caused by the act, or concluded an agreement on its compensation with the injured party or took other measures necessary for its compensation, and if the person of the perpetrator in consideration of his/her life so far and circumstances of the case suffice to justify such a decision.

/2/ A probation term of 6 months to 2 years shall be determined in the decision on conditional stay of criminal prosecution. The probation term shall start with the validity of this decision on conditional stay of criminal prosecution.

/3/ The decision on conditional stay of criminal prosecution shall impose the accused who concluded an agreement on damage compensation with the injured party, to recover the damage in the course of the probation term.

/4/ The accused may also be imposed to observe appropriate restrictions aimed to make him/her live in orderly manner during the probation term.

/5/ The accused may file a complaint against the decision on conditional stay of criminal prosecution and it shall have a suspensive effect. If a court decides on a conditional stay of criminal prosecution then the prosecutor shall also have such a right.

/6/ Conditional staying of criminal prosecution pursuant to paragraph 1 shall not be possible if such act caused death.

### **Section 308**

/1/ If the accused lived an orderly manner, satisfied the duty to compensate for the caused damage and met also other imposed restrictions during the probation term the body which conditionally stayed the criminal prosecution in the first instance, shall rule that the sentenced proved worth. Otherwise, and this even during the probation term, it shall rule to continue criminal prosecution.

/2/ If no decision pursuant to paragraph 1 herein was made within one year from the expiration of the probation term, and it was not caused by the accused, it shall be assumed that he/she proved worth.

/3/ The validity of the decision that the accused proved worth or the expiration of the term stipulated in paragraph 2 herein shall enforce the effects of staying criminal prosecution (Section 11 paragraph 1 letter f)).

/4/ The accused and the injured party may file a complaint against this decision pursuant to paragraph 1 herein and it has a suspensive effect. If a court makes such a decision the prosecutor shall also have this right.

### **Title Four**

## **Proceedings Before a Single Judge**

### **Section 314a**

(1) A single judge shall perform proceedings on criminal offences for which the law stipulates an imprisonment below five years.

(2) Provision of paragraph 1 herein shall not be applied if a cumulative sentence is to be imposed and the prior sentence was imposed in proceedings held before a panel.

### **Section 314 b**

(1) A single judge shall have the same rights and duties as the panel and its presiding judge.

(2) A single judge shall not hold closed session.

### **Section 314c**

/1/ A single judge shall hold no preliminary hearing on the indictment, however he/she shall review it with respect to the aspects of Section 181 para 1 and Section 186. Based on the results of indictment review the single judge shall

a) take one of the decisions stipulated in Section 188 paragraph 1 letter a) through d),

b) may stay criminal prosecution if the circumstances stipulated in Section 172 paragraph 2 are present or

c) returns the case for additional investigation to the prosecutor if the pre-trial proceedings failed to clarify basic facts important for the decision on guilt.

/2/ Provisions of Section 189 through 191 shall also be applied in the proceedings before a single judge.

/3/ After reviewing the indictment the single judge shall rule also always about further continuation of detention if the accused is detained custody and, provided, no main hearing is ruled.

/4/ A prosecutor may file a complaint against the decision pursuant to paragraph 1 herein and it has a suspensive effect provided it is not an interruption of criminal prosecution .

### **Section 314d**

/1/ If the single judge makes no decision out of those stipulated in Section 314c paragraph 1 herein he/she shall order a main hearing.

/2/ If after judgement pronounciation the prosecutor as well as the accused waived appeal or made the statement of waiving appeal within three working days from the judgement pronounciation, the single judge may issue a simplified written judgement without justification elaboration.

### **Penal Order**

### **Section 314e**

/1/ A single judge may issue a penal order without hearing the case at a main hearing provided that the facts are established with the acquired evidence beyond doubt.

/2/ A penal order may be used to impose

- a) sentence of imprisonment to one year,
- b) ban on activity for five years,
- c) pecuniary penalty,
- d) forfeiture of the thing.

/3/ A substitute sentence of imprisonment for pecuniary penalty shall not exceed one year, even if combined with the imposed sentence of imprisonment.

/4/ A penal order shall not be issued

- a) in proceedings against a juvenile who did not complete eighteen years of age at the time of its issue,
- b) in proceedings against a person deprived of capacity for legal action or with restricted capacity for legal action,
- c) if a protective measure should be decided,
- d) if a cumulative sentence is to be imposed and the previous sentence was imposed with a judgement.

/5/ A penal order shall have the nature of a sentencing judgement. The effects related to the pronouncement of the judgement come as of serving the penal order on the accused.

### **Section 314f**

/1/ The penal order shall contain

- a) designation of the court issuing the penal order,
- b) day and place of penal order issue,
- c) designation of the accused (Section 120 paragraph 2),
- d) verdict of guilt (Section 120 paragraph 3) on the imposed sentence (Section 122 paragraph 1),
- e) verdict of granting damage compensation (Section 228 paragraph 1, 2) provided the title to its compensation was duly applied ,
- f) instructions of the right to file a refusal.

/2/ A penal order shall be served on the accused, the prosecutor and the injured party who applied the title to damage compensation. It shall be served on the accused to his/her own hands (Section 63 paragraph 1 and 3). If the accused has also a defence counsel the penal order shall also be served on him/her.

### **Section 314g**

/1/ The accused, persons authorized to file an appeal in his/her favour and the prosecutor may file a refusal of the penal order. The refusal shall be filed with the court

which issued the penal order within eight days from its delivery. In persons who may file an appeal in favour of the accused with the exception of the prosecutor the term shall expire as of the same day as for the accused. If the penal order is served on the accused and his/her defence counsel the term shall start as of that delivery which occurred later. To return the term the provisions of Section 62 shall be applied similarly.

/2/ The injured party may file a refusal of the verdict of damage compensation which recognized the damage compensation; if the injured party filed a refusal the penal order is cancelled in its verdict of damage compensation. The single judge shall refer the injured party to civil proceedings in his/her ruling.

/3/ If the authorized person filed a refusal of the penal order in the prescribed term the penal order shall be cancelled by this and the single judge shall rule a main hearing in the case; in the hearing of the case at the main hearing the single judge shall not be bound by the kind and specification of the sentence contained in the penal order. Otherwise, the penal order shall become valid and enforceable.

/4/ If the accused was prosecuted for a criminal offence stipulated in Section 613 the injured party may withdraw the consent with criminal prosecution till the time the penal order is served on any of the persons stipulated in paragraph 1 herein. The withdrawal of the consent shall cancel the penal order and the single judge shall stay the criminal prosecution.

/5/ If a penal order was issued the prosecutor can withdraw the indictment till the time the penal order is served on any of the persons stipulated in paragraph 1. The withdrawal of the indictment shall cancel the penal order and the case is returned to pre-trial proceedings.

**CHAPTER TWENTY**  
**ENFORCEMENT PROCEEDINGS**

**Section 315**

**Competence in Enforcement Proceedings**

/1/ The decision shall be enforced or its enforcement shall be arranged by the body which made the decision; in proceedings before a court, the presiding judge of panel shall enforce or shall arrange the enforcement of the decision of the panel.

/2/ Rulings related to the execution of the sentence and of protective measures shall be made by the court which ruled in the case in the first instance, provided not otherwise stated later herein .

/3/ Measures necessary for the execution of the sentence and of protective measures and for the collection of costs of the criminal proceedings, mainly notification of other bodies and persons having co-action in the enforcement of the mentioned decisions, provided nothing different is stipulated further, shall be made by the presiding judge of the panel of the court which ruled in the case in the first instance.

**Title One**

**Section 316-319 - cancelled**

**Title Two**

**Execution of a Sentence of Imprisonment**

## **Section 320**

### **General Provisions**

/1/ The act on serving sentence of imprisonment stipulates how the sentence of imprisonment shall be executed.

/2/ In persons serving an imprisonment sentence the decision on the execution of this sentence shall be made by the court in which district this imprisonment sentence is served.

/3/ If the sentences of imprisonment which are imposed successively have a different execution of the sentence determined (Section 39a and Section 81 of the Criminal Act) the court in which district the imprisonment sentence is served shall determine the joint execution of successively imposed sentences.

## **Section 321**

### **Order to Serve the Sentence**

/1/ As soon as the decision pursuant to which an imprisonment sentence without suspension shall be enforced becomes enforceable, the presiding judge of panel shall send an order of sentence execution to the appropriate reformatory institution and summons the sentenced person, if in liberty, to commence the execution of the sentence. If the verdict imposing imprisonment sentence became enforceable through a decision by an appeal court the presiding judge of the appeal court panel may order the execution of this sentence in an accused who is in custody, immediately after decision pronouncement.

/2/ If there is no concern that the sentenced person who is free will escape the presiding judge of panel may give him/her a reasonable term to arrange personal affairs before commencing to serve the sentence. This term shall not be longer than one month from the day the decision stipulated in paragraph 1 herein became valid.

/3/ If the sentenced does not commence serving the sentence in the term given to him/her or if there is concern that he/she will escape the presiding judge of panel shall order him/her to be brought to the sentence. If the place of residence of the sentenced is not known Section 69 paragraph 3 shall be applied as appropriate to the order of his/her delivery to the sentence. If the place of residence of the sentenced is known the provision of Section 83c paragraph 2 shall be applied as appropriate to his/her delivery to the sentence.

## **Suspension of Sentence Execution**

### **Section 322**

/1/ The presiding judge of panel shall suspend the execution of imprisonment sentence for a necessary period of time if serving the sentence were to endanger the life or health of the sentenced person.

/2/ The presiding judge of panel shall suspend the execution of imprisonment service imposed on a pregnant women or a mother of a newborn child for a period of one year after delivery.

/3/ A complaint which has a suspensive effect is admissible against the decisions pursuant to paragraphs 1 and 2 herein.

### **Section 323**

/1/ The presiding judge of panel may suspend, for serious reasons, the execution of a sentence of imprisonment not exceeding the period of one year by a period of three months the utmost from the day as of which the decision stipulated in Section 321 became valid.

/2/ Further suspension of the execution of such a sentence or a suspension by more than three months may be permitted by the presiding judge of panel only exceptionally for very important reasons, especially if the execution of the sentence could have exceptionally serious effects on the sentenced person or his/her family. However, a suspension may be permitted for a period of six months from the day as of which the decision stipulated in Section 321 paragraph 1 became valid, the most.

/3/ If there is concern that the sentenced person escapes or abuses the permitted suspension the presiding judge of panel shall revoke the suspension.

/4/ The prosecutor may file a complaint against the decision permitting the suspension of sentence execution pursuant to paragraph 2.

## **Section 324**

### **Decision-Making in the Change of Sentence Execution**

/1/ The district court in the district of which an sentence of imprisonment is served shall rule about the change of the imprisonment sentence upon a proposal by the prosecutor or director of the reformatory institution, or upon a motion by the sentenced or also without such a petition in a public session.

/2/ Prior to a decision on changing the execution of imprisonment sentence the sentenced person must be shall be examined.

/3/ A complaint against a decision pursuant to paragraph 1 herein is admissible and it shall have a suspensive effect .

## **Section 325**

### **Interruption of Sentence Execution**

/1/ If a sentenced person serving an imprisonment sentence suffers a serious disease the presiding judge of panel may interrupt the execution of the sentence for the necessary time; the presiding judge of panel shall always interrupt the execution of the sentence on a pregnant woman or a mother of a child younger than one year.

/2/ If there is concern that the sentenced person will escape or that he/she abuses the permitted interruption the presiding judge of panel shall revoke the interruption of sentence execution.

/3/ A complaint against decision pursuant to paragraph 1 herein is admissible.

## **Section 326 - cancelled**

## **Section 327**

### **Waiver of Sentence Execution**

/1/ Minister of justice may waive the execution of the sentence of imprisonment or of its remaining term if the sentenced person was or is to be extradited or expelled. If no

extradition or expulsion were executed or if the extradited or expelled person returned a court shall rule that the sentence of imprisonment or its remaining term shall be served.

/2/ The court may waive the execution of an imprisonment sentence or of its remaining term also when it finds that the sentenced person contracted an incurable fatal disease or an incurable mental disease.

/3/ A complaint against the decision pursuant to paragraph 2 herein is admissible and it has a suspensive effect.

### **Section 328**

#### **Suspension and Interruption Sentence Execution and Waiver of Its Execution in Military**

/1/ The presiding judge of panel shall either suspend or interrupt the execution of a sentence of imprisonment below six months which is to be served or is served in a reformatory institution if the sentenced person was drafted to serve his mandatory military service.

/2/ If the sentenced person, while serving this service, did not commit any criminal offence and served a regular military service, the court shall waive the execution of the sentence or of its remaining term otherwise it shall rule that the sentence or its remaining term will be served. If the execution of the sentence or of its remaining term was waived the sentence is considered to be served as of the day on which its execution was suspended or interrupted.

/3/ If the director of a reformatory institution or the chief of a military reformatory unit in which the sentenced serves the sentence, file a motion for a release on parole, or

they join such a motion, the presiding judge of panel, with the consent of the prosecutor, may rule in favour of the release of the sentenced on parole.

/4/ A complaint against the decision pursuant to paragraph 2 herein is admissible and it has a suspensive effect.

## **Sentence on Probation**

### **Section 329**

/1/ As soon as the judgement imposing an imprisonment sentence the execution which was conditionally suspended in the consideration of a pledge of a civil association to guarantee the reform of the sentenced, shall become valid, the presiding judge of panel shall send a copy of the judgement to the civil association which assumed the guarantee and shall ask them for participation in the reform. Simultaneously, he/she shall ask them in case the pledged guarantee is not meeting its objective and the civil association revoked its guarantee due to the way of life of the sentenced, violation of restrictions and conditions imposed by the court or any other reasons, to notify the court of such their decision.

/2/ The presiding judge of panel may ask the civil association operating at the workplace of the sentenced or in the place of his/her residence to cooperate in the reform also when a probatory suspension of sentence execution was permitted without their guarantee.

/3/ The court shall follow the behaviour of a person conditionally sentenced during the probation term and while doing so it shall rely on the assistance of civil associations.

### **Section 330**

/1/ The court shall rule about the sentenced on probation as to satisfying the probation or as to serve the sentence suspended on probation, in a public session. The court shall rule in a public session whether, on the grounds of civil association guarantee withdrawal, a sentence suspended on probation is ordered to be executed or a sentence on probation will remain valid as well as on the preservation of a sentence on probation in validity as well as on the preservation of the sentence on probation in validity and the prolongation of the probation term in a juvenile in the case of Section 82 paragraph 2 of the Penal Act.

/2/ In the decision-making on the person sentenced on probation proving worth the court shall consider also the opinion of the civil association.

/3/ A complaint against the decision pursuant to paragraph 1 is admissible and it has a suspensive effect.

/4/ The decision that the sentenced on probation proved worth may be made, with the consent of the prosecutor, also by the presiding judge of the panel.

## **Section 331**

### **Release on Parole**

/1/ The court shall rule about a release on parole from the sentence of imprisonment upon a motion by the prosecutor or the director of the reformatory institution in which the sentence is served, upon a petition by the sentenced or also without such a motion, in a public session. If the petition by the sentenced for a release on parole was denied the sentenced may repeat it only after the expiration of a one year term from the denial with

the exception of the case when the petition was denied on the grounds that the term for release on parole stipulated in the law was not satisfied.

/2/ The civil association stipulated in Section 4 paragraph 1 may also file a motion for release on parole provided they offer to pledge guarantees for the completion of the sentenced person reform. Prior to filing the motion they may ask the director of the reformatory institution in which the sentence is served to report to them on the state of the reform of the sentenced.

/3/ If the director of the reformatory institution or the chief of a military reformatory unit in which the sentenced is serving his/her sentence file a motion for a release on parole or join such a motion the decision on the release of the sentenced on parole may also be made, with the consent of the prosecutor, by the presiding judge of panel.

/4/ Upon a request by the civil association, for participation in the reform of the parolee the provision of Section 329 shall be applied as appropriate.

### **Section 332**

/1/ The court shall rule on the parolee as to proving worth or having to serve the remaining term of the sentence, as well as on the remaining term of the sentence to be served or the release on parole remaining valid when the civil association withdrew their guarantee, in a public session. The presiding judge of the panel may rule, with the consent of the prosecutor, on the parolee proving worth.

/2/ When deciding as to the parolee proving worth the court shall also consider the opinion of the civil association.

### **Section 333**

/1/ A decision pursuant to Section 331 is made by the district court in the district of which the imprisonment sentence is served, decision pursuant to Section 332 is made by the court which released the sentenced on parole.

/2/ Prior to the decision on a release on parole or on the execution of the remaining term of the sentence the sentenced person shall be examined; this shall not apply if the court acts pursuant to Section 331 paragraph 3.

/3/ A complaint against the verdict on the duration of the parole term is admissible in the decision pursuant to Section 331 paragraph 3. A complaint against other decisions pursuant to Section 331 and 332 is admissible and it has a suspensive effect.

## **Section 334**

### **Including Detention into Sentence**

/1/ The presiding judge of the panel shall rule on including detention into the sentence in a ruling, usually, simultaneously with the order to serve the sentence. The detention is counted as of its duration to the the day of order to serve the sentence from the time when the personal liberty of the accused was restricted.

/2/ A complaint against the ruling pursuant to paragraph 1 herein is admissible.

/3/ The court shall rule on a motion by the prosecutor not to include the time of interruption of sentence execution granted to the sentenced for therapeutical care in a medical facility outside the reformatory institution into the execution of the imprisonment sentence if the damage to health was caused by the sentenced

intentionally, in a public session. A complaint against this decision is admissible and it has a suspensive effect.

### **Section 335 - cancelled**

### **Title Three**

### **Sections 336 - 340 cancelled**

### **Title Four**

### **Execution of Some Other Sentences**

### **Execution of Pecuniary Penalty**

#### **Section 341**

As soon as the judgement pursuant to which the sentenced is obliged to pay a pecuniary penalty shall become enforceable the presiding judge of the panel shall order the sentenced to pay it within fifteen days and shall advise him/her that otherwise the payment will be extracted.

#### **Section 342**

/1/ Upon a request by the sentenced the presiding judge of the panel may for serious grounds

a) suspend the execution of the pecuniary penalty by three months the utmost from the day the judgement became valid or

b) allow to pay up the pecuniary penalty in installments so that it will have to be paid up within one year from the day the judgement became valid the latest.

/2/ If the reasons for which the execution of the pecuniary penalty was suspended extinct or if the sentenced is in default without a serious reason the presiding judge of panel may revoke the permission of suspension or of installments.

### **Section 343**

/1/ The presiding judge of panel shall order the extraction of the pecuniary penalty if the sentenced person does not pay it

a) within fifteen days from the notice to pay,

b) within fifteen days from being notified of the decision to revoke the permitted suspension or permitted payment scheme, or

c) after the expiration of the suspension term of sentence execution.

/2/ The pecuniary penalty may be extracted only if not frustrating the satisfaction of the granted title of the injured to damage compensation. If the injured party does not commence his/her title extraction within three months from the day the judgement, imposing the pecuniary penalty, became valid, the pecuniary penalty may be extracted regardless of injured party's title.

### **Section 344**

/1/ The court shall waive the enforcement of the pecuniary penalty or of its remaining part if the sentenced person, due to circumstances beyond his/her control, became long-term unable to pay the pecuniary penalty or if the execution of the penalty were to seriously endanger the nutrition or education of a person for which the sentenced person has the maintenance duty of nutrition or education by law.

/2/ If the pecuniary penalty was not paid and the procedure pursuant to paragraph 1 herein or Section 342 paragraph 1 is excluded and extraction would not bring the result the court shall order the execution of a substitute imprisonment sentence or of its proportional part; simultaneously it will also rule about the manner of substitute sentence execution.

/3/ The sentenced person may anytime avert the execution of a substitute sentence or of its proportional part by paying the pecuniary penalty or its proportional part. The presiding judge of panel shall rule which part of the substitute sentence is to be served.

/4/ A complaint against the decision pursuant to paragraph 1 through 3 is admissible and it has a suspensive effect.

## **Enforcement of Property Forfeiture Sentence**

### **Section 345**

If the judgement imposing the sentence of whole property or of its part forfeiture became enforceable the presiding judge of panel shall send the body which enforces the property forfeiture sentence pursuant to special regulations, a copy of the judgement without the justification as to the enforcement of this sentence.

### **Section 346**

/1/ If any doubts arise during the enforcement of property forfeiture as to the application of this sentence to particular means or things with respect to their essential necessity for the satisfaction of vital needs of the sentenced person or of persons for who he/she has the duty to provide nutrition or education by law the presiding judge of panel shall rule, upon a motion by the appropriate body enforcing the property forfeiture sentence or upon a petition by the sentenced or the person whose nutrition or education is concerned, on it. Such a motion may be filed only within three months from the day when the judgement became valid or if it is means and things which were affected by the enforcement of property forfeiture sentence only later, within one month from the time it happened.

/2/ A complaint against the decision pursuant to paragraph 1 is admissible and it has a suspensive effect.

/3/ The presiding judge of panel shall send a copy of the final ruling stipulated in paragraph 1 herein to the body enforcing property forfeiture pursuant to specific regulations.

/4/ The ownership rights of a third party to the means and things affected by the enforcement of the property forfeiture sentence shall not be exercised pursuant to paragraph 1 herein but only according to civil law regulations.

## **Securing Property Forfeiture Sentence Enforcement**

### **Section 347**

/1/ If the accused is prosecuted for a criminal offence for which due to its nature and significance and the circumstances of the accused a sentence of property forfeiture may

be expected and there is concern that the enforcement of this penalty will be frustrated or made difficult, the court and in the pre-trial proceedings the prosecutor may seize the property of the accused. The court shall always seize the property of the accused when a property forfeiture sentence was imposed in a judgement which is not valid, yet.

/2/ A complaint against the seizure decision is admissible.

### **Section 348**

/1/ A seizure shall affect the whole property of the accused, increments and proceeds, arising from the seized property as well as the property the accused acquires after seizure. However, it shall not apply to means and things to which property forfeiture does not apply by law.

/2/ The presiding judge of panel and in the pre-trial proceedings the prosecutor shall rule, upon a motion by the pertinent authority enforcing the seizure decision pursuant to specific regulations or upon a motion by the accused or a person for whose nutrition or education the accused has the duty to provide by law, whether the seizure of the property shall not apply to some means or things as they are indispensable for the satisfaction of the vital needs of the accused or the mentioned person. A complaint against this decision is admissible.

/3/ While the seizure is in effect any legal act by the accused concerning the seized property, with the exception of acts aimed to avert an immediate threat of damage, is ineffective.

/4/ Whoever who holds things belonging to the seized property shall have the duty to notify the prosecutor or the court seizing the property of it as soon as he/she learned about it; otherwise he/she shall be liable for the damage caused by failure to report.

/5/ An ownership right of a third person to the seized means and things shall not be applied pursuant to paragraph 2 herein but only pursuant to civil law regulations.

### **Section 349**

The presiding judge of panel in the pre-trial proceedings and the prosecutor shall cancel seizure if the reason for which the property was seized extincts.

### **Section 350**

#### **Enforcement of Ban on Activity**

/1/ Immediately after the validity of the judgement imposing the sentence of activity ban on the sentenced person the presiding judge of panel shall rule on counting into the term of the execution of the imposed ban on activity, the period prior to judgement validity for which the sentenced person was withdrawn the authorization to perform the activity which is the subject of the ban with respect to the criminal offence, pursuant to specific regulations or based on a measure by a state body forbidding him/her this activity. A complaint against this decision is admissible.

/2/ Provisions of Section 331 through 333 shall be applied as appropriate to the proceedings on a conditional waiver of the sentence of activity ban as well as to the proceedings on the order of serving the remaining term of this sentence. However, all decisions shall be made by the court which ruled in the case in the first instance (Section 315 paragraph 2).

### **Section 350a**

## **Enforcement of the Ban of Residence Sentence**

/1/ The presiding judge of panel shall notify the municipal authority and the police body to which district the ban applies as well as the municipal authority and the police body in which district the sentenced has a permanent residence on imposing a ban of residence sentence.

/2/ If the sentenced person works in a district to which the ban of residence applies the presiding judge of panel shall also notify the organisation with which the accused has an employment contract.

/3/ The police body in the place of his/her domicile or residence may, on serious grounds, permit the sentenced a visit of the place or district to which the ban of residence applies.

/4/ During the period in which the sentenced person serves an active military service the ban of residence is not served. If the sentenced did not commit any criminal offence during the performance of this service and duly served the military service the court shall waive the execution of ban of residence sentence or of its remaining term. A complaint against this decision is admissible and it has a suspensive effect.

/5/ Provisions of Section 331 through 333 are similarly applied to the proceedings on a conditional waiver of the execution of the ban of residence sentence remaining term as well as to the proceedings on order to serve the remaining term of this sentence.

/6/ The decision on imposing appropriate restrictions on a person imposed a ban of residence in addition to a sentence of imprisonment without suspension shall be made in a public session of the court in which district the sentence of imprisonment was served the last. A complaint against this decision is admissible and it has a suspensive effect.

## **Section 350b**

### **Enforcement of the Expulsion Sentence**

The procedure in the enforcement of the expulsion sentence shall be stipulated in a generally binding legal regulation.

## **Title Five**

### **Enforcement of Protective Treatment and Protective Education**

## **Section 351**

### **Order of Protective Treatment Execution**

/1/ The presiding judge of panel shall order a protective treatment execution to a therapeutical institution in which the protective treatment shall be effected. If, however, a protective treatment was imposed in addition to a sentence of imprisonment without suspension and the conditions for the enforcement of such treatment are present in the reformatory institution, the presiding judge of panel may order the protective treatment to be effected while serving the imprisonment sentence.

/2/ If the person imposed a protective treatment presents a threat to his/her surrounding while staying in liberty, the presiding judge of panel shall arrange for an immediate delivery of this person to the therapeutical institution; otherwise he/she may give him/her an appropriate term for arranging personal affairs.

/3/ If the person concerned is a member of armed forces or of an armed corps in active service, then the presiding judge of panel shall request the pertinent commander or director to arrange person's delivery to the therapeutical institution.

/4/ The presiding judge of panel shall ask the therapeutical institution to notify the court imposing the protective treatment of the commencement of the protective treatment. At the same time, he/she shall ask the institution to report immediately to the district court in which district the protective treatment is effected when the reasons for further continuation of the protective therapy extinct.

### **Section 315a**

#### **Change of Protective Treatment Enforcement Manner**

The court in which district the therapeutical institution in which the protective therapy is effected, is located, shall rule on the change of protective treatment enforcement manner in a public session; a complaint against this decision is admissible and it has a suspensive effect.

### **Section 352**

#### **Waiver of Protective Treatment Enforcement**

Upon a motion by the prosecutor or the accused or without such a motion, the court which imposed the protective treatment shall rule on the waiver of protective treatment enforcement prior to its commencement in a public session. A complaint against this decision is admissible and it has a suspensive effect.

### **Section 353**

## **Release from Protective Treatment and its Termination**

Upon a motion by the prosecutor, the accused or the therapeutical institution or without it the district court in which district the protective treatment is effected shall rule on the release from protective treatment or its termination. A complaint against this decision is admissible and it has a suspensive effect.

### **Section 354**

#### **Order of Protective Education Enforcement**

/1/ The presiding judge of panel shall order the enforcement of protective education to the correctional facility in which the execution should start.

/2/ If the juvenile is not in detention and there is no concern of his/her escape the presiding judge of panel may give him/her an appropriate term to arrange personal affairs prior its commencement.

### **Section 355**

#### **Waiver of Protective Education Enforcement**

/1/ Upon a motion by the prosecutor, the youth authority or the juvenile or without it the court shall rule on waiver of protective education enforcement prior to its commencement in a public session.

/2/ A complaint against the decision pursuant to paragraph 1 herein is admissible and it has a suspensive effect.

## **Section 356**

### **Release from Protective Education**

/1/ Upon a motion by the prosecutor, the youth authority or the juvenile or the correctional facility or without it the district court in which district the protective education is effected shall rule on the release from protective education in a public session.

/2/ If the motion pursuant to paragraph 1 herein was not filed by the correctional facility the representative of this facility should be interrogated prior to the decision.

/3/ A complaint against the decision pursuant to paragraph 1 herein is admissible and it has a suspensive effect.

## **Section 356a**

### **Placement on Probation Outside a Correctional Institute**

/1/ Upon a motion by the prosecutor, the youth authority or the director of the correctional facility or a petition by the juvenile or without such a motion the district court in which district the protective education is effected shall rule on the placement on probation outside an correctional facility in a public session.

/2/ This court shall also rule on the cancellation of juvenile's placement on probation outside the correctional facility.

/3/ A complaint against the decision pursuant to paragraph 1 and 2 herein is admissible and it has a suspensive effect.

### **Section 357**

#### **Prolongation of Protective Education**

/1/ Upon a motion by the prosecutor, the youth authority or the correctional facility or without such a motion the district court in which district the protective education is effected shall rule on the prolongation of protective education in a public session.

/2/ If the motion pursuant to paragraph 1 herein was not filed by the correctional facility the representatives of this facility should be interrogated prior to the decision.

/3/ The protective education may be prolonged only when its execution has already commenced.

/4/ A complaint against the decision pursuant to paragraph 1 herein is admissible.

### **Section 358**

#### **Supervision by a Prosecutor**

A prosecutor in whose district protective treatment or protective education are effected shall supervise their enforcement. The administration of the place in which protective treatment or protective education are enforced shall have the duty to implement prosecutor's orders concerning the observance of regulations valid for the enforcement of protective treatment or protective education.

## **Title Six**

### **Enforcement of Some Other Decisions**

#### **Section 359**

##### **Waiver of Punishment Due to Guarantee**

If the court accepted a guarantee by a civil association stipulated in Section 4 paragraph 1 and as a consequence of this it waived the punishment, it shall serve on the civil association a copy of the judgement. At the same time the court shall request the civil association to assume, as pledged in the guarantee, the care for the reform of the sentenced and to observe that he/she compensates the damage caused by the criminal offence, unless he/she did so before.

#### **Section 360**

##### **Enforcement of Custody**

The custody enforcement manner is stipulated in a separate regulation.

#### **Section 361**

##### **Extraction of Disciplinary Penalties and of Costs of Proceedings**

##### **Criminal**

/1/ As soon as the ruling imposing a disciplinary penalty shall become enforceable the police body, investigator, prosecutor or the presiding judge of panel imposing the fine shall call the person who was imposed the fine to pay it within fifteen days and

advises him/her that otherwise the payment will be extracted. The paid disciplinary fine shall fall to the state.

/2/ The state administration of courts shall extract the costs of the criminal proceedings which are fixed at a lump sum.

### **Section 362 - cancelled**

## **CHAPTER TWENTY ONE**

### **EXPUNGEMENT OF RECORD**

#### **Section 363**

Upon a petition by the sentenced or a motion by the civil association stipulated in Section 4 paragraph 1, provided the case is not stipulated in Section 69 paragraph 3 of the Penal Act, as well as upon a motion by persons who may file an appeal in favour of the sentenced, the court shall decide on expungement of record. The court shall rule on expungement of record of a juvenile also without any motion or petition.

#### **Section 364**

/1/ The presiding judge of panel of the district court in which district the sentenced has or had the last place of residence in the time of filing the motion shall rule on expungement of record, and this is so even if the sentence was pronounced by a military court.

/2/ However, if the sentenced person is a member of armed forces the expungement of record shall be ruled by the presiding judge of panel of the military district court in

which district the sentenced served his service in the time of filing the motion, and this is so even if the sentence was not pronounced by a military court.

/3/ The presiding judge of panel of the court which was deciding the case in the first instance shall rule on the expungement of record of a juvenile.

/4/ A complaint against the decision on expungement of record is admissible and it has a suspensive effect.

### **Section 365**

/1/ As soon as the decision on expungement of record shall become valid the presiding judge of panel shall notify the sentenced, the petitioner and the body in charge of criminal records registry; expunged record shall not be entered in the criminal record statement.

/2/ If the motion for expungement of record was denied it may be filed again after a one year term except when it was denied only on the grounds the term for expungement stipulated by law has not expired. A motion filed despite this facts shall be denied by the court without any investigation.

## **PART FOUR**

### **SOME PROCEDURES RELATED TO CRIMINAL PROCEEDINGS**

#### **CHAPTER TWENTY TWO**

##### **GRANTING PARDON AND APPLICATION OD AMNESTY**

## **Section 366**

### **Granting Pardon**

/1/ The president of the republic shall grant pardon based on the right vested to him in the constitution.

/2/ The president shall determine in which cases the prosecutor general or minister of justice may hold proceedings on a petition for pardon and deny an unjustified petition.

/3/ If the president of the republic orders so in proceedings on granting pardon, criminal proceedings shall not commence or the commenced criminal proceedings shall not be continued and the accused is released from detention or sentence execution is suspended or interrupted.

## **Section 367**

### **Proceedings on Granting a Pardon**

In cases stipulated in Section 366 paragraph 2 proceedings shall be held and unjustified petition shall be denied by

a) prosecutor general prior to filing indictment and he/she may also order that criminal proceedings shall not commence or the commenced criminal proceedings shall not be continued and the accused shall be released from detention till the time the petition for pardon is settled,

b) minister of justice after filing indictment and he/she may also order that criminal proceedings shall not commence and the accused shall be released from detention or the

execution of the sentence is suspended or interrupted till the time the motion for pardon is settled,

### **Section 368**

#### **Decision to Apply Amnesty**

The court deciding in the first instance shall also decide whether and to what extent a person imposed a final sentence is eligible to an amnesty. If such a person serves an imprisonment sentence during the decision-making time the court in the district of which the sentence is served, shall make the decision. An appeal against this decision is admissible and it has a suspensive effect.

### **Section 369**

#### **Conditional Granting of Pardon**

If the sentence or its remaining term were pardoned in the granting of the pardon only under certain conditions, the court which ruled in the case in the first instance, shall supervise the compliance with the conditions and the reform of the sentenced. Provision of Section 329 on the cooperation with civil association shall be applied as appropriate.

### **Section 370**

#### **Change of Terms of Sentence**

/1/ If a sentence only for some of the criminal acts - for which an aggregate or cumulative sentence was imposed and it was not fully served, yet - was pardoned in the amnesty, the court shall determine appropriate sentence for those criminal offences

which are not affected by the amnesty considering their levels of the seriousness. A complaint may be filed against this decision and it has a suspensive effect.

/2/ The court imposing the sentence in the first instance shall rule pursuant to paragraph 1 in a public session.

### **Section 370a - cancelled**

## **CHAPTER TWENTY THREE**

### **Section 371 through 374 - cancelled**

## **CHAPTER TWENTY FOUR**

### **LEGAL CONTACTS WITH FOREIGN COUNTRIES**

#### **Section 375**

#### **General Provisions**

Provisions stipulated in this Chapter shall be applied only if a promulgated international treaty does not stipulate a different procedure.

#### **Title One**

#### **Request for Extradition From a Foreign Country**

#### **Section 376**

/1/ If the accused stays abroad and there is a need for his/her extradition the presiding judge of panel shall issue a warrant of arrest against him/her and based on it shall ask the ministry of justice for other measures. In the pre-trial proceedings this shall be done upon prosecutor's motion.

/2/ If the case does not permit any delay the presiding judge of panel shall ask the ministry of justice to arrange a preliminary arrest of the accused; the warrant of arrest shall be send to the ministry of justice subsequently.

/3/ The warrant of arrest shall include

a) the name and family name of the accused, his/her personal data and information on citizenship and/or a description of the person and a photo,

b) the legal concept of the criminal act together with the specification of the pertinent legal provisions and a description of the facts of the act with an exact identification of when, where and how it was committed,

c) the verbatim wording of legal provisions pursuant to which the criminal act is evaluated together with the specification of the term of sanction stipulated for it in the law and

d) if an extradition of a sentenced in order to enforce his/her sentence is concerned, then also information on which court imposed what sentence together with an attached copy of judgement with a validity clause.

### **Section 377**

/1/ The accused extradited by a foreign country shall be taken over by police bodies. They shall turn the received person without delay to the presiding judge of panel which issued the warrant of arrest.

/2/ If the extradition is not effected to enforce a sentence the presiding judge of panel shall have the duty to hear the accused within 24 hours from the delivery and rule on detention.

### **Section 378**

/1/ If the accused was extradited by a foreign country with reservation it shall be respected.

/2/ The accused may be prosecuted only for criminal offences on the grounds of which he/she was extradited unless an additional consent for criminal prosecution for other criminal offences is given.

/3/ If the accused was requested or extradited from a foreign country only to serve the sentence for some of the criminal offences he/she was imposed an aggregate or cumulative sentence earlier, the court shall rule on an appropriate sentence for the criminal acts the extradition applies to in a public session.

/4/ If a foreign country extradites a person who was imposed a sentence or protective measure in a final judgement to enforce the sentence or protective measure and by doing so makes reservations to the judgement or proceedings preceding it the regional court shall cancel the judgement in the necessary scope in a closed session after police bodies received the sentenced and it shall also rule on further procedure as to satisfy the reservation. If the whole judgement is cancelled or only its verdict of sentence it shall

rule on the detention at the same time. If there is a need for additional facts the whole case may be returned to the prosecutor for additional investigation.

/5/ A complaint against the decision pursuant to paragraph 3 and 4 is admissible and it has a suspensive effect unless it is a decision on detention.

## **Title Two**

### **Extradition to a Foreign Country**

#### **Section 379**

##### **Preliminary Investigation**

/1/ The prosecutor who was sent by the ministry of justice or prosecutor general a request for extradition by a foreign country or learned about a criminal offence for which a foreign country may request extradition shall conduct a preliminary investigation. The purpose of preliminary investigation is to find whether there are conditions for extradition and, mainly, whether it is a criminal offence pursuant to the laws of both countries for which an extradition is admissible and which culpability did not expire, and whether the person is not a citizen of the Slovak Republic.

/2/ In the extradition proceedings the person who is affected by the extradition shall have a defence counsel.

/3/ Prosecutor shall examine such a person and advise him/her on the content of the extradition request. If this person presents facts rebutting the suspicion and presents evidence on it which may be taken without substantial delay, then the preliminary investigation shall apply to it as well.

/4/ If the person whose extradition is concerned is taken into preliminary detention pursuant to Section 380b or into an extradition detention pursuant to Section 381 the regulations on the enforcement of detention<sup>12/</sup> shall be applied as appropriate to the contacts with the defence counsel and lawyer and correspondence under detention.

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12/ Section 8 and Section 9 of National Council of the Slovak Republic Act No. 156/1993 Coll. on the enforcement of detention.

## **Section 380**

### **Court Decision**

/1/ Upon a motion by the prosecutor the regional court in which district the person whose extradition is concerned has his/her residence or was captured, shall rule after the completion of the preliminary investigation as to the admissibility of extradition and shall submit the case to the ministry of justice.

/2/ If the minister of justice has doubts on the correctness of the regional court decision he/she may submit the case to the supreme court to review the decision.

## **Section 380a**

### **Detention**

Upon a request by the bodies of a foreign country the prosecutor conducting preliminary investigation may issue order to the police bodies to detain the person whose extradition is concerned. The reasons stipulated in Section 67 paragraph 1 and 2 shall not binding. If the prosecutor does not release the detained person within 24 hours

from detention then he/she shall file a motion for preliminary detention with the court in this period.

## **Section 380b**

### **Preliminary Custody**

/1/ Upon a motion by the prosecutor the presiding judge of the panel shall rule on taking the detained person into preliminary detention within 24 hours from the delivery of the detained person. The reasons for detention pursuant to Section 67 paragraph 1 and 2 shall not be binding. If the presiding judge of panel does not take the detained person into preliminary detention in set the term, then he/she shall release the person to freedom.

/2/ If no foreign country request for extradition of the concerned person together with the pertinent documents arrives within 18 days from the detention of the person the presiding judge of panel of the regional court may release the person from a preliminary detention. A preliminary detention shall not last longer than 40 days from the day of person's detention. If a foreign country request for extradition arrives during the duration of the preliminary detention the presiding judge of panel may, upon the motion by the prosecutor conducting preliminary investigation, take this person into extradition detention provided the conditions stipulated in Section 381 paragraph 1 are satisfied.

/3/ A release from preliminary detention shall not exclude a new preliminary detention or extradition detention.

## **Section 381**

### **Extradition Detention**

/1/ Upon a motion by the prosecutor conducting preliminary investigation the presiding judge of panel of the regional court may take the person whose extradition is concerned into detention if this is necessary to prevent person's escape.

/2/ If the admissibility decision on extradition to a foreign country was made the county court shall take the person whose extradition is concerned, into custody provided the presiding judge of panel did not do so pursuant to paragraph 1. The reasons for detention pursuant to Section 67 shall not be binding.

/3/ If an inadmissibility decision on extradition was made or if the minister of justice orders it an immediate release from detention shall be arranged.

## **Section 382**

### **Permission and Enforcement of Extradition**

/1/ Minister of justice shall permit extradition to a foreign country provided the regional court or the supreme court ruled pursuant to Section 380 herein that extradition is admissible.

/2/ The presiding judge of panel of the regional court shall arrange the extradition after its permission as well as the related release of the person whose extradition is concerned.

## **Section 383**

### **Extension of extradition to Another Crime**

If the country to which a certain person was extradited requests the prosecution of this person for another crime or the enforcement of sentence imposed for another crime than the one for which the extradition was permitted, provisions on extradition shall be applied as appropriate.

### **Title Three**

#### **Taking-over and Transfer of the Criminal Case**

##### **Section 383 a**

##### **Taking-over of a Criminal Case from Abroad**

The prosecution general shall rule on a motion by the pertinent body of a foreign country to have the criminal prosecution of a citizen of the Slovak Republic for crimes committed on the territory of that country taken over by the pertinent bodies of the Slovak Republic and in case of a decision in favour of the motion it shall immediately submit a petition to the competent body with substantive and territorial competence to commence criminal prosecution pursuant to the provisions of this act.

##### **Section 383b**

##### **Transfer of a Criminal Case to a Foreign Country**

If a criminal prosecution is conducted against a citizen of a foreign country for a crime committed on the territory of the Slovak Republic the prosecution general, and after filing the indictment the ministry of justice, may transfer the criminal prosecution to the appropriate body of the foreign country the accused persons is a citizen of.

## **Section 383c**

### **Transport for the Purposes of Proceedings Abroad**

If a transport of person for the purposes of criminal proceedings abroad is requested by a foreign country the supreme court shall rule on the admissibility of transport upon a motion by a foreign country. The provisions of Title Two are applied as appropriate to the decision on the admissibility of transportation and security measures.

## **Section 383d**

### **Taking-over of a Person from a Foreign Country in Order to Perform a Procedure on the Territory of the Slovak Republic and His/Her Return**

/1/ If the presence, either to serve as a witness or for confrontation, of a person is necessary for the purpose of a criminal prosecution on the territory of the Slovak Republic and this person is detained abroad or serves an imprisonment sentence abroad, the judge in the pre-trial proceedings upon a motion by the prosecutor and the presiding judge of panel in proceedings before a court shall rule that this person will be in detention on the territory of the Slovak Republic during the temporary transfer and shall ask the ministry of justice of the Slovak Republic for other measures.

/2/ In the decision pursuant to paragraph 1 the judge and in the proceedings before a court, the presiding judge of panel shall state that detention commences as of the day of such person's taking-over.

/3/ The person temporary transferred by a foreign country shall be taken-over by bodies of the Prison and Justice Guard Corps and they shall notify of the taking-over the body issuing the detention decision without delay .

/4/ After the performance of necessary procedures, however, the latest in the term stipulated by the foreign country, this person shall be returned.

/5/ The return of the person to the foreign country after the decision on release from detention ordered pursuant to paragraph 1 shall be arranged by the Ministry of Justice of the Slovak Republic.

### **Section 383e**

#### **Transfer of an Accused Foreigner or an Accused Person without Citizenship for the Performance of Procedures Abroad**

/1/ Upon a motion by a foreign country an accused foreigner or an accused person without a citizenship who is in detention or serving a sentence of imprisonment may be temporary transferred to the territory of a foreign country in order to give testimony or confrontation.

/2/ Such a person may be temporary transferred provided the following conditions shall be satisfied:

- a) the person stipulated in paragraph 1 will give his/her consent to it,
- b) his/her absence shall not change the purpose of detention or execution of the sentence enforced on the territory of the Slovak Republic,
- c) the temporary transfer shall not prolong inappropriately duration of the custody enforced on the territory of the Slovak Republic,

d) the temporary transfer shall not prolonge inappropriately duration of the execution of the imprisonment sentence enforced on the territory of the Slovak Republic.

/3/ In the pre-trial proceedings the Prosecution General of the Slovak Republic and in the proceedings before a court the Ministry of Justice of the Slovak Republic shall rule on the permission of a temporary transfer of the person stipulated in paragraph 1 herein, after the conditions stipulated in paragraph 1 and 2 herein are satisfied. The Ministry of Justice of the Slovak Republic shall arrange the transfer of the person to the bodies of the foreign country.

/4/ The body deciding on the temporary transfer of the person stipulated in paragraph 1 herein shall, at the same time, determine the appropriate term during which the person temporary transferred shall be returned to the territory of the Slovak Republic. This term shall not be longer than 30 days.

/5/ The person transferred shall stay in detention on the territory of the foreign country and this shall be stated in the decision of the body which ruled pursuant to paragraph 3 herein. The same shall also apply when such a person is escorted over the territory of a third country.

/6/ The time spent in detention abroad shall not be included in the duration of terms pursuant to Section 71 paragraph 1 and 2. Ruling on this shall be made by the court and in the pre-trial proceedings by the judge upon prosecutor's motion (Section 71 paragraph 7). However, the time spent in custody abroad shall be included into the duration of the execution of a sentence served in the Slovak Republic. The court ordering sentence enforcement shall rule on it.

#### **Title Four**

## **Letters Rogatory**

### **Section 384**

/1/ Letters rogatory to foreign country courts and authorities to provide legal assistance as well as in providing legal assistance to foreign country courts and authorities shall be governed by regulations valid for relations with other countries in civil law cases as appropriate, provided it is not stipulated otherwise in an international treaty, and this shall also apply to criminal cases. .

/2/ Upon a request by a body of a foreign country a house search or personal search, seizure of things or other acts of legal assistance may be conducted in order to secure evidence for criminal proceedings held on the territory of a foreign country. Provisions of Title Three through Six of Chapter Six of the Code of Criminal Procedure shall be applied to the order of house or personal search, thing seizure or performance of another procedure.

/3/ The body enforcing letters rogatory pursuant to paragraph 2 may suspend the transfer of seized things when they are needed in pending criminal proceedings.

/4/ In the transfer of things seized pursuant to paragraph 2 the competent body shall request the foreign country to return the things. However, it may explicitly waive this right.

## **Title Five**

### **Enforcement of Judgements by Foreign Country Courts**

#### **Section 384a**

If a judgement of a foreign country court in a criminal case is to be enforced pursuant to a proclaimed international treaty by which the Slovak Republic is bound, the ministry of justice shall submit the case to the supreme court with a motion to rule on the acknowledgement of foreign court decision on the territory of the Slovak Republic. The supreme court shall rule on the motion with a judgement after hearing the prosecutor general.

#### **Section 384b**

If the foreign country judgement was acknowledged pursuant to Section 384a the ministry of justice may give its consent to take over the sentenced person for sentence enforcement or to ask the country which court pronounced the judgement to transfer the sentenced person.

#### **Section 384c**

The sentenced person transferred by a foreign country shall be taken over by the bodies of the Prison and Justice Guard Corps. The judge of the court indicated in Section 384d shall rule on custody within 24 hours from the transfer and in doing so he/she shall not bound by the reasons for detention pursuant to Section 67.

#### **Section 384d**

The court competent pursuant to Section 14 through 18 shall rule on the enforcement of a foreign country court decision (Section 384a) with a judgement in a public session. The sentenced shall always have a defence counsel in these proceedings.

### **CHAPTER FIVE**

## **PROVISIONAL AND CONCLUDING PROVISIONS**

### **Section 385**

From July 1, 1990 the regulations on criminal proceedings valid prior to this date may be applied only within the limits of the provisions of this chapter.

### **Section 386**

/1/ Regulations valid prior to this date shall be applied to offence proceedings in cases in which the court was delivered a motion for sentence prior to July 1, 1990.

/2/ Regulations valid prior to this date shall be applied to execution of corrective measure sentence imposed prior to July 1, 1990.

/3/ Penal orders issued prior to July 1, 1990 shall be subject present regulations.

### **Section 387**

/1/ In the proceedings on retrial of criminal proceedings concluded with final validity prior to the effect of this act provisions of this act shall be applied. However, in such a case the conditions for retrial permission shall be viewed pursuant to the law which is more favourable for the accused.

/2/ If the decision which is challenged by the retrial motion was issued in the first instance by a court which is not existing anymore then the retrial motion shall be ruled by a court having substantive and territorial competence; if the former State Court ruled

in the first instance then the retrial motion shall be ruled by the regional (higher military) court which would have territorial competence pursuant to this act.

### **Section 388**

/1/ The regional court shall also be competent to hold proceedings in the first instance on criminal acts pursuant to regulations with an earlier effect which in their nature and seriousness correspond the criminal offences stipulated in Section 17 paragraph 1.

/2/ Decisions and measures concerning the enforcement of judgements pronounced by the Supreme Court of the Slovak Republic as a first instance court shall be issued by the Municipal Court at Bratislava and in the military judiciary sector the Higher Military Court at Trenčín.

### **Section 389**

/1/ The decision on the non-enforcement of a sentence imposed for an act which shall not anymore constitute a criminal offence as a consequence of Criminal Act amendment shall be made by the court which ruled in the case in the first instance.

/2/ The decision on a proportional shortening of an aggregate and cumulative sentence imposed for an act which shall not anymore constitute a criminal offence as a consequence of Criminal Act amendment and for another concurrent criminal offence shall be made in a public session by the court which ruled in the case in the first instance.

/3/ If a death penalty imposed prior to July 1, 1990 was changed into an imprisonment sentence the court which ruled in the case in the first instance, shall rule on its execution manner in a public session.

/4/ A complaint against the decisions pursuant to paragraph 1 through 3 is admissible and it has a suspensive effect.

### **Section 390**

Act No. 64/1956 Coll. on court criminal proceedings (the Code of Criminal Procedure) shall be hereby cancelled.

### **Section 391**

Minister of justice may stipulate which procedures commissioned to the presiding judge of panel pursuant to this act may be performed by another officer of the court.

### **Section 391a**

/1/ Ministry of justice shall hereby be authorized to issue for district and regional courts standing orders stipulating in more detail the procedure by district and regional courts in the administration of criminal cases, as a generally binding legal regulation.

/2/ After an agreement with the Ministry of Interior of the Slovak Republic, the Ministry of Justice of the Slovak Republic shall hereby be authorized to stipulate the procedure for the enforcement of extradition sentence in a generally binding legal regulation .

### **Section 391b**

After an agreement with the Prosecution General of the Slovak Republic and the Ministry of Finance of the Slovak Republic, the Ministry of Justice of the Slovak Republic shall hereby be authorized to stipulate the procedure for competent bodies in securing and administering seized property, in a generally binding legal regulation .

### **Section 391c**

/1/ The supreme court shall be competent to act in proceedings in pending cases in which the Supreme Court of the Czech and Slovak Federal Republic had substantive competence pursuant to the present regulations if a body acting in criminal proceedings with a seat in the territory of the Slovak Republic ruled in the first instance.

/2/ The supreme court shall be competent to act in proceedings on complaints against violation of the law which pursuant to the present valid laws were the competence of the Supreme Court of the Czech and Slovak Federal Republic provided a body acting in criminal proceedings with its seat in the territory of the Slovak Republic ruled the case in the first instance.

/3/ The supreme court shall be competent to act in proceedings on violation of the law in cases ruled by the former State Court or the former Supreme Court as the court of first instance if a court with its seat in the territory of the Slovak Republic was competent to act in the first instance pursuant to present valid regulations.

/4/ Proceedings on removal of the case from the court with its seat in the Slovak Republic and its assignment to a court in the Czech Republic and vice versa shall be not continued as of January 1, 1993.

## **Section 392**

Act No. 57/1965 Coll. of June 17, 1965 amending Act No. 141/1961 Coll. on Court Criminal Proceedings effective as of August 1, 1965, Act No. 58/1969 Coll. of June 5, 1969 on liability for damage caused by a decision made by a state body or its incorrect official procedure effective as of July 1, 1969, Act No. 149/1969 Coll. of December 18, 1969 amending Act No. 141/1961 Coll. on court criminal proceedings effective as of January 1, 1980, Act No. 48/1973 Coll. of April 25, 1973 amending Code of Criminal Procedure effective as of July 1, 1973, Act No. 19/1978 Coll. of April 5, 1978 amending the act on courts organisations and elections of judges, act on prosecution, Code of Criminal Procedure and Code of Notary Procedure effective as of July 1, 1978, Act No. 43/1980 Coll. of April 10, 1980 amending Criminal Law Act and Code of Criminal Procedure effective as of April 24, 1980, Act No. 159/1989 Coll. of December 13, 1989 amending Criminal Law Act, act on offences and Code of Criminal Procedure effective as of February 1, 1990, Act No. 178/1990 Coll. of May 2, 1990 amending Code of Criminal Procedure effective as of July 1, 1990, Act No. 303/1990 Coll. as of July 20, 1990 amending Code of Criminal Procedure effective as of July 20, 1990 and Act No. 558/1991 Coll. of December 11, 1991 amending Code of Criminal Procedure and state secrecy act effective as of January 1, 1992, Act No. 6/1992 Coll. of December 16, 1992 amending Code of Criminal Procedure effective as of January 1, 1993, Act No. 178/1993 Coll. of July 16, 1993 amending Code of Criminal Procedure effective as of August 12, 1993. Extract from Act No. 558/1991 Coll. amending the Code of Criminal Procedure and state secrecy act.

## **Article II**

### **Interim and Closing Provisions**

/1/ The investigator shall be competent in proceedings enforced by a searching body till the day of effect of this act. He/she shall not have to repeat the procedures of the searching body provided they were taken in a way stipulated in the present regulations.

/2/ When the act in its provisions on exceptional remedies in criminal proceedings mentions investigator and investigator's decision it shall be understood also as a searching body and the decision of a searching body pursuant to the present regulations.

/3/ In cases in which indictment was filed with a court competent pursuant to present provision of Section 17 the proceedings shall be completed pursuant to the present regulations.

/4/ Decisions by the courts of the former Czech and Slovak Federal Republic with their seat in the territory of the Czech Republic shall be enforceable under the same conditions as the decisions by courts of the Slovak Republic.

### **Article III**

The Chairman of the National Council of the Slovak Republic shall hereby be authorized to promulgate the full wording of Act No. 141/1961 Coll. on court criminal proceedings (The Code of Criminal Procedure) as stipulated in later regulations, in the Collection of Laws of the Slovak Republic.

### **Article IV**

This act shall become effective as of October 1, 1994.

**President of the Slovak Republic**

**Chairman of the National Council of the Slovak Republic**

**Prime Minister of the Government of the Slovak Republic**