Act XC of 2017
on the Code of Criminal Procedure

The National Assembly,

to establish the criminal liability of perpetrators of criminal offences punishable under the Criminal Code or international law in efficient proceedings that respect the fundamental right to a fair trial and are conducted within a reasonable period,

in light of the requirement to establish the truth,

with particular emphasis on providing strong protection for aggrieved parties of criminal offences and enforcing their rights,

to ensure that proceedings are conducted on the basis of the separation of functions and the exercise of rights as intended,

taking into account the obligations of Hungary under international and European Union law,

to exert the State's exclusive criminal jurisdiction in criminal proceedings,

adopts the following Act:

PART ONE

GENERAL PROVISIONS

Chapter I

FUNDAMENTAL PROVISIONS

The presumption of innocence

Section 1 No one shall be considered guilty until the court finds him guilty by a final and binding conclusive decision.

The protection of fundamental rights

Section 2 (1) The human dignity of every person shall be respected in criminal proceedings.

(2) The right to liberty and security of the person shall be afforded to every person in criminal proceedings.

(3) In a criminal proceeding, a fundamental right may be restricted only in a proceeding under this Act, for a reason, in a manner, and to an extent determined in this Act, provided that the purpose to be achieved may not be guaranteed by any other procedural act or measure involving any lesser restriction.

The right to defence

Section 3 (1) The defendant shall have the right to an effective defence at all phases of a criminal proceeding.

(2) The defendant shall have the right to defend himself personally and to engage a defence counsel to carry out his defence.

(3) The court, prosecution service, or investigating authority shall provide the defendant with a defence counsel as laid down in this Act.

(4) The court, prosecution service, or investigating authority shall afford adequate time and circumstances for preparing a defence.

(5) The defendant shall have the right to defend himself at liberty.

(6) The court, prosecution service, or investigating authority shall take into account *ex officio* all exculpatory circumstances and circumstances mitigating criminal liability.

The basis of and obstacles to criminal proceedings

Section 4 (1) The prosecution service or investigating authority shall launch a criminal proceeding *ex officio* if it becomes aware of a criminal offence subject to public prosecution.

(2) Unless otherwise provided in this Act, the court shall proceed on the basis of a motion.

(3) A criminal proceeding may not be launched, or a criminal proceeding already launched shall be terminated if the act of the perpetrator has already been adjudicated with final and binding effect, except for extraordinary legal remedy proceedings and certain special procedures.

(4) Paragraph (3) shall also apply where an act of the perpetrator constitutes more than one criminal offence, but the court, pursuant to the assessment offered in the indictment, does not find the defendant guilty in all criminal offences that can be established based on the facts presented in the indictment document.

(5) If the liability of a person was established in an infraction procedure, a criminal proceeding may not be launched against him on the basis of the same facts without issuing a prosecutorial compliance reminder, or conducting a review or retrial procedure, pursuant to the Act on infractions.

(6) All other circumstances preventing the launch of a criminal proceeding, necessitating the termination of any criminal proceeding already launched, or requiring the delivery of a judgment of acquittal shall be specified in an Act.

(7) A criminal proceeding may not be launched or a criminal proceeding already launched shall be terminated, if the act of the perpetrator has already been adjudicated with final and binding effect in a Member State of the European Union (hereinafter "Member State"); or if a decision was adopted in a Member State regarding the merits of the act which prevents the launch of a new criminal proceeding regarding the same act, pursuant to the laws of the country where the decision was adopted, or the continuation of the criminal proceeding *ex officio* or based on any ordinary legal remedy.

(7a) If multiple acts or a permanent act by the perpetrator constitute a single criminal offence, or multiple criminal offences by the perpetrator constitute a single criminal offence pursuant to a provision of Act C of 2012 on the Criminal Code (hereinafter the "Criminal Code"), paragraph (7) shall not prevent a criminal proceeding from being launched or completed on the basis of an act to which no reference is made among the facts of the case of a Member State decision specified in paragraph (7).

(8) Paragraph (7) shall not prevent a criminal proceeding from being launched or completed if

a) the final and binding judgment delivered by a court of the Member State (hereinafter "judgment delivered in a Member State") may not be taken into account, or

b) the act was committed in its entirety within the territory of Hungary, unless the perpetrator was found guilty and the penalty imposed by the judgment delivered in a Member State was already enforced, is being enforced, or may not be enforced under the laws of the Member State where the final and binding judgment was delivered.

(9) In a case specified in paragraph (8), the Prosecutor General shall decide on launching a criminal proceeding. If a guilty judgment is delivered in such a proceeding, any penalty, measure, or coercive measure affecting personal freedom enforced in another country shall be calculated into the penalty or measure imposed by the Hungarian court.

The separation of procedural tasks

Section 5 In a criminal proceeding, the prosecution, the defence, and the sentencing shall be separated.

The ground for sentencing, the binding nature of the indictment and the legal remedy

Section 6 (1) The court shall deliver its judgment on the basis of the indictment.

(2) The court shall decide on, and may not exceed the scope of, the indictment.

(3) The court may decide on the criminal liability of the indicted person only, and it may adjudicate only acts that are specified in the indictment.

(4) No ordinary legal remedy shall lie against a decision by the Curia.

The fundamental rules of evidence

Section 7 (1) Proving the indictment shall be the responsibility of the prosecutor.

(2) The defendant shall not be required to prove his innocence.

(3) In a criminal proceeding, a person shall not be required to give a self-incriminating testimony or provide evidence against himself.

(4) A fact not proven beyond a reasonable doubt shall not be held against the defendant.

(5) As for the matter of whether the defendant committed the criminal offence, the court, the prosecution service, and the investigating authority shall not be bound by any decision adopted, or fact established, in a civil, administrative, infraction, disciplinary, or other proceeding.

Language of criminal proceedings and the right to language use

Section 8 (1) Criminal proceedings shall be conducted in the Hungarian language. Members of a national minority living in Hungary and recognised by an Act may use their national minority mother tongue in criminal proceedings.

(2) A person shall not suffer any disadvantage because he does not understand the Hungarian language.

(3) Everybody shall be entitled to use his mother tongue in a criminal proceeding.

(4) A hearing-impaired or deaf-blind person shall be entitled to use sign language in a criminal proceeding.

The scope of this Act

Section 9 (1) Criminal proceedings shall be conducted pursuant to this Act in cases falling within Hungarian criminal jurisdiction.

(2) A procedural act by the court, the prosecution service or the investigating authority may be conducted concerning data accessible through an information system that is in Hungary regardless of the location of such data. The procedural act may be conducted regarding that part of the information system that the court, the prosecution service and the investigating can access, on the basis of authorisation by law, without bypassing or circumventing the means or information technology solution protecting the information system.

(3) A procedural act conducted pursuant to paragraph (2) shall be without prejudice to any commitment undertaken by Hungary in an international treaty.

Chapter II

INTERPRETATIVE PROVISIONS

Section 10 (1) For the purposes of this Act,

1. *measure applied in place of a penalty* means reprimand, release on probation, reparation work, and special education in a juvenile correctional institution;

2. *contact address* means the contact address as defined in the Act on the registration of personal data and home address of citizens,

3. *special criminal offence related to business management:*

a)

b)

c) economic fraud, as defined in section 374 (6) *a)* of the Criminal Code,

d) misappropriation, as defined in section 376 (6) *a)* of the Criminal Code,

e) mismanagement, as defined in section 377 (2) of the Criminal Code,

f) budget fraud and any related failure to comply with the supervisory or control obligation as defined in section 396 (5) of the Criminal Code,

g) violation of the order of accounting, as defined in section 403 (3) of the Criminal Code,

h) bankruptcy fraud, as defined in section 404 (3) of the Criminal Code,

i) insider trading,

j) unauthorised disclosure of inside information,

k) illegal market manipulation,

l) organising a pyramid scheme;

4. *economic operator* means an economic operator, as defined in the Act on the Code of Civil Procedure;

5. *relative* means a lineal relative and a lineal relative's spouse or cohabitant, an adoptive parent or foster parent (including step-parents living in the same household), or an adoptive or foster child (including step-children living in the same household), a sibling and a sibling's spouse or cohabitant, a spouse, a cohabitant, a lineal relative and a sibling of a spouse or a cohabitant;

6. *information system* means a piece of equipment performing the automatic technical processing, processing, storage, and transfer of data, or the totality of such interconnected pieces of equipment;

7. *legal representative* means an attorney-at-law or law office if proceeding as

a) a representative of the aggrieved party, the defendant, a party with a pecuniary interest, or an other interested party,

b) a representative of a substitute private prosecuting party,

c) an aide of a witness,

d) a legal aid lawyer,

e) a guardian *ad litem*,

f) a representative of a private prosecuting party;

8. *audio-visual recording* means a continuous recording capturing images and sound simultaneously;

9. *representative* means a statutory representative, a legal representative, or another authorised representative;

10. *service address* means an address specified by a person involved in a criminal proceeding as the address to be used for communication by post, which is different from the home address, contact address, or place of actual residence of that person;

11. *home address* means the home address, as defined in the Act on the registration of personal data and home address of citizens,

12. *media content provider* means a media content provider, as defined in the Act on the freedom of the press and the fundamental rules of media contents;

13. *entity other than a natural person* means an entity other than a natural person, as defined in the Act on the Code of Civil Procedure;

14. *rank* means the actual rank of soldier, or the rank determined on the basis of the service position grade and pay step of a professional member of the police force, the Parliamentary Guard, the prison service, a professional civil defence organisation, or a civil national security service;

15. *place of actual residence* means the real estate where the person participating in a criminal proceeding actually resides, including his place of detention, as well as the accommodation of a person who is not a Hungarian citizen.

(2) Where this Act provides for legal consequences for a penalty specified in the Act, it shall be construed to mean the upper limit of the penalty range specified in the Special Part of the Criminal Code.

(3) A decision, penalty, measure, or motion that imposes or seeks to impose any further obligation or restriction of a right shall be considered a more detrimental decision, penalty, measure, or motion.

(4) A district court also means a capital district court.

(5) For the purposes of this Act, a statutory representative also means a holder of a position vested with a right of representation, as defined in the Act on the Civil Code.

PART TWO

THE COURT, THE PROSECUTION SERVICE, AND THE INVESTIGATING AUTHORITY

Chapter III

THE COURT

The task of the court

Section 11 The task of the court shall be to administer justice. The court shall adjudicate and carry out the tasks relating to the criminal proceeding as specified in this Act.

The proceeding courts

Section 12 (1) The court of first instance shall be

a) a district court or

b) a regional court.

(2) The court of second instance shall be

a) a regional court in cases falling within the subject-matter jurisdiction of district courts,

b) a regional court of appeal in cases falling within the subject-matter jurisdiction of regional courts,

c) the Curia in cases falling within the subject-matter jurisdiction of regional courts of appeal.

(3) The court of third instance shall be

a) the regional court of appeal in cases where a district court proceeded as the court of first instance,

b) the Curia in cases where a regional court proceeded as the court of first instance.

Composition of the court

Section 13 (1) Unless otherwise provided in this Act, the court of first instance shall sit as a single judge.

(2) The court of first instance shall sit as a panel of three professional judges if a single judge referred the case to a court panel. A single judge may not proceed subsequently in a case that was referred to a court panel.

(3) If the court of first instance sits as a panel of three professional judges regarding special criminal offences related to business management, also a judge on the economic section of the regional court, the civil section of the regional court or the administrative section of the regional court may be appointed as one of the panel members.

(4) Unless otherwise provided in this Act, the court of second or third instance shall sit as a panel of three professional judges.

(5) The court of second or third instance may refer a case relating to a special criminal offence related to business management to a panel of five professional judges if it considers necessary to do so due to the complexity of the case, the volume of case documents, the number of persons involved in the criminal proceeding, or for any other reason.

(5a) In a third instance proceeding, the Curia shall sit as a panel of five professional judges.

(6) In cases within the subject-matter jurisdiction of the court of first instance, a junior judge may proceed with independent signatory right, in place of the single judge or the chair of the panel in cases specified in this Act. In such situations, the provisions relating to court proceedings shall apply to the proceeding of the junior judge.

(7) In cases specified by law, an administrative court officer may also proceed outside of a trial under the control and supervision of a judge. In such situations, the provisions relating to court proceedings shall apply to the proceeding of the administrative court officer.

Grounds for the disqualification of judges

Section 14 (1) A person may not proceed as a judge if

a) he proceeded in the case as a prosecutor or a member of the investigating authority, or he is a relative of a person who proceeds or proceeded in the case as a prosecutor or a member of the investigating authority,

b) he participates or participated in the case as a defendant, person reasonably suspected of having committed a criminal offence, defence counsel, aggrieved party, party with a pecuniary interest, party reporting a crime, an aide of any such person, or he is a relative of any such person,

c) he participates or participated in the case as a witness, expert, or consultant,

d) he adopted a decision permitting secret information gathering concerning the case, regardless of whether or not any piece of information secretly gathered was used in the criminal proceeding,

e) he cannot be expected to adjudicate the case without bias for any other reason.

(2) A notice of a ground for disqualification specified in paragraph (1) may be submitted only against a judge proceeding in the case.

(3) In addition to the cases regulated in paragraph (1),

a) a person shall be disqualified from any further proceedings of the court following the indictment if he proceeded as an investigating judge before the indictment or he proceeded with regard to an appeal filed against a decision adopted by the investigating judge,

b) a judge shall be disqualified from a second or third-instance proceeding if he participated in adjudicating the case at first instance, or first or second instance, respectively,

c) a judge shall be disqualified from a proceeding that is repeated due to setting aside if he participated in adopting the setting aside decision or the decision set aside as groundless,

d) a judge shall be disqualified from a proceeding that is repeated due to a retrial if he participated in adopting the decision granting retrial or the decision challenged by the retrial,

e) with the exception of simplified review procedures, a judge shall be disqualified from an extraordinary legal remedy proceeding if he participated in adopting the decision challenged by the extraordinary legal remedy.

(4) In a situation specified in paragraph (3), a judge shall be disqualified from adjudicating the case if a relative of his participated in adopting the challenged decision.

(5) In the situation specified in paragraph (3) *c)*, a judge who participated in adopting the setting aside decision shall not be disqualified from the revision of the decision adopted in the repeated proceeding.

(6) In a situation specified in paragraph (3) *d)*, a judge who participated in adopting the decision granting retrial shall not be disqualified from the first or second-instance proceeding repeated due to a retrial ordered under section 637 (5) on a ground specified in section 637 (1) *g)*.

(7) In a situation specified in paragraph (1) *e)*, it shall not constitute a ground for disqualification, in and of itself, if the judge concerned filed a crime report regarding a criminal offence committed against him by a person participating in the criminal proceeding during or because of his proceeding.

(8) In a situation specified in paragraph (3) *e)*, it shall not constitute a ground for disqualification if in the main case the judge participated in adopting a decision that is not affected by the motion for extraordinary legal remedy.

Notification of disqualification

Section 15 (1) The president of the court shall be notified without delay of a ground for disqualification relating to a judge by the judge concerned and of a ground for disqualification relating to a member of a court panel by the chair of the panel after he became aware thereof.

(2) Only a prosecutor, defendant, defence counsel, aggrieved party, or a party with a pecuniary interest may submit a notice of a ground for disqualification.

(3) The notice of disqualification shall be reasoned, and the likelihood of the ground for disqualification shall be substantiated.

(4) A person specified in paragraph (2) may not submit a notice of a ground for disqualification specified in section 14 (1) *e)* after the commencement of the trial, unless he substantiates that he became aware of the facts underlying the notice only after the commencement of the trial, and the notice is submitted within three days.

(5) A notice submit without being justified or substantiated as required by paragraph (4) may be dismissed without stating any reason as to its merits.

(6) If a ground for disqualification specified in section 14 (1) *d)* exists, the judge concerned shall not be bound by any statutory obligation of confidentiality toward his supervisor responsible for case assignment.

Handling of disqualification as an administrative matter

Section 16 (1) If the president of the court becomes aware of a ground for disqualification, he shall initiate the disqualification of the judge concerned *ex officio*.

(2) If the judge submits a notice of a ground for disqualification against himself or acknowledges a ground for disqualification of which notice was submitted by another person, the president of the court shall arrange for the designation of another judge. In such a situation, no separate decision on disqualification shall be required.

Handling of disqualification by the court

Section 17 (1) If disqualification may not be handled as an administrative matter, another single judge of the court shall decide on the disqualification of the judge concerned on the basis of case documents.

(2) If the court does not have a judge not affected by the ground for disqualification, the court of second instance shall decide on the disqualification; if all judges of the court of second instance are, or are also, affected by the notice of disqualification, the court of third instance shall decide. If all judges of the regional court of appeal as the court of third instance are, or are also, affected by the ground for disqualification, the Curia shall decide on the disqualification.

(3) If the notice was not submitted by the judge concerned, his statement shall be obtained before adopting a decision.

(4) No appeal shall lie against a decision declaring or refusing the disqualification.

Other rules on disqualification

Section 18 (1) A judge who submitted a notice of a ground for disqualification against himself, or acknowledged a disqualification of which notice was submitted by another person, may not proceed in the case until the notice of disqualification is dealt with. In any other situation, the judge concerned may continue to proceed and may adopt a conclusive decision.

(2) A manifestly unfounded notice of disqualification may be dismissed without stating any reason as to its merits, and the person who submitted the notice may be subject to a disciplinary fine.

(3) The provisions on the disqualification of judges shall apply accordingly to the disqualification of junior judges, keepers of minutes, and administrative court officers.

(4) The issue of disqualification shall be decided upon by the court as a matter of priority.

Subject-matter jurisdiction of a court of first instance

Section 19 District courts shall have subject-matter jurisdiction to adjudicate at the first instance those criminal offences the adjudication of which is not conferred on regional courts in this Act.

Section 20 (1) Regional courts shall have subject-matter jurisdiction as courts of first instance over the following criminal offences:

1. criminal offences punishable, under an Act, by imprisonment for up to fifteen years or more,
2. crimes against humanity,
3. war crimes,
4. preparation for homicide, homicide committed by negligence, homicide in the heat of passion, causing bodily harm as defined in section 164 (8) and (9) *c)* of the Criminal Code,
5. criminal offences against the rules of medical intervention and research,
6. kidnapping, failure to report kidnapping, trafficking in human beings and forced labour,
7. violation of patient autonomy,
8. criminal offences against the State,
9. criminal offences against classified data and national data assets,
10. prisoner mutiny, criminal offences against justice before an international tribunal,
11. corruption related criminal offences,
12. violence against an internationally protected person,

13. terrorist act, failure to report a terrorist act, terrorism financing, incitement to war, unlawful seizure of a vehicle, participation in a criminal organisation, causing public danger as defined in section 322 (2) *b)* of the Criminal Code, and disturbing the operation of public interest facilities as defined in section 323 (2) *c)* and (3) *c)* of the Criminal Code,

14. violation of an international economic restriction, failure to report a violation of an international economic restriction, abuse of military products or services, abuse of dual-use products,

15. criminal offence against the order of election, referendum and European citizens' initiative,

16. robbery of a vulnerable person as defined in section 366 (3) *a)* of the Criminal Code,

17. theft as defined in section 370 (6) *a)* of the Criminal Code, vandalism as defined in section 371 (6) of the Criminal Code, embezzlement as defined in section 372 (6) *a)* of the Criminal Code, fraud as defined in section 373 (6) *a)* of the Criminal Code, information system fraud causing particularly significant damage as defined in section 375 (4) *a)* and (5) of the Criminal Code,

18. violation of copyright or related rights as defined in section 385 (4) *c)* of the Criminal Code, violation of industrial property rights as defined in section 388 (3) *c)* of the Criminal Code,

19. special criminal offences related to business management,

20. money laundering as defined in section 399 (7) of the Criminal Code,

21. criminal offences subject to military criminal proceedings,

22. communist crimes as defined in the Act on the punishability and the exemption from the statute of limitations of crimes against humanity and the prosecution of criminal offences committed under the communist dictatorship, and crimes which have been exempted from the statute of limitations by international law.

(2) If the criminal offences committed by the defendant fall within the subject-matter jurisdiction of different courts, a regional court shall proceed.

The territorial jurisdiction of the court of first instance

Section 21 (1) Unless otherwise provided in this Act, a court shall have territorial jurisdiction for a proceeding if the criminal offence was committed within its area of jurisdiction. The Act on the name, seat, and area of jurisdiction of courts shall determine the area of jurisdiction of each court.

(2) If a criminal offence was committed within the area of jurisdiction of more than one court, or if the place where the criminal offence was committed cannot be located, the court that took action before the other courts of the same subject-matter jurisdiction shall proceed in the case (hereinafter “precedence”). If the place where the criminal offence was committed becomes known before the commencement of the trial, and upon a motion by the prosecution service, the defendant, or the defence counsel, the proceeding shall be continued by the court which has territorial jurisdiction over the place where the criminal offence was committed.

(3) A court with territorial jurisdiction over the home address or place of actual residence of

a) the defendant or

b) the aggrieved party

shall also have territorial jurisdiction for a proceeding if the prosecution service files the indictment with that court.

(4) If there is more than one defendant, a court with territorial jurisdiction over one defendant may also proceed against the other defendants, unless such a proceeding exceeds its subject-matter jurisdiction. If there is more than one such court, the rules of precedence shall apply.

(5) The district court located at the seat of a regional court or, within the area of the Budapest-Capital Regional Court, the Central District Court of Pest shall proceed with territorial jurisdiction over the entire county or Budapest, respectively, regarding the following criminal offences:

1. causing public danger, except for causing public danger as defined in section 322 (2) *b)* of the Criminal Code,

2. disturbing the operation of public interest facilities, except for disturbing the operation of public interest facilities as defined in section 323 (2) *c)* and (3) *c)* of the Criminal Code,

3. abuse of radioactive materials,

4. unlawful operation of a nuclear facility,

5. abuse related to the application of atomic energy,

6. economic fraud, except for economic fraud as defined in section 374 (6) *a)* of the Criminal Code,

7. money counterfeiting,

8. facilitating money counterfeiting,

9. stamp counterfeiting,

10. criminal offences damaging the budget, except for budgetary fraud as defined in section 396 (5) of the Criminal Code and any related commission of failure to comply with the supervisory or control obligation related to budget fraud,

11. failure to comply with the notification obligation regarding money laundering,

12. criminal offences against the order of business management except for violation of the order of accounting as defined in section 403 (3) of the Criminal Code, bankruptcy fraud as defined in section 404 (3) of the Criminal Code, insider trading, unauthorised disclosure of inside information, illegal market manipulation, organising a pyramid scheme,

13. criminal offences against consumers' interests and fair competition.

14.

(6) The Budapest-Capital Regional Court shall proceed in a proceeding launched concerning a criminal offence specified in point 22 of section 20 (1).

(7) If the criminal offences committed by a defendant fall within the territorial jurisdiction of different courts, the court with territorial jurisdiction to adjudicate any of the criminal offences pursuant to paragraph (5) or (6) shall proceed.

(8) The territorial jurisdiction of the court with territorial jurisdiction over the perpetrator shall also extend to the accessory after the fact. The territorial jurisdiction of a court with territorial jurisdiction over the perpetrator of the punishable act committed by another person shall also extend to the perpetrator of a criminal offence specified in section 399 (3) and (4) of the Criminal Code, a qualified form of those criminal offences as set out in section 399 (5) to (8) of the Criminal Code and a criminal offence specified in section 400 (1) and (2) of the Criminal Code.

Section 22 (1) A criminal offence committed beyond the borders of Hungary shall fall within the territorial jurisdiction of the court within the area of jurisdiction of which the home address or place of actual residence of the defendant is located.

(2) If the defendant committed the criminal offence beyond the borders of Hungary and the proceeding is conducted in his absence, the court within the area of jurisdiction of which the last known home address or place of actual residence of the defendant is located shall have territorial jurisdiction.

(3) If the court with territorial jurisdiction for the proceeding may not be determined under paragraphs (1) and (2), the Central District Court of Pest shall proceed in matters falling within the subject-matter jurisdiction of district courts, and the Budapest-Capital Regional Court shall proceed in matters falling within the subject-matter jurisdiction of regional courts.

Examination of subject-matter and territorial jurisdiction

Section 23 The court shall examine its subject-matter and territorial jurisdiction *ex officio*.

Designation of the proceeding court

Section 24 (1) The proceeding court shall be designated if there is a conflict of subject-matter or territorial jurisdictions between courts, or if a court may not proceed due to disqualification.

(2) The matter of designation shall be decided by

a) the second instance panel of the regional court if the conflict of territorial jurisdiction arose between district courts within its area,

b) the regional court of appeal if

ba) the conflict of subject-matter jurisdictions arose between regional courts and district courts within its area, or

bb) the conflict of territorial jurisdiction arose between regional courts or district courts belonging to different regional courts within its area.

(3) In cases other than those specified in paragraph (2), the Curia shall decide on the matter of designation.

(4) If a designation becomes necessary due to disqualification, the matter of designation shall be decided by the court deciding on the matter of disqualification at the same time as deciding on the matter of disqualification.

Chapter IV

THE PROSECUTION SERVICE

Tasks of the prosecution service

Section 25 (1) The prosecution service shall act as the public prosecutor.

(2) The prosecution service shall investigate, supervise the lawfulness of detection, and control the examination.

(3) The prosecution service shall conduct preparatory proceedings, and shall carry out its tasks specified in this Act in a preparatory proceeding conducted by another organ.

(4) The superior prosecution office shall supervise the exercise of the supervisory and control powers of a prosecution office.

Powers of the prosecution service

Section 26 (1) The prosecution service may file motions and observations concerning all matters that are decided by the court.

(2) Acting within its supervisory powers, the prosecution service

a) may require the investigating authority to proceed independently regarding an investigation or the supplementation of a crime report,

b) shall monitor the lawfulness of the proceedings of the investigating authorities,

c) may amend or set aside an unlawful decision by an investigating authority,

d) may establish that a procedural act or other action by an investigating authority violated the law,

e) shall call upon an investigating authority to remedy an established violation,

f) may permit, in cases specified in this Act, a procedural act to be carried out or a decision to be adopted,

g) shall assess complaints submitted against a decision of the investigating authority and against casting suspicion,

h) shall assess objections submitted against an investigating authority due to the protraction of the proceedings,

i) may attend procedural acts, and may request the investigation case documents to be presented.

(3) Acting within its control powers, the prosecution service

a) may carry out the actions specified in paragraph (2),

b) may instruct an investigating authority to carry out a procedural act,

c) may prohibit the performance of a procedural act,

d) may amend or set aside a decision adopted by an investigating authority,

e) may instruct an investigating authority to adopt a decision,

f) may instruct an investigating authority to prepare decisions by the prosecution service,

g) may make performing a procedural act or adopting a decision conditional upon preliminary approval,

h) may oblige an investigating authority to give an account.

(4) Individual procedural acts carried out by the prosecution service during an investigation shall not prejudice the control and supervisory powers of the prosecution service and the independence of the proceedings of an investigating authority.

(5) The prosecution service may take over the investigation in any case.

(6) A prosecutor shall exercise the powers of the prosecution office where he operates. The performance of a procedural act may be prohibited only by the superior prosecutor of the proceeding prosecutor.

(7) Unless otherwise provided in an Act, acting within its supervisory powers as regards the exercise of the supervisory and control powers of a prosecution office, the superior prosecution service shall exercise the supervisory powers set out in paragraph (2) *b)* to *f)* and *i)*.

Disqualification of a prosecutor

Section 27 (1) A person may not proceed as a prosecutor if

a) he proceeded in the case as a judge, or he is a relative of a judge who proceeds or proceeded in the case,

b) he participates or participated in the case as a defendant, person reasonably suspected of having committed a criminal offence, defence counsel, aggrieved party, party with a pecuniary interest, party reporting a crime, an aide to any such person, or he is a relative of any such person,

c) he participates or participated in the case as a witness, expert, or consultant,

d) he is unlikely to assess the case without bias for any other reason.

(2) A notice of a ground for disqualification specified in paragraph (1) may be submitted only against a prosecutor proceeding in the case.

(3) A prosecutor shall be disqualified from a retrial procedure if he carried out the investigation, performed any procedural act, brought an indictment, or represented the prosecution in the main case.

(4) It shall not constitute a ground for disqualification if a prosecutor filed a crime report because of a criminal offence he became aware of in his official capacity.

(5) In a case specified in paragraph (1) *d)*, it shall not constitute a ground for disqualification, in and of itself, if the prosecutor concerned filed a crime report regarding a criminal offence committed against him by a person participating in the criminal proceeding during or because of his proceeding.

(6) Except for the Office of the Prosecutor General, a prosecution office may not proceed in a case if a ground for disqualification under paragraph (1) *a)* or *b)* applies in relation to its head or deputy head.

(7) If a ground for disqualification under paragraph (1) *a)* or *b)* applies in relation to a chief prosecutor or deputy chief prosecutor, a district prosecution office operating within the area of the chief prosecution office may not proceed in the case.

Notification and handling of disqualification

Section 28 (1) A prosecutor shall notify the head of the prosecution office of any ground for disqualification against him without delay. The prosecutor concerned shall not proceed in the case from the time when the notice of the ground for disqualification is submitted.

(2) Only a defendant, defence counsel, aggrieved party, or a party with a pecuniary interest may submit a notice of a ground for disqualification. In such an event, the prosecutor concerned may proceed in the case without restrictions until the notice is handled.

(3) The notice of disqualification shall be reasoned, and the likelihood of the ground for disqualification shall be substantiated.

(4) A notice submitted without stating any reason may be dismissed without stating any reason as to its merits.

(5) A manifestly unfounded notice of disqualification may be dismissed without stating any reason as to its merits, and the person who submitted the notice may be subject to a disciplinary fine.

(6) The chief prosecutor shall decide on the disqualification of a prosecutor or head of a district prosecution office operating within the area of the county chief prosecution office, or of a prosecutor of the chief prosecution office. The Prosecutor General shall decide on the disqualification of a chief prosecutor or a prosecutor of the Office of the Prosecutor General. If a notice submitted for the disqualification of a prosecutor or head of a district prosecution office, or a prosecutor of a chief prosecution office, also affects the chief prosecutor, the Prosecutor General shall decide on the disqualification.

(7) If the head of the prosecution office becomes aware of a ground for disqualification, he shall initiate the disqualification of the prosecutor concerned *ex officio*.

(8) No complaint shall lie against a decision declaring the disqualification, or refusing the disqualification after the indictment.

(9) The provisions on the disqualification of prosecutors shall also apply to the disqualification of junior prosecutors, trainee prosecutors, administrative prosecution officers, and keepers of minutes.

The subject-matter and territorial competence of the prosecution service

Section 29 (1) Except for cases specified by law or a normative instruction of the Prosecutor General, the subject-matter and territorial competence of a prosecution office shall be determined by the subject-matter and territorial jurisdiction of the court it is attached to. The Prosecutor General shall determine the organisation of the prosecution service on the basis of an Act.

(2) If more than one prosecution office has territorial competence over a criminal offence, the one taking action earlier according to the rules of precedence shall proceed.

(3) On the basis of an instruction given by the Prosecutor General or a superior prosecution office, a prosecution office may also proceed in a case otherwise falling outside its subject-matter or territorial competence.

(4) If a conflict of subject-matter or territorial competence arises among prosecution offices, the superior prosecution office shall designate the proceeding prosecution office. No complaint shall lie against this decision.

Exclusive prosecutorial investigation

Section 30 Only the prosecution service shall investigate the following criminal offences:

a) criminal offences other than offences subject to military criminal proceedings committed by professional members of the police, the Parliamentary Guard, the prison service, a professional disaster management organ, or a civil national security service,

b) criminal offences committed by employees of the National Tax and Customs Administration occupying an excise officer position,

c) homicide as defined in section 160 (2) *e)* of the Criminal Code, kidnapping as defined in section 190 (2) *e)* of the Criminal Code, violence against a public officer, or robbery as defined in section 365 (3) *f)* and (4) *c)* of the Criminal Code committed against a judge, a prosecutor, a junior judge, a junior prosecutor, a trainee judge or trainee prosecutor, an administrative court officer, an administrative prosecution officer, a professional member of the police or the Parliamentary Guard, an employee of the National Tax and Customs Administration occupying an excise officer position, or a foreign public officer,

d) criminal offences committed by judges, prosecutors, junior judges, junior prosecutors, trainee judges and trainee prosecutors, administrative court officers, or administrative prosecution officers, and criminal offences committed by lay judges in relation to the administration of justice,

e) the following acts related to persons with immunity arising from public office or international law:

ea) criminal offences committed by such persons,

eb) violence against a public officer or violence against an internationally protected person committed against such persons,

ec) other criminal offences committed against such persons in relation to their functions,

f) active bribery regarding a public officer, passive bribery regarding a public officer, active bribery in court or in authority proceedings, passive bribery in court or in authority proceedings, active trading in influence committed concerning a public officer or a foreign public officer as defined in section 298 (1), (1a), and (3) of the Criminal Code, passive trading in influence committed concerning a public officer or foreign public officer as defined in section 299 (1), (2), and (5) of the Criminal Code, and failure to report a corruption criminal offence,

g) criminal offences against justice committed before an international tribunal,

h) communist crimes as defined in the Act on the punishability and the exemption from the statute of limitations of crimes against humanity and the prosecution of criminal offences committed under the communist dictatorship, and crimes which have been exempted from the statute of limitations by international law.

Chapter V

THE INVESTIGATING AUTHORITY

The task of investigating authorities

Section 31 (1) The investigating authority shall carry out preparatory proceedings and investigations to detect criminal offences.

(2) The investigating authority shall proceed independently during preparatory proceedings and detection, and it shall proceed under the control of the prosecution service during examination.

(3) Where the responsibility for performing a specific procedural act or adopting a decision is not conferred on the court or the prosecution service by an Act, the investigating authority shall be entitled to perform or adopt it.

(4) If an investigating authority finds that a procedural act needs to be performed or a decision needs to be adopted for which a decision falling within the responsibility of a court or the prosecution service needs to be taken, it shall inform the prosecution service accordingly and without delay.

(5) The investigating authority shall comply with any instruction by the prosecution service within the applicable time limit.

(6) The head of the investigating authority shall be responsible for complying with instructions by the prosecution service.

(7) If the head of the investigating authority can recognise the unlawfulness of an instruction by the prosecution service, he shall draw the attention of the head of the respective prosecution office to it without delay. If, despite this, the head of the prosecution office sustains the instruction, he shall issue the instruction in writing if so requested by the head of the investigating authority in a written notice providing his reasoned position concerning the unlawfulness of the instruction by the prosecution service.

(8) The head of the investigating authority may, through its superior organ, file a submission with the superior prosecution office against the instruction by the prosecution service. The superior organ shall forward the submission, accompanied by its factual and professional position on the matter, to the superior prosecution office. Such a submission shall not have suspensory effect.

(9) On the basis of the submission, the superior prosecution office shall review the case documents, and it shall inform the person filing the submission in writing about the result of the review and its legal position within fifteen days following receipt of the submission.

Disqualification of a member of an investigating authority

Section 32 (1) A person may not proceed as a member of an investigating authority if

a) he proceeded in the case as a judge, or he is a relative of a judge who proceeded or proceeds in the case,

b) he participates or participated in the case as a defendant, person reasonably suspected of having committed a criminal offence, defence counsel, aggrieved party, party with a pecuniary interest, party reporting a crime or an aide to any such person, or he is a relative of any such person,

c) he participates or participated in the case as a witness or expert,

d) he is unlikely to assess the case without bias for any other reason.

(2) A ground for disqualification specified in paragraph (1) may be submitted only against a member of an investigating authority who is proceeding in the case.

(3) A member of an investigating authority who proceeded in the main case shall also be disqualified from

a) any investigation ordered during a retrial,

b) investigating criminal offences against justice.

(4) It shall not constitute a ground for disqualification if a member of the investigating authority filed a crime report regarding a criminal offence he became aware of in the course of performing his service duties.

(5) In a case specified in paragraph (1) *d)*, it shall not constitute a ground for disqualification, in and of itself, if the proceeding member of the investigating authority filed a crime report regarding a criminal offence committed against him by a person involved in the criminal proceeding during or because of his proceeding.

(6) An investigating authority may not proceed in a case if a ground for disqualification under paragraph (1) applies in relation to its head. If a ground for disqualification applies in relation to the head of an investigating authority with national territorial competence, the prosecution service shall carry out the investigation.

Section 33 (1) If a person other than the member concerned of the investigating authority submitted a notice of a ground for disqualification, the member concerned of the investigating authority may proceed in the case without any restrictions during the handling of the notice.

(2) The head of the investigating authority concerned shall decide in the matter of disqualification of a member of an investigating authority, while the head of the superior investigating authority shall decide in the matter of disqualification of the head of the investigating authority. The proceeding prosecution office shall decide in the matter of disqualification of the head of an investigating authority with national territorial competence.

(3) In other respects, section 28 (1) to (5) and (7) to (8) shall apply to the disqualification of a member of an investigating authority.

(4) The provisions pertaining to the disqualification of a member of the investigating authority shall also apply to the disqualification of the keeper of minutes.

Investigating authorities

Section 34 (1) An organ designated to carry out investigating authority tasks within the police organ established to carry out general policing tasks shall act as general investigating authority.

(2) The National Tax and Customs Administration shall investigate the following criminal offences:

a) violation of an international economic restriction, failure to report a violation of an international economic restriction, abuse of military products or services, abuse of dual-use products,

b)

c) intellectual property infringement, violation of copyright or related rights, circumventing technical measures protecting intellectual property, falsifying rights management information, violation of industrial property rights,

d) abuse of social security, social or other welfare benefits, budget fraud, failure to comply with the supervisory or control obligation related to budget fraud, facilitating excise fraud,

e) violation of the order of accounting, bankruptcy fraud, unauthorised international trade activity,

f) imitation of competitors,

g) public deed forgery in relation to criminal offences specified in points *a)* to *f)*, using false private deed, abuse of unique identification mark, stamp counterfeiting, money laundering, failure to comply with the notification obligation regarding money laundering.

(3) On a commercial vessel or civil aircraft flying the flag of Hungary abroad, the commander of the vessel or aircraft shall be entitled to apply the provisions on investigating authorities concerning a criminal offence subject to Hungarian criminal jurisdiction.

The subject-matter and territorial competence of investigating authorities

Section 35 (1) The subject-matter and territorial competence of investigating authorities shall be defined by law.

(2) If there is a conflict of subject-matter competences between the general investigating authority and the National Tax and Customs Administration, or if a criminal offence falling within the subject-matter competence of the general investigating authority or the National Tax and Customs Administration is committed in concurrence with a criminal offence falling outside the subject-matter competence of the given investigating authority and separating the proceedings seems inappropriate, the prosecution service shall designate the proceeding investigating authority. The prosecution service may designate the National Tax and Customs Administration as the proceeding investigating authority, even if investigating the given criminal offence falls outside its subject-matter competence. No complaint shall lie against a decision adopted on the designation.

(3) According to an agreement reached by and between the heads of investigating authorities and subject to the approval of the prosecution service, investigating authorities may investigate a case or a certain set of cases jointly.

Chapter VI

OTHER ORGANS PROCEEDING IN CRIMINAL PROCEEDINGS

Section 36 (1) Organs specified in this Act that are authorised to use covert means may also proceed in preparatory proceedings.

(2) The organ responsible for handling exhibits and criminal assets shall participate, as provided for by an Act, in the handling of things and electronic data seized for confiscation or forfeiture of assets, sequestrated assets (hereinafter jointly "criminal assets") and seized means of evidence.

(3) The provisions pertaining to the disqualification of a member of the investigating authority shall also apply to the disqualification of members of other organs proceeding in a criminal proceeding.

PART THREE

PERSONS PARTICIPATING IN CRIMINAL PROCEEDINGS

Section 37 The participants in a criminal proceeding are the defendant, the person reasonably suspected of having committed a criminal offence, the defence counsel, the aggrieved party, the private prosecuting party, the substitute private prosecuting party, the civil party, the party with a pecuniary interest, other interested party, and the legal persons subjected to the proceedings as provided for by an Act.

Chapter VII

THE DEFENDANT AND THE PERSON REASONABLY SUSPECTED OF HAVING COMMITTED A CRIMINAL OFFENCE

The concept of the defendant and the person reasonably suspected of having committed a criminal offence

Section 38 (1) The defendant is a person against whom a criminal proceeding is conducted.

(2) The defendant is a suspect during the investigation, an accused after the indictment, or a convict after a penalty, reprimand, release on probation, reparation work, or special education in a juvenile correctional institution is imposed by a final and binding conclusive decision or applied.

(3) The person reasonably suspected of having committed a criminal offence is the person, during the investigation, but before the communication of the suspicion, who was apprehended for the commission of a criminal offence or summoned for an interrogation as a defendant or whose compulsory attendance was ordered or against whom a wanted notice for the commission of a criminal offence or an arrest warrant was issued.

The rights and obligations of the defendant and the person reasonably suspected of having committed a criminal offence

Section 39 (1) The defendant shall be entitled to

a) get informed of the subject of the suspicion or the indictment, as well as any change thereto,

b) be afforded adequate time and circumstances for preparing the defence by the court, the prosecution service, or the investigating authority,

c) be informed by the court, the prosecution service, or the investigating authority about his rights and obligations in the criminal proceeding,

d) authorise a defence counsel for his defence, or move for the official appointment of a defence counsel,

e) consult his defence counsel without supervision,

f) give or refuse to give a testimony,

g) present pieces of evidence, file motions and observations, and address the court by exercising his right to the last word,

h) attend the trial and the sessions held relating to coercive measures affecting personal freedom subject to judicial permission, and to ask questions as provided for in this Act,

i) seek legal remedy,

j) inspect the case documents of the proceeding in their entirety, with the exceptions specified in this Act,

k) initiate that a plea agreement be concluded or a measure or decision by a prosecutor be offered.

(2) The defendant in detention shall be entitled to

a) get informed of the reason for his detention and any change thereto,

b) have the court, the prosecution service, or the investigating authority inform one person selected by him about his detention,

c) establish, and keep without control, contact in person, via post or by electronic means with his defence counsel and, in case of a foreign national defendant, the consular representative of his state,

d) keep supervised contact in person or controlled contact via post, or by electronic means with the person selected by him, in accordance with the instructions of the prosecution service before the indictment or the court after the indictment,

e) to keep contact with the person or authority specified in an international treaty promulgated by an Act in accordance with the international treaty.

(3) A defendant shall be obliged to

a) attend procedural acts in accordance with the instructions of the court, the prosecution service, or the investigating authority and as specified in this Act,

b) inform the proceeding court, prosecution office, or investigating authority about his home address, contact address, place of actual residence, service address, phone contact details and electronic mail address or other electronic contact details as well as any change thereto within three working days following the change.

(4) The court, the prosecution service, or the investigating authority shall advise the defendant of his rights and obligations at the beginning of his participation in the criminal proceeding. The information shall cover that he may file a request for legal aid, the conditions for such legal aid, and the right to use his mother tongue.

(5) If the defendant is in detention, the proceeding court, prosecution office, or investigating authority shall inform the defendant about his rights also in writing. The information shall cover the period of detention as specified in the decision ordering the detention and the maximum possible period of detention as specified in an Act, the rules of extending, maintaining, and reviewing the detention, and the right to seek legal remedy against these decisions, as well as the right to file a motion for the termination of the detention.

(6) With a view to exercising the rights provided for under paragraph (1) *b)* and *e)*, the court, the prosecution service, or the investigating authority shall postpone the beginning or performance of a procedural act for at least one hour, if the defendant did not have an opportunity, through no fault of the defendant or the defence counsel, to prepare for defence or to consult the defence counsel before the commencement of the procedural act concerned.

(6a) If the defendant is in detention, the court or the prosecution service may make a provision according to the legal title of the detention in accordance with section 172 (4) and section 390 (1) of Act CCXL of 2013 on the enforcement of penalties, measures, certain coercive measures and infraction confinement (hereinafter the "Sentence Enforcement Act").

(7) In the exercise of the right provided for under paragraph (2) *d)*, the court or the prosecution service may restrict or prohibit communication with a relative only to prevent the complication or frustration of the taking of evidence or to eliminate the possibility of reoffending. The court or the prosecution service shall review the provision one year after it is made and decide to maintain it if still justified. The defendant or the defence counsel may seek legal remedy against an ordering or maintaining decision.

(8) With the exception of paragraph (1) *a)*, *f)* to *h)*, *j)* and *k)* and paragraph (3) *b)*, to the rights and obligations of the person reasonably suspected of having committed a criminal offence, the rules on the rights and obligations of the defendant shall apply accordingly.

Legal succession on the side of the defendant

Section 40 If this Act affords a right for a relative or heir of the defendant to file motions, the provisions pertaining to the rights of defendants shall apply to the rights of the relative or heir.

Chapter VIII

THE DEFENCE COUNSEL

Persons authorised to act as defence counsel

Section 41 (1) An attorney-at-law may act as defence counsel based on an authorisation or official appointment. Provisions laid down in this Act concerning an attorney-as-law acting as defence counsel shall apply also to a junior attorney-at-law, a European Community lawyer, a salaried attorney-at-law and a salaried European Community lawyer, provided that the conditions set out in the Act on the professional activities of attorneys-at-law are met.

(2) A junior attorney-at-law may act as defence counsel when acting with or as a substitute for an attorney-at-law

a) before the indictment,

b) after the indictment before a district court or a regional court, with the proviso that he may not deliver a closing argument before the regional court.

(3) More than one defence counsel may act for a defendant and a person reasonably suspected of having committed a criminal offence, and a defence counsel may act for more than one defendant and person reasonably suspected of having committed a criminal offence.

The rights and obligations of the defence counsel

Section 42 (1) Unless otherwise provided in this Act, the defence counsel may exercise all rights of the defendant that are not by nature related to the person of the defendant exclusively. A defence counsel may exercise these rights independently as rights of the defence counsel.

(2) In addition to the provisions laid down in paragraph (1), a defence counsel shall also be entitled to

a) attend procedural acts the defendant may, or is obliged to, attend,

b) attend, in cases specified in this Act, procedural acts the defendant may not attend or where the attendance of the defendant may be restricted,

c) obtain and collect data for the defence within the framework of statutory possibilities and conditions, and, for this purpose, engage a private investigator under the Act on the rules of personal and property protection and private investigation activities.

(3) A decision communicated to the defendant shall, in all cases, also be communicated to his defence counsel.

(4) A defence counsel shall be obliged to

a) contact the defendant without delay,

b) use all lawful means and methods of defence in due time and in the interest of the defendant,

c) inform the defendant about the lawful means of defence, and advise him of his rights and obligations,

d) promote the detection of facts that exculpate or mitigate the liability of the defendant,

e) arrange for a substitute if he is prevented from attending to his duties, except for unavertable and previously unknown obstacles, and notify, at the same time, the proceeding court, prosecution office, or investigating authority about the fact of being prevented,

f) exercise his rights and perform his obligations in a manner that does not hinder the timely completion of the criminal proceeding.

(5) If the defendant is in detention, the proceeding court, prosecution office, or investigating authority shall inform the detaining institution about the name and contact details of the defence counsel, as well as any changes thereto, without delay but no later than upon the admission of the defendant or within forty-eight hours of becoming aware of a change.

(6) If more than one defence counsel acts for a defendant, the first defence counsel to file the authorisation shall be considered the leading defence counsel; if more than one authorisation is filed simultaneously, the proceeding investigating authority, prosecution office, or court shall designate the leading defence counsel. Case documents, including summons and notifications, shall be served on the leading defence counsel. The leading defence counsel or the defence counsel designated by the leading defence counsel shall have the right to deliver the closing argument. The leading defence counsel or the defence counsel designated by the leading defence counsel, or in the absence thereof, the defence counsel attending the given procedural act shall have the right to make the legal remedy statement.

(7) Provisions on the rights and obligations of the defence counsel shall also apply accordingly to the defence counsel of the person reasonably suspected of having committed a criminal offence in line with the rights of the person reasonably suspected of having committed a criminal offence.

Disqualification of the defence counsel

Section 43 (1) A person may not serve as defence counsel if

a) he is the defendant, an aide to the defendant or a relative of such a person,

b) he proceeds or proceeded in the case as a judge, a prosecutor, or a member of the investigating authority, or he is a relative of such a person,

c) he acted in a manner that is contrary to the interests of the defendant or the person reasonably suspected of having committed a criminal offence, or his interests are contrary to the interests of the defendant or the person reasonably suspected of having committed a criminal offence,

d) he participates or participated in the case as an expert or consultant,

e) he participates or participated in the case as a witness unless he could not have been interrogated under section 170 (1) *a)* or he refused to give a witness testimony under section 173,

f) he participates or participated in the case as an aide to a person, other than the defendant, who participates or participated in the case as a witness,

g) he acts or acted in the case as a mediator,

h) he participates or participated in the case, or another case related to it, as a defendant.

(2) The same defence counsel may act for more than one defendant or person reasonably suspected of having committed a criminal offence if there is no conflict between the interests of the defendants or persons reasonably suspected of having committed a criminal offence. A defence counsel acting for more than one defendant or person reasonably suspected of having committed a criminal offence shall be disqualified from the proceeding if there is a conflict of interests among the defendants or persons reasonably suspected of having committed a criminal offence.

(3) The matter of disqualification of a defence counsel shall be decided, before the indictment only upon a motion by the prosecution service, by the court.

(4) If the defence counsel submits a notice of a ground for disqualification against himself, he may not act in the case after submitting the notice of the ground for disqualification.

(5) Except for the provisions laid down in paragraph (4), the defence counsel may act in the case until the matter of disqualification is adjudicated.

Mandatory participation of the defence counsel in the proceeding

Section 44 The participation of a defence counsel in a criminal proceeding shall be mandatory if

a) the criminal offence is punishable by imprisonment for up to five years or more under an Act,

b) the defendant or the person reasonably suspected of having committed a criminal offence is subject to a coercive measure affecting personal freedom or, in another proceeding, to pre-trial detention or preliminary compulsory psychiatric treatment, or is serving a sentence of imprisonment, confinement, or special education in a juvenile correctional institution,

c) the defendant or the person reasonably suspected of having committed a criminal offence is hearing-impaired, deaf-blind, blind, speech-impaired, unable to communicate or seriously impaired in his communication for any other reason, or has a mental disorder, regardless of his capacity to be held liable for his acts,

d) the defendant or the person reasonably suspected of having committed a criminal offence does not know the Hungarian language,

e) the defendant or the person reasonably suspected of having committed a criminal offence is unable to defend himself personally for any other reason,

f) a defence counsel was appointed by the court, the prosecution service, or the investigating authority upon a motion by the defendant or the person reasonably suspected of having committed a criminal offence or because the appointment was considered necessary for any other reason,

g) it is expressly provided for under this Act.

Authorised defence counsel

Section 45 (1) Authorisation to provide defence may be granted by the person reasonably suspected of having committed a criminal offence, the defendant, their statutory representative or adult relative, or, for foreign nationals, the consular officer of their home country.

(2) With the exception specified in paragraph (3), an authorised attorney-at-law may act as defence counsel after an original or certified copy of his authorisation is filed with the proceeding court, prosecution office, or investigating authority. A European Community lawyer shall be obliged to file with the proceeding court, prosecution office or investigating authority the original cooperation contract concluded with an attorney-at-law or a law office pursuant to the Act on the professional activities of attorneys-at-law or a certified copy thereof and, if it is in a language other than Hungarian, a certified translation thereof.

(3) The statement on the authorisation of the defence counsel may not be registered validly in the client settings register within the meaning of Act CIII of 2023 on the general rules on digital State and laying down certain rules relating to the provision of digital services (hereinafter the "Digital Citizenship Act") (hereinafter "client settings register"), unless the authorisation is accepted and the statement of acceptance is registered in the client settings register. An authorisation recorded in the client settings register shall be effective from the time when a notice of it is submitted to the proceeding court, prosecution office, or investigating authority.

(4) The person reasonably suspected of having committed a criminal offence or the defendant may withdraw the authorisation of a defence counsel authorised by himself or an aide, as defined in paragraph (1), at any time.

(5) Unless provided otherwise in a given authorisation, the authorisation shall be effective until the criminal proceeding is concluded with final and binding effect, and it shall also apply to any mediation procedure, procedure for retrial, review, simplified review, removal of assets or things relating to the criminal offence, or rendering data inaccessible, as well as any special procedure.

Officially appointed defence counsel

Section 46 (1) The court, the prosecution service, or the investigating authority shall decide on officially appointing a defence counsel if the participation of a defence counsel in the criminal proceeding is mandatory and the defendant or the person reasonably suspected of having committed a criminal offence does not have an authorised defence counsel. On the basis of the official appointment, the regional bar association of the seat of the proceeding court, prosecution office, or investigating authority shall be responsible for designating the attorney-at-law acting as the defence counsel.

(2) For the designation, the decision officially appointing the defence counsel shall also be communicated to the competent regional bar association specified in paragraph (1).

(3) The regional bar association shall designate the defence counsel by operating an information system guaranteeing, as possible, the immediacy of designation and the actual availability of the designated defence counsels.

(4) If the participation of a defence counsel in a criminal proceeding is mandatory and the defendant or the person reasonably suspected of having committed a criminal offence does not have a defence counsel, the court, prosecution service, or investigating authority shall appoint a defence counsel

a) at the time of the summons, compulsory attendance or notification where the defendant is summoned, subjected to compulsory attendance or notified, or where a person reasonably suspected of having committed a criminal offence is summoned or subjected to compulsory attendance, to be interrogated as a suspect,

b) without delay in the course of the procedural act in a situation other than those specified in point *a)*.

(5) The court, the prosecution service, or the investigating authority shall appoint a defence counsel if the participation of a defence counsel in the criminal proceeding is not mandatory but is considered necessary to guarantee an effective defence for the defendant or the person reasonably suspected of having committed a criminal offence.

(6) The prosecution service or the investigating authority shall appoint a defence counsel if the defendant is unable to arrange for defence due to his income and financial situation and moves for the official appointment of a defence counsel. Following the indictment, the court shall appoint a defence counsel upon a motion by the defendant.

(7) No legal remedy shall lie against the official appointment or designation of a defence counsel. The defendant or the person reasonably suspected of having committed a criminal offence may submit a reasoned motion for the designation of another defence counsel. The court, the prosecution office, or the investigating authority before which the proceeding is pending shall decide on the motion.

(8) The officially appointed defence counsel may move for his discharge from the official appointment if justified. The court, the prosecution office, or the investigating authority before which the proceeding is pending shall decide the motion.

(9) The officially appointed defence counsel shall be entitled to a fee and the reimbursement of his costs in consideration of his assistance.

Section 47 (1) Before the indictment, the investigating authority or the prosecution service shall arrange for the attendance of a defence counsel by applying the provisions on substitute defence counsels as reasonable if

a) the regional bar association fails to designate a defence counsel within one hour after the receipt of the official appointment decision,

b) at the time of designation, a ground for exclusion specified in section 43 (1) *a)* to *b)* or *d)* to *h)* exists regarding the defence counsel designated by the regional bar association, or

c) at the time of designation, the designated defence counsel may not be duly summoned or notified due to the unavailability of the defence counsel, and the procedural act may not be dispensed with.

(1a) For the purposes of paragraph (1) *c)*, in case a summons or notification is issued urgently under section 113 (3), or issued under 113 (4), a designated defence counsel shall be considered unavailable if the investigating authority or the prosecution service cannot establish contact with the designated defence counsel within one hour using the contact methods specified in law.

(1b) The attendance of a substitute defence counsel officially appointed under paragraph (1) shall be mandatory at the procedural act.

(2) After the indictment, the court shall designate an attorney-at-law to act as an officially appointed defence counsel if

a) the regional bar association fails to designate a defence counsel within one hour after the receipt of the official appointment decision,

b) at the time of designation, a ground for exclusion exists regarding the defence counsel designated by the regional bar association, or

c) at the time of designation, the designated defence counsel may not be duly summoned or notified due to the unavailability of the defence counsel, and the procedural act may not be dispensed with.

(3) In a situation specified in paragraph (2) *b)* and *c)*, designation by a regional bar association shall cease to have effect when the court's decision on the designation is adopted.

(4) In a situation specified in paragraphs (1) and (2), the decision designating a defence counsel shall also be communicated to the attorney-at-law designated by the regional bar association, if necessary.

The scope of official appointment

Section 48 (1) The official appointment shall be effective until the criminal proceeding is concluded with final and binding effect, and it shall also apply to any mediation procedure, procedure for retrial, review, simplified review, removal of assets or things relating to the criminal offence, or rendering data inaccessible, as well as any special procedure.

(2) An official appointment shall cease to have effect when the defence counsel authorised to act for the defendant or the person reasonably suspected of having committed a criminal offence files the authorisation in accordance with this Act, or notice is given of the registration of the authorisation in the client settings register.

(3) If the authorisation is filed or a notice is given of the registration of the authorisation in the client settings register, the court, the prosecution service, or the investigating authority shall inform the authorised defence counsel about the name and contact details of the officially appointed defence counsel who acted earlier.

(4) The authorised defence counsel shall inform, without delay, the officially appointed defence counsel who acted earlier about the fact that he acts as authorised defence counsel in the criminal proceeding.

(5) Upon receipt of such information, the officially appointed defence counsel who acted earlier shall disclose and hand over to the authorised defence counsel, without delay, any and all data and case documents that may be used for defence.

(6) If the authorised defence counsel or the officially appointed defence counsel who acted earlier fails to perform an obligation specified in paragraphs (4) and (5), the court or the prosecution service may oblige him to reimburse the criminal costs caused and may impose a disciplinary fine.

(7) With the exceptions specified in paragraphs (1) and (2), the official appointment of a defence counsel shall cease to have effect when the proceeding court, prosecution office, or investigating authority discharges the defence counsel from the official appointment.

(8) If the officially appointed defence counsel is discharged under section 46 (7) to (8) and a new defence counsel is officially appointed simultaneously by the court, the prosecution office or the investigating authority, the provisions laid down in paragraphs (3) to (6) shall apply as reasonable.

Official appointment of a substitute defence counsel

Section 49 (1) The court, the prosecution service, or the investigating authority shall appoint a substitute defence counsel to substitute a defence counsel if

a) the defence counsel fails to appear at a procedural act despite being duly summoned,

b) he fails to provide a well-grounded excuse for his absence in advance or fails to arrange for a substitute,

c) all other conditions of performing the procedural act are met, and

d) the procedural act may not be dispensed with.

(2) If the conditions specified in paragraph (1) *a)* and *c)* are met, the court, the prosecution service, or the investigating authority shall appoint a substitute defence counsel also if

a) the defence counsel provided an excuse for his absence in advance but failed to arrange for a substitute, and

b) postponing the procedural act would jeopardise the successful performance of the procedural act or delay the criminal proceeding considerably.

(3) If a substitute defence counsel is appointed, the evidentiary procedure may not be concluded in the absence of the defendant's defence counsel during the court proceeding, and the substitute defence counsel may not deliver a closing argument unless the defendant consents to doing so.

(4) The provisions concerning the official appointment of the defence counsel shall apply to the official appointment of a substitute defence counsel with the proviso that the appointing court, prosecution office or investigating authority shall designate the acting defence counsel. An attorney-at-law acting as the defence counsel for a person or a defendant reasonably suspected of having committed another criminal offence, and who attends the procedural act, may also be designated as the substitute defence counsel, provided that there is no conflict between the interests of the persons or defendants reasonably suspected of having committed the criminal offence.

(5) The scope of the substitute defence counsel's official appointment shall be effective until the procedural act performed in the absence of the defence counsel is completed. In a situation under section 47 (1), the substitute defence counsel may act in consecutive procedural acts until the officially appointed defence counsel appears or contacts the proceeding prosecution office or investigating authority.

(6) The provisions concerning the officially appointed defence counsels shall apply to the fee and cost reimbursement of the substitute defence counsels.

Chapter IX

THE AGGRIEVED PARTY

The concept of the aggrieved party

Section 50 Aggrieved party means a natural person or an entity other than a natural person the rights or legitimate interest of whom or which were directly violated or jeopardised by the criminal offence.

The rights and obligations of the aggrieved party

Section 51 (1) The aggrieved party shall be entitled to

a) submit evidence, file motions and observations,

b) address the court in the course of closing arguments,

c) attend the trial and other procedural acts specified by an Act, and ask questions as provided for in this Act,

d) inspect case documents produced in relation to a criminal offence that affected him, with the exceptions specified in this Act,

e) be informed about his rights and obligations in a criminal proceeding by the court, the prosecution service, or the investigating authority,

f) seek legal remedy as provided for by this Act,

g) make use of the assistance of an aide,

h) enforce a civil claim in the court procedure as a civil party, and submit a notice of his intent to do so during the investigation,

i) act as a private prosecuting party or a substitute private prosecuting party.

(2) The aggrieved party shall be entitled to make a statement, at any time, regarding any physical or mental harm or pecuniary loss he suffered as a result of the criminal offence, and whether he wishes the defendant to be convicted and punished.

(3) The aggrieved party shall be entitled to make a statement, at any time, that he does not wish to exercise his rights as an aggrieved party in the given proceeding any longer. Such a statement shall not prevent the proceeding court, prosecution office, or investigating authority from interrogating the aggrieved party as a witness, and it shall not serve as relief from any of the obligations specified in paragraph (6) *a)*. The aggrieved party may withdraw such a statement at any time. If the aggrieved party withdraws the statement, he may resume exercising his rights as an aggrieved party in the criminal proceeding after the withdrawal.

(4) If the aggrieved party made a statement under paragraph (3), any submitted civil claim or corresponding declaration of intent shall be considered withdrawn.

(5) The aggrieved party shall be entitled to be informed, upon request, about any of the following concerning the criminal offence affecting him:

a) release or escape of a defendant in pre-trial detention,

b) release on parole or permanent release or escape of a defendant sentenced to imprisonment to be served, or an interruption of his sentence of imprisonment,

c) release or escape of a defendant sentenced to confinement, or an interruption of his sentence of confinement,

d) release or escape of a person under preliminary compulsory psychiatric treatment,

e) release, leave without permission, or release on adaptation leave of a person under compulsory psychiatric treatment, and

f) in case of special education in a juvenile correctional institution, any temporary or permanent discharge of the juvenile, leave from the juvenile correctional institution without permission, or interruption of his special education in a juvenile correctional institution.

(6) The aggrieved party shall be obliged to

a) participate in procedural acts, including expert examinations, in line with the instructions given by the court, the prosecution service, or the investigating authority as laid down in this Act,

b) inform the proceeding court, prosecution office, or investigating authority about his home address, contact address, place of actual residence, service address, phone contact details and electronic mail address or other electronic contact details as well as any change thereto within three working days after the change.

Protection against of arbitrary contact

Section 51/A (1) The aggrieved party of a violent criminal offence against a person may move that the court, the prosecution service or the investigating authority instruct the defendant to refrain from arbitrary interference with the private life and daily lifestyle of the aggrieved party. The aggrieved party of a violent criminal offence against a person may submit this motion also during the investigation, before his interrogation as a suspect.

(2) In a decision adopted within three working days of submission, the court, the prosecution service or the investigating authority shall either

a) dismiss the motion of the aggrieved party if a ground for exclusion referred to in paragraph (5) exists, or

b) establish that no ground for exclusion referred to in paragraph (5) exists and warn the defendant that by contacting the aggrieved party for the purpose of causing fear to, or interfering with the private life or daily lifestyle of, the aggrieved party arbitrarily while being subject to the criminal proceeding, he commits a criminal offence.

(3) If the aggrieved party puts forward the motion before he is interrogated as a suspect, the motion shall be assessed and the decision referred to in paragraph (2) shall be served at the time of the communication of the suspicion.

(4) In the decision referred to in paragraph (2) *b)*, the defendant shall be advised also that he may request the establishment of contact with the aggrieved party in connection with the exercise of the rights of the defendant in a criminal proceeding through the court, the prosecution service or the investigating authority.

(5) The adoption of a decision referred to in paragraph (2) *b)* shall be excluded if

a) a legal relationship based on which the defendant is entitled to maintain contact with the defendant, in particular a legal relationship for housing or the performance of work or relating to parental custody over the common child, exists between the defendant and the aggrieved party;

b) a rule of behaviour referred to in section 280 (3) is to be imposed; or

c) the reasonable suspicion of the commission of violent criminal offence against a person cannot be established against the defendant or he was not indicted for the commission of such a criminal offence.

(6) If a ground for exclusion under paragraph (5) arises, or the aggrieved party withdraws his motion, after a decision referred to in paragraph (2) *b)* is adopted, the court, the prosecution service or the investigating authority shall, in its decision, establish that the ground for exclusion exists or that the aggrieved party withdrew the motion, and inform the defendant that, from then on, paragraph (4) does not apply to establishing contact with the aggrieved party.

Legal succession on the side of the aggrieved party

Section 52 (1) If the aggrieved party dies before or after instituting a criminal proceeding, his place may be taken by his relative, statutory representative, or a dependant of the aggrieved party under law or a contract, and

a) except for the right to enforce a civil claim, he may exercise the rights of the aggrieved party, including his right to act as a private prosecuting party or a substitute private prosecuting party, and

b) he shall be subject to the obligation specified in section 51 (6) *b)*.

(2) If more than one person is entitled to act, the persons concerned may designate a person from among themselves to exercise the rights of the aggrieved party. In the absence of an agreement, the first person to take action in the proceeding may exercise the rights of the aggrieved party.

(3) If the aggrieved party is an entity other than a natural person and it is terminated, its legal successor may take its place within one month.

The private prosecuting party

Section 53 (1) Private prosecuting party means an aggrieved party

a) who, in case of the criminal offences of causing minor bodily harm, violation of personal secrets, violation of the confidentiality of correspondence, defamation, insult, violation of the memory of a deceased person, making false audio or image recording capable of harming the reputation of another or disclosing false audio or image recording capable of harming the reputation of another, or

b) which, in case of the criminal offences of violation of personal secrets, violation of the confidentiality of correspondence, insult, making false audio or image recording capable of harming the reputation of another or disclosing false audio or image recording capable of harming the reputation of another,

represents the prosecution, provided that the perpetrator may be punished upon private motion.

(2) Where a proceeding is launched by a crime report filed by one of the aggrieved parties involved in causing minor bodily harm, or committing defamation or insult mutually, and the other aggrieved party files a private motion under this Act, the latter shall act as a counter-prosecuting party, provided that there is a personal and close material connection between the acts. Provisions laid down in this Act concerning private prosecuting parties shall also apply to counter-prosecuting parties.

(3) Insult and defamation shall be subject to public prosecution if committed against a judge, prosecutor, or member of a law enforcement organ or civilian national security service during or because of his official proceedings.

(4) A private prosecuting party who cannot fulfil his obligation to appear in person due to his persistent and severe illness may be replaced by his statutory representative or authorised representative. Where the private prosecuting party does not have a statutory or authorised representative, the court shall call upon the private prosecuting party to provide for representation within one month from the service of the call.

(5)

Substitute private prosecuting parties

Section 54 (1) A substitute private prosecuting party means an aggrieved party who or which represents the prosecution, in a situation specified in this Act, concerning a criminal offence subject to public prosecution.

(2) A substitute private prosecuting party who cannot fulfil his obligation to appear in person due to his persistent and severe illness may be replaced by his statutory representative or authorised representative. Where the substitute private prosecuting party does not have a statutory or authorised representative, the court shall call upon the substitute private prosecuting party to provide for representation within one month of the service of the call.

(3)

The civil party

Section 55 (1) Civil party means an aggrieved party who or which enforces a civil claim in a court proceeding, even if he submitted his intent to do so before the indictment.

(2) The legal successor of an aggrieved party may act as a civil party if legal succession took place due to the death or termination of the aggrieved party, or on the basis of a statutory provision.

(3) The enforcement and administration of civil claims shall also be subject to the provisions of the Act on the Code of Civil Procedure as specified in this Act, with the differences arising from the nature of criminal proceedings.

Section 56 (1) In the criminal proceeding, a claim for

a) damages or

b) release of a thing or payment of a sum

may be enforced as a civil claim, provided that it incurred as a direct consequence of the act subject to indictment.

(1a) A claim for grievance award that incurred as a direct consequence of the act subject to indictment may be enforced as a civil claim in a criminal proceeding only in the situation specified in section 571 (2b).

(2) The civil claim shall also be subject to the provisions of the Act on the Code of Civil Procedure pertaining to the types of claims. If an aggrieved party enforces the claims specified in paragraph (1) alternatively, the provisions of the Act on the Code of Civil Procedure pertaining to the joinder of claims shall also apply.

(3) A claim that may not be enforced in court may not be enforced as a civil claim in a criminal proceeding.

(4) As for criminal offences damaging the budget and other criminal offences committed against the State, a claim may not be enforced as a civil claim if proceedings other than civil court actions, such as administrative authority, tax, or customs administration procedures, are available for the enforcement of that claim.

(5) The prosecution service may enforce a civil claim if the conditions specified in the Act on the Code of Civil Procedure are met.

(6) The enforcement of a civil claim by other legal means shall not be prevented by the fact that the aggrieved party did not take action as a civil party.

Chapter X

PARTIES WITH PECUNIARY INTEREST AND OTHER INTERESTED PARTIES

The party with a pecuniary interest

Section 57 (1) Party with a pecuniary interest means a natural person or entity other than a natural person who or which

a) is the owner of or holds any attribute of ownership right regarding a thing that is or can be confiscated or seized,

b) is entitled to dispose of any asset that may be subject to forfeiture of assets,

c) is entitled to dispose of any electronic data that may be ordered to be rendered permanently inaccessible, or

d) is entitled to a hosting service the provision of which has been ordered to be suspended.

(2) The party with a pecuniary interest shall be entitled to

a) submit evidence and file motions and observations concerning matters affecting him,

b) attend procedural acts directly affecting the thing, asset, or electronic data subject to his right of disposal,

c) get informed of the ground, and of changes to such ground, for any coercive measure affecting a thing, asset, or electronic data specified in paragraph (1),

d) be informed about his rights and obligations in a criminal proceeding by the court, the prosecution service, or the investigating authority,

e) seek legal remedy concerning matters affecting him,

f) inspect the case documents of the proceeding concerning matters affecting him, with the exceptions specified in this Act,

g) make use of the assistance of an aide.

(3) The party with a pecuniary interest may only attend a procedural act under paragraph (2) *b)* if he filed a motion requesting to be notified about any procedural act directly affecting the thing, asset, or electronic data subject to his right of disposal. Notification of the party with a pecuniary interest may be omitted, and he may be removed from the place of a procedural act

a) if doing so is necessary due to the nature or urgency of the procedural act,

b) to guarantee the safety of another person involved in the criminal proceeding.

(4) If the court orders confiscation, forfeiture of assets, or rendering electronic data inaccessible, the party with a pecuniary interest may enforce his claim by other legal means after the conclusive decision becomes final and binding.

(5) The party with a pecuniary interest shall be present at procedural acts in line with the instructions given by the court, the prosecution service, or the investigating authority as laid down in this Act.

The other interested party

Section 58 (1) In a criminal proceeding, other interested party means a natural person or entity other than a natural person

a) a right or legitimate interest of whom or which is directly affected by the decision adopted in the criminal proceeding, or

b) who or which has a right, or is subject to an obligation specified in this Act regarding a procedural act concerning him or it.

(2) In particular, the following shall be other interested parties:

a) the party reporting a crime,

b) the witness,

c) the person affected by search or subject to a body search,

d) the person affected by data acquisition activities,

e) the person affected by expert examination, inspection, or presentation for recognition,

f) the aide,

g) the expert and the consultant.

(3) The provisions laid down in section 57 (2) and (5) shall apply accordingly to the rights and obligations of the other interested party.

(4) Organs specified by law may participate as an other interested party in criminal proceedings concerning criminal offences damaging the budget and other criminal offences committed against the State.

(5) If the organ specified in paragraph (4) participates in a proceeding as an other interested party, it shall also be entitled, within its statutory scope of activities, to

a) submit data concerning damage and pecuniary loss caused by the criminal offence, as well as the value affected by the criminal offence,

b) submit evidence, file motions and observations,

c) be informed about decisions that are to be communicated to the aggrieved party under this Act,

d) file a complaint against the termination of the proceeding during the investigation.

Chapter XI

THE AIDES

The concept of the aide

Section 59 (1) To represent and protect the rights and legitimate interests, and to facilitate the exercise and performance of the rights and obligations of a defendant, an aggrieved party, a party with a pecuniary interest, and an other interested party, as specified in this Act, the following may participate in a criminal proceeding as an aide:

a) a statutory representative, the guardian *ad litem*,

b) an adult relative of the defendant,

c) a consular officer where the defendant, aggrieved party, or witness is a foreign national,

d) the spouse or cohabitant of a defendant subject to compulsory psychiatric treatment,

e) the adult person providing care for the minor or the juvenile,

f) an authorised representative,

g) a supporter,

h) an adult person specified by an aggrieved party or by the party reporting the crime,

i) an attorney-at-law acting for a witness,

j) an adult person who does not have an interest in the case and is authorised by a person affected by a search or who attends the search,

k) an adult person specified by the person subject to a body search,

l) an agent for service of process,

m) a person protecting a person who participates in a Protection Programme,

n) a legal aid lawyer,

o) a person performing interpretation tasks.

(2) A person may not serve as an aide if

a) he has not attained the age of eighteen years,

b) he was excluded from participating in public affairs by the court with final and binding effect, during the period of his exclusion, or

c) he was placed under custodianship by the court with final and binding effect.

(3) Provisions laid down in this Act concerning an attorney-as-law acting as an aide shall apply also to a junior attorney-at-law, a registered in-house legal counsel, a European Community lawyer, a salaried attorney-at-law and a salaried European Community lawyer, provided that the conditions set out in the Act on the professional activities of attorneys-at-law are met.

Section 60 The aide shall be entitled to be informed about his criminal procedural rights and obligations, as well as those of the person he aids, by the court, the prosecution service, or the investigating authority.

The authorised representative

Section 61 (1) Unless acting in person is required under this Act, a representative authorised by an aggrieved party, a party with a pecuniary interest, an other interested party, or their statutory representative may also act in their place.

(2) The authorised representative may exercise the rights of the represented person under this Act.

(3) The following may act as an authorised representative in a criminal proceeding:

a) an attorney-at-law or a law office,

b) a relative of an aggrieved party, a party with a pecuniary interest, or an other interested party,

c) an employee of an administrative organ, other budgetary organ, economic operator, or other entity other than a natural person, in matters concerning the activities of his employer,

d) an employee of a local government organ in matters concerning the activities of his employer, and an officer specified in the organisational and operational regulations of a local government organ if the proceeding, considering its subject matter, falls within the scope of matters in the regulations in which the officer is entitled to take action,

e) a public benefit purpose organisation established to represent the interests of aggrieved parties or certain groups of aggrieved parties,

f) a person authorised to do so under the law.

(4) An authorised attorney-at-law or law office may authorise another attorney-at-law or law office to act as a substitute.

(5) The provisions laid down in the Act on the Code of Civil Procedure regarding agents shall apply to the representation of a civil party by way of authorisation.

Section 62 (1) The authorisation shall be given in writing or recorded in the minutes. With the exception specified in paragraph (3), the authorised representative shall annex or attach the original authorisation or a certified copy thereof to his first submission, or if the submission takes place beforehand, to the case documents at the time when he appears before the proceeding court, prosecution office, or investigating authority for the first time. A European Community lawyer shall be obliged to attach to his first submission the original cooperation contract concluded with an attorney-at-law or a law office pursuant to the Act on the professional activities of attorneys-at-law or a certified copy thereof and, if it is in a language other than Hungarian, a certified translation thereof or, if that occurs first, hand it over at the time of his first appearance to the proceeding court, prosecution office or investigating authority for attaching to the case documents.

(2) With the exceptions specified in paragraphs (3) and (4), the authorisation shall be set out in a public deed or a private deed of full probative value.

(3) The statement granting the authorisation may not be registered validly in the client settings register unless the authorisation is accepted and the statement of acceptance is registered in the client settings register. An authorisation recorded in the client settings register shall be effective from the time a notice of it is submitted to the proceeding court, prosecution office, or investigating authority.

(4) A law may provide otherwise for the certification of the authorisation granted to an attorney-at-law.

(5) Any restriction regarding an authorisation shall be effective only to the extent it is apparent from the authorisation itself.

Section 63 (1) Pursuant to the Act on legal aid, an aggrieved party, a party with a pecuniary interest, or an other interested party may request representation by a legal aid lawyer.

(2) If the court, prosecution service, or an investigating authority notices that the conditions of permitting representation by a legal aid lawyer are met concerning an aggrieved party, a party with a pecuniary interest, or an other interested party, it shall inform the person concerned that he may request permission for being represented by a legal aid lawyer under the Act on legal aid.

Section 64 (1) The representative authorised by the defendant or by his statutory representative may act in place of the defendant in the following events:

a) receipt of an extract from, or copy of, a case document,

b) receipt of a case document addressed to the defendant at the sender,

c) posting bail,

d) placing security into deposit.

(2) The following may act as an authorised representative for the defendant:

a) an attorney-at-law or law office,

b) an adult relative of the defendant.

(3) In other respects, the provisions laid down in sections 61 to 62 shall apply accordingly to the authorised representative of the defendant.

The supporter

Section 65 The supporter appointed by the guardianship authority for an aggrieved party, a party with a pecuniary interest, or an other interested party (hereinafter jointly "supported person") may participate in the criminal proceeding to facilitate supported decision making without prejudice to the capacity of a person to act under an Act.

Section 66 (1) The supporter

a) may attend, simultaneously with the supported person, each procedural act, including a closed trial; however, his absence shall not be an obstacle to the performance of the procedural act or to the continuation of the criminal proceeding,

b) may, in the interest of facilitating statements under this Act, consult with the supported person in a manner not disturbing the order of the procedural act,

c) may not make any statement in place of the supported person.

(2) The supported person shall be solely responsible for the attendance of his supporter at the procedural act.

(3) No cost incurred in relation to a supporter's participation in the criminal proceeding shall be considered a criminal cost; such costs shall be advanced and borne by the supported person.

(4) The guardianship authority's decision or certificate confirming the capacity of a person as a supporter shall be presented to the court, the prosecution office, or the investigating authority at the first procedural act where the supporter appears together with the supported person.

Section 67 (1) A supporter may not participate in the criminal proceeding if

a) he is a participant, or an aide to such a participant, in the criminal proceeding with interests that are contrary to the interests of the supported person,

b) he proceeds or proceeded in the case as a judge, a prosecutor, or a member of the investigating authority, or he is a relative of such a person,

c) he participates or participated in the case as a defence counsel, witness, or expert,

d) it would be otherwise in conflict with the interests of the proceeding.

(2) The court, prosecution office, or investigating authority before which the proceeding is pending shall decide on disqualification of the supporter. The supporter or the supported person may seek legal remedy against such a decision.

(3) If the supporter is disqualified from the criminal proceeding or the court, the prosecution service, or the investigating authority notes a conflict of interest, other than those specified in paragraph (1), it shall inform the guardianship authority concurrently with the supported person without delay.

Chapter XII

CAPACITY TO ACT IN CRIMINAL PROCEEDINGS

The capacity of the defendant and the person reasonably suspected of having committed the criminal offence to act in the criminal proceeding

Section 68 The defendant and the person reasonably suspected of having committed the criminal offence may act in a criminal proceeding personally or, if acting in person is not mandatory under this Act, through an authorised representative in situations specified in this Act, regardless of his capacity to act under civil law.

The capacity of the aggrieved party, the party with a pecuniary interest, or the other interested party to act in the criminal proceeding

Section 69 (1) An aggrieved party, a party with a pecuniary interest, or an other interested party may act in person or, if acting in person is not mandatory under this Act, through an authorised representative if

a) he has full capacity to act under civil law, or

b) he is an adult with partially limited capacity to act, whose civil law capacity to act is not restricted regarding the subject matter of the proceeding or an individual procedural act.

(2) Even if he is entitled, under the rules of civil law, to validly dispose of

a) the subject matter of reparation, regarding consent to reparation, the aggrieved party,

b) the thing, asset, or data specified in section 57 (1), the party with a pecuniary interest

may act in person, or, if acting in person is not mandatory under this Act, through an authorised representative.

(3) The aggrieved party may file a motion for a restraining order, even if he is a minor with limited capacity to act under the rules of civil law.

(4) Regarding the matter of refusing to give witness testimony and consenting to confrontation, even a minor with limited capacity to act under the rules of civil law shall act in person, and before making such a statement, he shall be allowed to consult his statutory representative.

(5) Unless acting in person is required under this Act, the statutory representative shall act for an aggrieved party, a party with a pecuniary interest, or an other interested party if

a) he does not have the capacity to act in the criminal proceeding,

b) a statutory representative was appointed for him without limiting his capacity to act unless he takes action in person or through an agent, or

c) he is an entity other than a natural person.

(6) If an organ specified under section 58 (4) acts in the proceeding as an other interested party, then the representative of the aggrieved party shall not act for the State. Otherwise, the rules of civil law shall apply to acting as a representative of the aggrieved party as regards criminal offences committed against the State..

The capacity of the civil party to act

Section 70 The provisions laid down in the Act on the Code of Civil Procedure regarding a person's procedural capacity shall apply to the civil party.

Examination of a person's capacity to act in the criminal proceeding

Section 71 (1) In case of any doubt, the court, the prosecution service, or the investigating authority shall examine *ex officio* the capacity of a person participating in a criminal proceeding to act in the criminal proceeding, as well as the capacity as such of the statutory representative or the supporter, at any phase of the proceedings. The court, the prosecution service, or the investigating authority shall also examine *ex officio* at any phase of the proceeding whether the specific authorisation of the statutory representative that may be required for a procedural act has been certified.

(2) Certification shall not be required for the capacity to act in the criminal proceeding, the statutory representation, the capacity as a supporter, or the authorisation, if it is common knowledge or the court, the prosecution service, or the investigating authority has official knowledge thereof.

The legal standing of the statutory representative

Section 72 (1) The statutory representative of a defendant or the person reasonably suspected of having committed the criminal offence may participate in the criminal proceeding as an aide and the rules on the rights of the defence counsel shall apply to his right to attend, make observations, request information, file motions, inspect case documents, and seek legal remedy.

(2) The statutory representative of the defendant or the person reasonably suspected of having committed the criminal offence shall be informed about all summonses and notifications to the defendant or the person reasonably suspected of having committed the criminal offence, respectively, and all decisions communicated to the defence counsel shall also be communicated to the statutory representative.

(3) The statutory representative of an aggrieved party, a party with a pecuniary interest, or an other interested party may exercise the rights of the represented person under this Act.

(4) If an aggrieved party, a party with a pecuniary interest, or an other interested party has the capacity to act in the criminal proceeding under section 69, but he does not have full capacity to act under the rules of civil law, his statutory representative may exercise his right to attend, inspect case documents, and be informed to provide adequate representation in matters exceeding the represented person's capacity to act under the rules of civil law.

(5) If a person participating in a criminal proceeding has multiple statutory representatives, the acting statutory representative shall be the statutory representative that acted first in the proceeding, unless otherwise agreed.

The guardian *ad litem*

Section 73 (1) The court, the prosecution service, or the investigating authority shall appoint a guardian *ad litem* if

a) a defendant, a person reasonably suspected of having committed the criminal offence, an aggrieved party, a party with a pecuniary interest, or an other interested party does not have full capacity to act under civil law, and he does not have a statutory representative, or the statutory representative cannot be identified,

b) a defendant, a person reasonably suspected of having committed the criminal offence, an aggrieved party, a party with a pecuniary interest, or an other interested party does not have a statutory representative who is not affected by a ground for disqualification,

c) the statutory representative is prevented from exercising his rights, or

d) the whereabouts of the aggrieved party, the party with a pecuniary interest, or the other interested party are unknown at the time of performing a procedural act that affects him, and he does not have a statutory representative or an authorised representative.

(2) The court, the prosecution service, or the investigating authority shall appoint an attorney-at-law as guardian *ad litem*. To the scope of appointment, in the cases specified in paragraph (1) *a)* to *c)*, the provisions of section 48 (1), and, in a situation described in paragraph (1) *d)*, the provisions of section 49 (5) shall apply.

(3) No appeal shall lie against the appointment of the guardian *ad litem*. The represented person may submit a reasoned motion for the appointment of another guardian *ad litem*. The court, prosecution office, or investigating authority before which the proceeding is pending shall decide on the motion.

(4) The officially appointed guardian *ad litem* may move for his discharge from the official appointment if justified. The court, the prosecution office, or the investigating authority before which the proceeding is pending shall decide on the motion.

(5) The prosecution service, before the indictment, or the court, after the indictment, may disqualify the statutory representative from the proceeding if

a) it is reasonable to assume that the statutory representative committed the criminal offence together with the defendant, or person reasonably suspected of having committed the criminal offence, represented by him,

b) there is a conflict between the interests of the statutory representative and the person represented by him.

(6) In a situation under paragraph (5) *a)*, the investigating authority, before the indictment, may also disqualify the statutory representative from the proceeding.

(6a) In a situation under paragraph 5 *b)*, the investigating authority may disqualify the statutory representative from the proceeding if seeking the decision of the prosecution service would cause such a delay which would jeopardise the success of the procedural act. In such a situation, the investigating authority shall, within eight days, request that the prosecution service disqualify the statutory representative. Should the prosecution service not order the disqualification of the statutory representative, in the absence of the statutory representative, the testimony of the witness or the defendant represented by the statutory representative may not be used as evidence, unless the witness or the defendant maintains the testimony provided in the absence of the statutory representative also when the statutory representative is present.

(7) If the reason for appointing the guardian *ad litem* ceases to exist in the course of the proceeding, the court, the prosecution service or the investigating authority shall discharge the guardian *ad litem* from the appointment.

(8) In the criminal procedure, a guardian *ad litem* shall have the same legal standing as a statutory representative. The provisions on the disqualification of a statutory representative shall apply to the disqualification of a guardian *ad litem*. The provisions of section 43 (1) shall also apply accordingly to the disqualification of the guardian *ad litem* representing the defendant or the person reasonably suspected of having committed the criminal offence.

(9) If the court, the prosecution service or the investigating authority discharges or disqualifies a guardian *ad litem*, and appoints another guardian *ad litem* at the same time, the provisions of section 48 (3) to (6) shall apply accordingly.

(10) A guardian *ad litem* shall be entitled to a fee and the reimbursement of his costs in consideration of his involvement.

PART FOUR

GENERAL PROVISIONS ON PROCEDURAL ACTS

Chapter XIII

GENERAL RULES ON THE EXERCISE OF RIGHTS BY PERSONS PARTICIPATING IN CRIMINAL PROCEEDINGS

Information, advising, communication

Section 74 (1) Unless otherwise provided in this Act, the court, the prosecution service, or the investigating authority shall inform and advise the person participating in the criminal proceeding of his rights and obligations before the procedural act affecting that person.

(2) In the course of communicating with the person participating in the criminal proceeding, the court, the prosecution service, or the investigating authority shall strive to ensure that the person participating in the criminal proceeding understands the information provided to him and he is understood.

(3) To achieve the goal specified in paragraph (2), the court, the prosecution service, or the investigating authority shall, when communicating,

a) use simple and commonly understood language,

b) take into account the condition and personal characteristics of the person participating in the criminal proceeding, and

c) verify that the person participating in the criminal proceeding understood the information provided to him orally, and explain the information if necessary.

Legal aid

Section 75 (1) Legal aid may be granted to the defendant or the natural person aggrieved party, party with a pecuniary interest or other interested party to facilitate the exercise of his rights, provided that he is unable to cover criminal costs, in whole or in part, due to his income and financial situation.

(2) In particularly justified cases, legal aid may be granted to an aggrieved party, a party with a pecuniary interest, or an other interested party, even if it is an entity other than a natural person if it is prevented from exercising its rights specified in this Act due to its financial situation, taking into account, in particular, the form of the company, its profit orientation, the financial situation of its members, and the capacity of its members to cover the necessary costs.

(3) Regardless of their income or financial situation, legal aid shall be granted to

a) a natural person aggrieved party enforcing a civil claim,

b) a defendant, an aggrieved party, a party with a pecuniary interest, and an other interested party in a case specified by law.

Section 76 (1) Legal aid shall cover

a) in the case of a defendant, advancing and bearing the fee and expenses of the officially appointed defence counsel and the guardian *ad litem* by the State,

b) in the case of an aggrieved party, a party with a pecuniary interest, or an other interested party, advancing the fee and costs of the legal aid lawyer by the State, as well as bearing such fee and costs in situations specified in the Act on legal aid and advancing the fee and expenses of the guardian *ad litem* by the State,

c) in the case of a civil claim submitted by the aggrieved party, the advance payment of the court procedural fee,

d) in the case of a private prosecuting party, advancing the fee and costs of the legal aid lawyer by the State, as well as bearing such fee and costs in situations specified in the Act on legal aid ,

e) in the case of a substitute private prosecuting party, the fee deferral for one-time copies of case documents, and advancing the fee and costs of a legal aid lawyer by the State, as well as bearing such fee and costs in situations specified in the Act on legal aid.

(2) If the court grants a civil claim submitted by a natural person aggrieved party, the legal aid granted to the aggrieved party shall also apply, as cost deferral, to the enforcement procedure.

Section 77 (1) Legal aid shall be granted by the legal aid service upon request by a person participating in the criminal proceeding in accordance with the law.

(2) If modifying and withdrawing legal aid may be in order, the court, the prosecution service, or the investigating authority shall inform the legal aid service about all changes to the facts underlying the legal aid.

Language use

Section 78 (1) If a person participating in the criminal proceeding wishes to use his mother tongue other than Hungarian, a national minority mother tongue, or other mother tongue specified in an international treaty promulgated by an Act, an interpreter, preferably one familiar with specialised legal language, shall be used.

(2) If using the mother tongue would cause disproportional difficulties, or with consent of the person who does not understand the Hungarian language, the use of another language specified as understood by that person shall be enabled by using an interpreter.

(3) If the person participating in a criminal proceeding is hearing-impaired, he shall be interrogated, upon his request, with support from a sign language interpreter, or he shall be allowed to give a written testimony in place of being interrogated.

(4) If the person participating in a criminal proceeding is deaf-blind, he shall be interrogated, upon his request, with support from a sign language interpreter.

(5) If the person participating in a criminal proceeding is speech-impaired, he shall be allowed, upon request, to give a written testimony in place of being interrogated.

(6) If the person participating in a criminal proceeding is unable to communicate or his capacity to communicate is considerably limited for a reason not specified in paragraphs (3) to (5), he shall be interrogated using a sign language interpreter, or communication shall be enabled by other appropriate means.

(7) Translation for a case document to be served under this Act shall be arranged for by the court, the prosecution office, or the investigating authority which adopted the decision or issued the other case document.

(8) Unless otherwise provided in an Act, a document to be served need not be translated, if the addressee expressly renounces such a translation.

(9) For a person participating in a criminal proceeding who was notified of a procedural act, an interpreter shall be officially appointed pursuant to paragraphs (1) and (2) at the motion of the person participating in a criminal proceeding that is submitted after the communication of the notification within the time limit set by the proceeding organ taking into account the date of the procedural act.

(10) The person participating in the criminal proceeding who was notified of the procedural act shall be advised of the provisions of paragraph (9) in the notification.

(11) An aggrieved party, party with a pecuniary interest or another interested party who is entitled to attend a procedural act may use a person specified by him who performs interpretation tasks without qualifying as an interpreter and who attends the procedural act (hereinafter "aide performing interpretation tasks") for the purpose of ensuring language use. The proceeding court, prosecution office or investigating authority shall decide on a motion for using an aide performing interpretation tasks without adopting a decision.

(12) An aide performing interpretation tasks shall not be used

a) at a procedural act held with the participation of the private prosecuting party or the substitute private prosecuting party; and

b) at a procedural act where an aggrieved party, party with a pecuniary interest or another interested party is to be interrogated as a witness or a defendant, or interviewed as an expert, or a physical means of evidence or electronic data is to be seized from such a party.

(13) The court, the prosecution office or the interrogating authority may refuse the use of an aide performing interpretation tasks; however, in such a situation, it shall officially appoint an interpreter.

Proceeding as a matter of priority

Section 79 (1) The criminal proceeding shall be conducted as a matter of priority

a) if the defendant is subject to a coercive measure affecting personal freedom subject to judicial permission,

b) if an aggrieved party or a defendant involved in the proceeding has not attained the age of eighteen years,

c) in a repeated procedure as defined in Part Eighteen, or

d) during a period of crisis caused by mass immigration in a criminal proceeding instituted for a criminal offence committed in the crisis area and specified in section 827.

(2) If more than one criminal proceeding is to be conducted as a matter of priority simultaneously, the court, the prosecution service, or the investigating authority shall proceed in the order specified in paragraph (1).

Administration of motions and statements suitable for protracting the proceeding

Section 80 (1) The court, the prosecution service, or the investigating authority may dismiss a motion, or statement aimed at having a legal effect, if it is

a) late,

b) excluded by an Act,

c) submitted by an ineligible person, or

d) identical to a previous motion regarding its content and is unsubstantiated

without stating any reason as to its merits.

(2) If this Act permits a motion or statement aimed at having a legal effect to be dismissed without stating any reason as to its merits, the statement of reasons for the decision shall include only the specification of the ground for dismissal and the law applied, and an advice concerning the consequences specified in paragraph (3).

(3) Unless otherwise provided in this Act, assessing a motion or statement aimed at having a legal effect which is submitted or made repeatedly by a person participating in a criminal proceeding even after being advised in accordance with paragraph (2), may be omitted, and the person submitting that motion or making that statement may be subject to a disciplinary fine, provided that submitting the motion or making the statement is suitable for protracting the proceeding.

(4) Paragraph (3) shall also apply to the prosecution office in the court proceeding, with the proviso that the head of the prosecution office may be informed in place of imposing a disciplinary fine.

Chapter XIV

SPECIAL TREATMENT IN THE CRIMINAL PROCEEDING

Provision and the general rules of special treatment

Section 81 (1) Where the aggrieved party or the witness is a natural person, he shall be considered a person requiring special treatment, provided that, considering his personal characteristics or the nature and circumstances of the criminal offence serving as the basis for the proceeding, he is restricted in his ability

a) to understand others or have himself understood by others,

b) to exercise his rights or perform his obligations specified in this Act, or

c) to participate in the criminal proceeding efficiently.

(2) In particular, the following factors shall serve as grounds for providing special treatment:

a) age of the person concerned,

b) mental, physical, medical condition of the person concerned,

c) the extremely violent nature of the act serving as the basis for the proceeding, and

d) the relationship between the person concerned and another person participating in the criminal proceeding.

(3) The court, the prosecution service, and the investigating authority

a) shall examine, *ex officio* after getting into contact with, or upon a motion by, the person concerned if he qualifies as a person requiring special treatment,

b) shall decide on providing special treatment based on individual assessment as determined by law,

c) may apply measures to treat carefully and protect the person concerned, as well as to facilitate the exercise of his rights and the performance of his obligations; the decision on applying such measures shall be taken upon a motion by the person concerned or *ex officio*,

d) may order case documents relating to initiating and examining the provision of special treatment to be handled confidentially.

(4) The measure applied by the court, the prosecution service, and the investigating authority to treat carefully and protect a person requiring special treatment, as well as to facilitate the exercise and performance of his rights and obligations, shall be appropriate and proportionate to the circumstances serving as the basis for special treatment. Unless otherwise provided in this Act, applying a measure qualifying as special treatment may not violate the procedural rights of any other person participating in the criminal proceeding.

(5) The court, the prosecution service and the investigating authority shall decide on

a) providing special treatment,

b) applying a measure qualifying as special treatment, unless otherwise provided in this Act, and

c) dismissing a motion submitted by the witness for special treatment

without adopting a decision.

(6) In a situation described in paragraph (5) *c)*, the investigating authority shall notify, without delay, the prosecution service about dismissing the motion.

(7) The court, the prosecution service, and the investigating authority shall decide on dismissing a motion for special treatment, which was submitted by the aggrieved party, by adopting a decision.

Section 82 The following persons shall qualify as persons requiring special treatment even without a specific decision:

a) persons who have not attained the age of eighteen years,

b) disabled persons as defined by the Act on the rights of and ensuring equal opportunities for disabled persons, as well as persons who might qualify as such persons,

c) aggrieved parties of criminal offences against the freedom of sexual life and sexual morality.

Refusing special treatment

Section 83 (1) A person requiring special treatment may, after being informed appropriately, refuse being provided special treatment or any individual measure qualifying as special treatment.

(2) A person requiring special treatment may not refuse a mandatory provision concerning the performance of individual procedural acts or the application of measures qualifying as special treatment.

Review of special treatment

Section 84 (1) The court, the prosecution service and the investigating authority may terminate any special treatment if the conditions for providing special treatment are not met any longer due to changes in the circumstances serving as grounds for such special treatment.

(2) The court, the prosecution service and the investigating authority shall decide on the termination of special treatment

a) by adopting a decision concerning the aggrieved party,

b) without adopting a decision concerning the witness.

(3) In a situation described in paragraph (2) *b)*, the investigating authority shall notify the prosecution service without delay.

Measures qualifying as special treatment

Section 85 (1) The court, the prosecution service, and the investigating authority shall contribute to facilitating the exercise of rights and the performance of obligations of, and to treating carefully, a person requiring special treatment, having regard to the interests of the proceeding, preferably by the following measures:

a) ensuring that the person concerned may exercise his rights and perform his obligations specified in this Act despite all obstacles that may arise from the circumstances serving as grounds for his special treatment,

b) proceeding with special care during communication,

c) proceeding with special care to protect the privacy of the person concerned in the course of conducting the criminal proceeding,

d) providing enhanced protection for personal data of the person concerned that serve as grounds for his special treatment, in particular health data,

e) facilitating the use of an aide by the person concerned,

f) taking into account the personal needs of the person concerned in the course of planning and performing procedural acts, and carrying out without delay the particular procedural acts that require the presence of the person concerned,

g) preparing each procedural act requiring the presence of the person concerned in a manner that allows for it to be carried out without any repetition,

h) ensuring that the person concerned does not meet unnecessarily any other person participating in the criminal proceeding in the course or at the location of a procedural act, especially if the ground for special treatment is his relationship to that person,

i) carrying out the procedural act in a room used or made suitable for such acts provided that no other means or measures would ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,

j) making audio-visual recordings at procedural acts requiring the participation of the person concerned,

k) securing the attendance of the person concerned at a procedural act by using a telecommunication device.

(2) To facilitate the exercise of the rights and the performance of the obligations of the person requiring special treatment, as well as to treat him carefully, the court may exclude the public from the trial or a specific part of the trial.

(3) The court, the prosecution service, and the investigating authority may also apply other measures specified in this Act to treat carefully the person requiring special treatment and to facilitate the exercise of his rights and the performance of his obligations.

Section 86 (1) The court, the prosecution service and the investigating authority shall protect a person requiring special treatment

a) if his life, physical integrity, or personal freedom is in jeopardy due to his participation in the criminal proceeding, or

b) to ensure that he can exercise his rights and perform his obligations under this Act without intimidation or influence.

(2) To protect a person requiring special treatment, the court, the prosecution service and the investigating authority may, in addition to the measures specified in section 85,

a) order to distort all identifying personal features of the person concerned by technical means when using a telecommunication device,

b) order the production of a copy of a sound recording or an audio-visual recording of a procedural act where all identifying personal features of the person concerned are distorted by technical means,

c) restrict, under this Act, the right of a defendant or a defence counsel to attend a procedural act,

d) restrict the right to ask questions of a person, who attends a procedural act involving the person concerned, by permitting that motions for questions be submitted,

e) refrain from confrontation involving a witness requiring special treatment,

f) order, *ex officio*, to process the personal data of the person concerned confidentially,

g) initiate ordering personal protection for the person concerned,

h) declare the person concerned to be a specially protected witness, or initiate such a declaration,

i) initiate the conclusion of an agreement for including the person concerned in a Protection Programme.

(3) If a measure protecting the person requiring special treatment is applied, all case document relating to the initiation and examination of providing special treatment shall be handled confidentially.

Special rules of measures qualifying as special treatment

Section 87 (1) If a procedural act requires the participation of a person who has not attained the age of eighteen years, the court, the prosecution service and the investigating authority

a) shall prepare an audio-visual recording as possible,

b) may order

ba) the procedural act to be attended also by a judicial psychologist expert,

bb) the procedural act to be carried out with assistance from a consultant performing a service specified in section 61 (2) of Act XXXI of 1997 on the protection of children and guardianship administration or another consultant specified by law. The consultant shall carry out its activities under the guidance of the person in charge of the procedural act; in doing so, he shall convey the questions put to the person who has not attained the age of eighteen years and any other communications by the authority,

c) shall ensure that the rights of children, enshrined in the Fundamental Law, the convention on the rights of the child promulgated by Act LXIV of 1991, the Act on the protection of children and guardianship administration, and other Acts, are enforced effectively concerning the criminal proceeding.

(2) A witness testimony made by a person who has not attained the age of eighteen years may not be subject to instrumental credibility examination.

(3) The confrontation of a witness who has not attained the age of eighteen years may not be ordered without his consent.

Section 88 (1) If a procedural act requires the participation of a person who has not attained the age of fourteen years,

a) the procedural act may not be carried out, unless there is no alternative to the expected evidence,

b) the procedural act shall be carried out in a room used or made suitable for such acts, provided that no other means or measures would ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,

c) the investigating authority shall ensure that the procedural act is carried out by the same person each time during the investigation unless doing so would jeopardise the success of the procedural act,

d) the court, the prosecution service and the investigating authority shall prepare an audio-visual recording of the procedural act.

(2) The confrontation of a witness who has not attained the age of fourteen years may not be ordered.

(3) If the procedural act requires the participation of a person who has not attained the age of fourteen years, the defendant and the defence counsel shall not be allowed to be present at the location of the procedural act in person.

(4) If the interrogation of a witness who has not attained the age of fourteen years was motioned by a defendant or a defence counsel, the court, the prosecution service and the investigating authority may ensure that the defendant, who filed the motion, and his defence counsel are present in person at the procedural act requiring the participation of the witness.

Section 89 (1) If the aggrieved party requires special treatment under section 82 *c)* during the investigation,

a) he may be interrogated only by a person of the same sex, and a person, who is of the same sex as the aggrieved party, shall also be present from the proceeding investigating authority at all other procedural acts attended by the aggrieved party, and

b) the investigating authority shall ensure that all procedural acts requiring the presence of the aggrieved party are carried out by the same person each time.

(2) The investigating authority may deviate from the provisions laid down in paragraph (1)

a) upon a motion by or with the consent of the aggrieved party,

b) if doing so is indispensable to ensure the success of the proceeding.

(3) The confrontation of an aggrieved party requiring special treatment under section 82 *c)* may not be ordered without the consent of the aggrieved party.

(4) If the aggrieved party requiring special treatment under section 82 *c)* has not attained the age of eighteen years,

a) the procedural act shall be carried out in a room used or made suitable for such acts, unless the procedural act cannot be carried out in that room or other means or measures are available to ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,

b) an audio-visual recording of the procedural act shall be prepared by the court, the prosecution service, and the investigating authority,

c) the defendant and the defence counsel may not be present in person at the location of the procedural act requiring the participation of the aggrieved party,

d) unless an exemption is made by law, it shall be ensured that the aggrieved party can see only the proceeding judge, prosecutor, or member of the investigating authority when using a telecommunication device,

e) after the indictment, a procedural act requiring the participation of the aggrieved party shall be carried out by the court through a delegate judge or a requested court,

f) the right to ask questions of persons who attend the procedural act requiring the participation of the aggrieved party shall be restricted, and such persons may only move for asking questions,

g) the public shall be excluded from parts of the trial where participation for the aggrieved party at the procedural act is mandatory.

(5) If the aggrieved party requiring special treatment under section 82 *c)* has not attained the age of eighteen years, the court, to protect the aggrieved party, may refrain from, *ex officio* or upon a motion, interrogating the aggrieved party as a witness, provided that the aggrieved party was interrogated during the investigation under paragraph (4) *b)*. In this event, the witness testimony made by the aggrieved party during the investigation may be used as a means of evidence.

(6) If an aggrieved party requiring special treatment in accordance with section 82 *c)* has not attained the age of eighteen years, the court shall perform a further procedural act requiring or involving the interrogation of the aggrieved party in a manner specified under section 87 (1) *b) bb)*, provided that the previous procedural act was performed in the same manner before the indictment. The procedural act may be carried out in another manner only if required by the particular needs or personal characteristics of the aggrieved party or any other material reason, and the facilitation of the exercise of the rights and the performance of the obligations of the aggrieved party and his careful treatment and protection can be ensured also by other means.

Specially protected witness

Section 90 (1) A witness requiring special treatment may be declared a specially protected witness by the court, upon a motion by the prosecution service, if

a) his testimony is related to the substantial circumstances of a case of considerable gravity,

b) there is no alternative to the evidence expected from his testimony, and

c) the life, physical integrity, or personal freedom of the witness or his relatives would be exposed to grave threats if his identity or the fact that he was interrogated as a witness would be revealed.

(2) No appeal shall lie against the court decision declaring a person to be a specially protected witness; the prosecution service and the witness may submit an appeal against the court decision dismissing a motion for declaring a person to be a specially protected witness.

(3) All case documents relating to a motion for declaring a person to be a specially protected witness shall be handled confidentially among the case documents of the proceeding until the motion is adjudicated. If the court declares a person to be a specially protected witness, all case documents concerning the motion for declaring that person to be a specially protected witness, procedural acts carried out with the participation of the witness concerned before he was declared a specially protected witness, and procedural acts carried out with the participation of the specially protected witness shall be handled confidentially among the case documents of the proceeding, unless otherwise provided in this Chapter.

Section 91 (1) The court shall cancel the status of a specially protected witness

a) upon a motion by the specially protected witnesses,

b) ex officio or upon a motion by the prosecution service if the conditions of declaring a person a specially protected witness are not met, or

c) ex officio or upon a motion by the defendant, the defence counsel, or the prosecution service if a specially protected witness engages in any behaviour that is clearly incompatible with his status as a specially protected witness.

(2) No appeal shall lie against the dismissal of the motion or the adoption of a decision cancelling the status of a specially protected witness under paragraph (1) *a)*.

(3) At the time of cancelling the specially protected witness status of a person, the court shall also cancel the confidential handling of case documents pertaining to the granting of the specially protected witness status.

Section 92 (1) Only the following persons may attend the procedural act requiring the participation of the specially protected witness before the indictment:

a) prosecutors and members of the investigating authority,

b) keepers of minutes and, if justified, experts and consultants,

c) aides to the specially protected witness, and

d) other persons inevitably affected by the procedural act.

(2) After the indictment, the court shall carry out procedural acts requiring the participation of the specially protected witness primarily through a requested court or a delegate judge; the defendant and the defence counsel may not attend such acts.

(3) The court may allow the specially protected witness to attend a procedural act by using a telecommunication device, provided that doing so does not pose any risk of revealing the identity of the witness. In this event, the court shall order the individual identifying characteristics of the witness to be distorted by technical means; the right to ask questions of the persons present shall also be limited to moving for asking questions.

(4) In the course of carrying out a procedural act requiring the participation of a specially protected witness, it shall be ensured that the specially protected witness cannot be identified.

(5) In the course of interrogating the specially protected witness, the credibility of the witness, the reliability of his knowledge, and all circumstances possibly affecting the trustworthiness of his testimony shall be examined and verified. All information obtained this way shall be recorded in the minutes of the interrogation.

(6) If the attendance of a specially protected witness is ensured by using a telecommunication device under paragraph (3), the witness may refuse to testify regarding any data based on which conclusion can be drawn regarding his identity, home address, contact address, or place of actual residence.

(7) A procedural act requiring the participation of the specially protected witness shall be recorded in a written minutes, which shall be handled confidentially. An extract of these minutes shall be produced.

(8) The extract of the minutes may only contain the name of the members of the court, the prosecution service, and the investigating authority, who attend the procedural act, as well as the fact that the witness was granted the status of a specially protected witness, and the description of the procedural act. If the court ensures the attendance of a specially protected witness by using a telecommunication device under paragraph (3), the extract of the minutes may only contain the name of the members of the authority specified in section 123 (1) *c)* or *d)*, from among the persons present at the separate location, as well as the fact that the witness was granted the status of a specially protected witness, and the description of the procedural act.

(9) The proceeding judge, prosecutor, or member of the investigating authority shall ensure that no conclusion can be drawn from the performance of the procedural act or the extract of minutes of the procedural act regarding the identity, home address, contact address, or place of actual residence of the specially protected witness.

Section 93 If the prosecution service intends to use as means of evidence a testimony given by or the results of a procedural act carried out with the participation of a specially protected witness, the court shall advise the defendant and his defence counsel that

a) they may file motions for cancelling the status of the specially protected witness under section 91 (1) *c)* only,

b) they may file motions for asking questions from the specially protected witness, but a question may not be aimed at discovering the identity or place of actual residence of the specially protected witness.

Personal protection

Section 94 (1) The proceeding court, prosecution office, and investigating authority may initiate, *ex officio* or upon a motion from the person requiring special treatment, that the person requiring special treatment, or another person with regard to the person requiring special treatment, be granted personal protection as defined by law.

(2) The court, the prosecution service, or the investigating authority shall decide on the initiative within eight days following receipt of the motion. No legal remedy shall lie against initiating personal protection. The person who submitted the motion may seek legal remedy if the motion is dismissed.

(3) Case documents relating to personal protection shall be handled confidentially, except for the corresponding motion, any decision dismissing the motion, and any decision on ordering or terminating personal protection.

Participating in the Protection Programme

Section 95 (1) The proceeding court, the prosecution office and, in agreement with the prosecution service, the investigating authority, may initiate *ex officio*, with the consent of the person requiring special treatment, or upon a motion from the person requiring special treatment, the conclusion of an agreement on participating in the Protection Programme defined by law.

(2) The court, the prosecution service, or the investigating authority shall decide on the initiative within three days following receipt of the motion. No legal remedy shall lie against the decision.

(3) The criminal procedural rights and obligations of a person participating in the Protection Programme shall not be affected by the fact that he is participating in the Protection Programme. If a person participates in the Protection Programme, the provisions of this Act shall apply subject to the following derogations:

a) all case documents relating to his participation in the Protection Programme shall be handled confidentially,

b) the person participating in the Protection Programme shall be summoned or notified through the organ protecting him, and case documents to be served on such a person may only be served through the organ protecting him,

c) the person participating in the Protection Programme shall disclose his original natural identification data in the criminal proceeding and provide the address of the organ protecting him in place of disclosing his home address, contact address, or place of actual residence,

d) all personal data of the person participating in the Protection Programme shall be processed confidentially,

e) the confidentially processed personal data of the person participating in the Protection Programme may only be accessed by, or any case document containing such data may only be inspected by, and information regarding such data or documents may only be provided to, persons approved by the organ providing protection,

f) costs incurring in relation to the appearance and participation of the person participating in the Protection Programme shall not be considered criminal costs,

g) a person protecting the person participating in the Protection Programme may attend any procedural act attended by the protected person,

h) the person participating in the Protection Programme may refuse to testify concerning any data based on which conclusion can be drawn regarding his new identity, new home address, contact address, or place of actual residence.

Other persons affected by individual measures

Section 96 (1) To facilitate the exercise of the rights and the performance of the obligations of the defendant, the court, the prosecution service, or the investigating authority may apply a measure specified in section 85 (1) if

a) the defendant has not attained the age of eighteen years,

b) the defendant is or may qualify as a disabled person as defined by the Act on the rights of and ensuring equal opportunities for disabled persons, or

c) it is justified in light of the relationship between the defendant and another person participating in the criminal proceeding.

(2) To facilitate the exercise of the rights and the performance of the obligations of the defendant who has not attained the age of eighteen years, the court, the prosecution service, or the investigating authority shall apply section 87 (1) and (2) accordingly.

(3) To facilitate the exercise of the rights and the performance of the obligations of the defendant has not attained the age of fourteen years, the court, the prosecution service, and the investigating authority

a) shall apply the provisions laid down in section 88 (1) *d),*

b) may not order any confrontation involving the defendant without his consent.

(4) If the conditions of providing personal protection are met regarding

a) an aide to an aggrieved party or a witness,

b) a defendant, a defence counsel, an expert, a consultant, a party with a pecuniary interest, or an aide to such a person,

or another person with regard to any of the persons listed above, the provisions laid down in section 94 shall apply accordingly.

(5) If the conditions of participating in the Protection Programme are met concerning the defendant, the provisions laid down in section 95 shall apply accordingly.

(6) In a situation described in paragraphs (4) or (5), the court, the prosecution service, or the investigating authority may apply the measures specified in section 85.

Chapter XV

THE PROTECTION OF DATA PROCESSED IN THE CRIMINAL PROCEEDING

The legal basis of data processing and data protection

Section 97 (1) To conduct the criminal proceeding, the court, the prosecution service, and the investigating authority may get informed of, and process, any and all personal data required for carrying out its tasks specified in this Act.

(2) To conduct the criminal proceeding, the court, the prosecution service, and the investigating authority may get informed of, and process, secrets protected on the basis of an Act and secrets related to the practice of a profession (hereinafter jointly "protected data"), which are required for carrying out its tasks specified in this Act, in a way and to an extent determined by law.

Section 98 (1) The court, the prosecution service and the investigating authority shall ensure that no protected data processed during the criminal proceeding is published or disclosed to an unauthorised person unnecessarily and that the protection of personal data is ensured.

(2) The court, the prosecution service and the investigating authority may permit access to any personal or protected data processed in the criminal proceeding only in accordance with the provisions of an Act.

(2a) To ensure compliance with the provisions of paragraph (2) the following shall be handled confidentially:

a) a case document containing the results of an operational analysis by the Financial Intelligence Unit to ensure compliance with the prohibition of disclosure as set out in the Act on the prevention and combating of money laundering and terrorism financing,

b) a case document containing personal data of the person concerned to protect his personal data until his interrogation if the confidential handling of the personal data of the person concerned was ordered in an administrative authority, civil contentious or other proceeding,

c) a case document containing a public interest report or a report submitted via the abuse report system to protect a public-interest whistleblower, or a whistleblower reporting an abuse, within the meaning of the Act on complaints, public-interest reports and rules relating to abuse reports until the interrogation of the public-interest whistleblower or the whistleblower reporting an abuse concerned.

(3) Unless otherwise provided by a law concerning a given category of data, a person participating in the criminal proceeding may process personal data and protected data accessed by him under the provisions of this Act only to the extent and for the period necessary for exercising his rights and performing his obligations specified in this Act.

(4) Before the proceeding is completed, personal data and protected data processed in the criminal proceeding may be erased only in compliance with the provisions of this Act.

(5) Personal data accessed in the criminal proceeding may be used for statistical purposes in a way that renders them unsuitable for identifying a person.

Processing personal data confidentially

Section 99 (1) The court, the prosecution service, and the investigating authority shall order, upon a motion, the name, birth name, place and date of birth, mother's name, nationality, ID number, home address, contact address, the place of actual residence, service address, and electronic contact details of the aggrieved party, the party with a pecuniary interest, the other interested party, and the aide to any such person, to be processed confidentially (hereinafter "confidential data processing").

(2) Only the aggrieved party, the party with a pecuniary interest, the other interested party, and the aide to any such person may file such a motion.

(3) The court, the prosecution service, and the investigating authority may also order confidential data processing *ex officio* to protect a person requiring special treatment.

(4) The court, the prosecution service, and the investigating authority may refrain from ordering confidential data processing regarding particular pieces of personal data, subject to the consent of the aggrieved party, the party with a pecuniary interest, and the other interested party.

(5) Only the proceeding court, prosecution office, and investigating authority may process personal data processed confidentially; such data may only be transferred to

a) the proceeding court, prosecution office, and investigating authority,

b) the victim support service to perform victim support tasks, and the probation service to conduct a mediation procedure or a restorative conflict management procedure, to the extent absolutely necessary for carrying out such tasks,

without the consent of the data subject.

(6) The court, the prosecution service, and the investigating authority shall ensure that no confidentially processed personal data may become known based on any other data of the proceeding.

(7) After confidential data processing is ordered, the proceeding court, the prosecution office, and the investigating authority

a) shall keep confidential any and all case documents and means of evidence that contain confidentially processed personal data of an aggrieved party, a party with a pecuniary interest, and an other interested party,

b) shall identify the aggrieved party, the party with a pecuniary interest, and the other interested party by inspecting documents suitable for identification, and

c) may not terminate the processing of data, including particular pieces of personal data, confidentially without the consent of the aggrieved party, the party with a pecuniary interest, and the other interested party.

(8) Inspection of parts that are not handled confidentially of a case document handled confidentially under paragraph (7) *a)* shall be ensured pursuant to the general rules, in particular, by way of providing an extract of the case document, which shall not contain any confidentially processed personal data.

(9) Confidential data processing shall not prevent the court, the prosecution service, and the investigating authority from indicating pieces of confidential personal data on case documents directly affected by a criminal procedural task and transferring such data without the data subject's consent, provided that doing so is indispensable for performing its criminal procedural tasks.

(10) When applying paragraph (9), such case documents, other than the indictment document, the decision suspending or terminating the proceeding, the conclusive decision and the case document under section 560 (3b), shall be handled confidentially under paragraph (7) *a)* after the criminal procedural task is completed.

Chapter XVI

INSPECTION AND CONFIDENTIAL HANDLING OF CASE DOCUMENTS

Inspection of the case documents

Section 100 (1) The case documents of the proceeding may be inspected by

a) the defendant and his defence counsel after the suspect interrogation,

b) the aggrieved party concerning the criminal offence affecting him, and

c) the other interested parties and the parties with pecuniary interests regarding matters affecting them

upon a motion to that effect.

(2) The right to inspect case documents provided for under paragraph (1) shall apply to all case documents pertaining to the proceeding, including documents obtained by the court, the prosecution service, and the investigating authority, documents filed by persons participating in the criminal proceeding, as well as other attached documents and means of evidence.

(3) The case documents of the proceeding shall not include case documents produced in relation to the supervision and control of the investigating authority by the prosecution service, in particular instructions from the prosecution service, investigation plans, draft decisions, and proposals.

(4) The court, the prosecution service and the investigating authority shall ensure the inspection of the case documents by

a) allowing the examination of such documents,

b) providing information or clarification regarding the content of the case document upon a specific motion or consent to that effect,

c) allowing the making of copies or recordings of such documents for own use,

d) serving such case documents or an extract or copy thereof produced by the court, the prosecution service and the investigating authority, or

e) other means specified by law.

(5) The right to inspect case documents shall not affect neither the specific provisions on confidentially handled case documents of the proceeding nor the duty to process data confidentially.

(6) Unless otherwise provided in this Act, having regard to the interests of investigations, the court, the prosecution service and the investigating authority may restrict the right to inspection or any method of inspection under paragraph (4) concerning case documents specified by them until the investigation is completed; a decision shall be adopted on any such restriction.

(6a) Unless otherwise provided in this Act, if the proceeding is conducted due to multiple acts, and there is at least one act with regard to which the suspicion is not yet communicated, the court, the prosecution service and the investigating authority may, adopting a decision to that effect, restrict the right to inspect case documents of the defendant and his defence counsel or restrict, without specifying the case documents, any of the means of inspection under paragraph (4).

(6b) Unless otherwise provided in this Act, if a significant number of documents were acquired in the proceeding and their inspection is not yet completed, the prosecution service and the investigating authority may restrict, adopting a decision to that effect, the right to inspect case documents or any means of inspection under paragraph (4) as regards the case documents specified by them until the completion of the inspection of the documents, but no longer than for three months following the acquisition of the documents.

(6c) If a means for inspecting the case document would be unlawful or, taking account of the nature of the case document, impossible, the court, the prosecution service and the investigating authority may, adopting a decision to that effect, restrict a means of inspection under paragraph (4) as regards the case documents specified by them.

(6d) Unless otherwise provided in this Act, if doing so is necessary for the protection of protected data, the court, the prosecution service and the investigating authority may restrict, adopting a decision to that effect, a means of inspection specified in paragraph (4) as regards the case documents specified by them.

(7) The right to inspect case documents and the method of inspection specified in paragraph (4) *d)*, may not be restricted

a) regarding case documents produced of a procedural act the requesting person attended or could have attended under the provisions of this Act, or

b) regarding expert opinions.

(8) No legal remedy shall lie against ensuring inspection in line with a corresponding motion.

(9) Unless otherwise provided in this Act, the court, the prosecution service and the investigating authority shall ensure the inspection of case documents, regarding which it did not introduce any inspection restriction, as specified under paragraph (2) within fifteen days after a motion to that effect is submitted.

Section 101 (1) To perform its tasks specified by law, the court, the prosecution service, a notary, a court bailiff, the state tax and customs authority, a probation officer, a preventive probation officer, the investigating authority, an administrative authority, a governmental audit organ, the National Authority for Data Protection and Freedom of Information, the police organ performing internal crime prevention and crime detection tasks, the counter-terrorism police organ, and the commander exercising employer's rights over a soldier defendant may inspect the case documents of the proceeding to the extent and for the period required for performing its tasks. Having regard to the interests of the investigation, the right to inspect case documents may be restricted until the investigation is completed. No legal remedy shall lie against the restriction of the right to inspect case documents.

(2) An organ established by an international treaty promulgated by an Act, or by a legal act of the European Union may inspect the case documents of the proceeding pursuant to paragraph (1) to the extent and for the period necessary for performing its tasks specified in the corresponding piece of legislation.

(3) The right to inspect case documents specified in paragraphs (1) and (2) shall be without prejudice to the specific provisions on confidentially handled case documents of the proceeding, the provisions on processing classified data, or the duty to process data confidentially.

Confidential handling of the case documents

Section 102 (1) The court, the prosecution service, or the investigating authority shall handle case documents specified in this Act confidentially and separately from other case documents.

(2) Unless otherwise provided in this Act or by the proceeding court or prosecution office, a case document handled confidentially may be inspected only by the court, the prosecution service, or the investigating authority.

(3) If a case document is handled confidentially, the court, the prosecution service, or the investigating authority shall

a) ensure that the case document handled confidentially, or its content, is not revealed in other case documents or data of the proceeding,

b) ensure the inspection of case documents in such a manner that prevents case documents handled confidentially from being revealed.

Chapter XVII

USE OF CLASSIFIED DATA

Condition of using classified data

Section 103 The rules of processing classified data shall not prevent the persons participating in the criminal proceeding from exercising their procedural rights or performing their obligations.

Use of classified data by the court and the prosecution service

Section 104 (1) In a criminal proceeding, the proceeding judge or prosecutor may use classified data produced and made available in or concerning the criminal proceeding without needing any personnel security clearance or confidentiality statement.

(2) When using classified data, the proceeding judge or prosecutor may process classified data to the extent strictly necessary to perform his tasks specified in this Act as specified below:

a) to conduct administrative affairs concerning the classified data, to process the classified data,

b) to conduct all activities concerning the registration of classified data,

c) to repeat classification,

d) to possess the classified data,

e) to copy and reproduce the classified data,

f) to produce extracts,

g) to translate the classified data,

h) to disclose the classified data within the organ,

i) to transfer and transport the classified data outside the organ.

(3) The head of the prosecutorial organ or the prosecutor designated by him in writing and the head of the court or the court leader specified by him in writing may grant the proceeding judge or prosecutor further authorisation, in addition to that provided for under paragraph (2).

Use of classified data by persons participating in the criminal proceeding

Section 105 (1) A person participating in a criminal proceeding may use classified data contained in a case document that may be inspected by him under this Act without needing personnel security clearance or confidentiality statement.

(2) The proceeding court, prosecution office, and investigating authority shall advise the person authorised to use classified data under paragraph (1) of his obligation to retain the classified data and of the fact that the misuse of classified data is punishable under the Criminal Code. The advice shall be recorded in the minutes.

(3) When using classified data, the person participating in the criminal proceeding shall have the right to the following in the course of processing classified data:

a) to possess the classified data,

b) to technically process the classified data with a view to exercising his rights and performing his obligations and tasks.

(4) The entity having the right to use classified data in accordance with section 104 may grant a person participating in a criminal proceeding further rights, in addition to those provided for under paragraph (3).

Granting access to classified data

Section 106 (1) When serving, or ensuring the inspection under section 105, of a case document containing classified data, the court, the prosecution service, or the investigating authority shall verify that the person concerned meets the requirements of personal, physical, administrative, and electronic security as specified in the law on the protection of classified data.

(2) The court, the prosecution service, or the investigating authority may grant access to a case document containing classified data in a room dedicated to confidential administration of documents or, during a trial, public session, or session held in the case, at the official premises of the court if

a) the person concerned declares that he does not meet the requirements of personal, physical, administrative, and electronic security,

b) the person concerned does not make a declaration, or

c) the court, the prosecution service, or the investigating authority establishes that the person concerned does not meet the requirements of personal, physical, administrative, and electronic security.

(3) When serving a case document containing classified data, the court, the prosecution service, or the investigating authority shall grant access by applying paragraph (2). If access may be granted only at the court, the prosecution office, or the investigating authority processing the classified data under paragraph (2) *a)* to *c)*, an extract of the case document, which does not contain any classified data, shall be served on the addressee.

(4) The verification of compliance with personal, physical, administrative, and electronic security requirements, as provided for under paragraph (1), may be dispensed with regarding an organ processing classified data as defined in the law on the protection of classified data.

Chapter XVIII

PROVIDING INFORMATION ON A CRIMINAL PROCEEDING

General rules on informing the public

Section 107 (1) The court, the prosecution service, and the investigating authority may inform the public about the criminal proceeding.

(2) Before the completion of the investigation, information may be provided by the prosecution service or an authorised member of the investigating authority; in the course of the court procedure, including any court proceeding conducted before the indictment, information may be provided by the prosecution service or a person authorised under the Act on the legal status and remuneration of judges.

(3) The person requesting information, including any permission to make an image, sound or audio-visual recording, from the court, prosecution service, or investigating authority to inform the public shall file a motion to that effect; the motion shall indicate the name in case of a natural person, or designation in case of an entity other than a natural person, and their contact details, as well as the intended means of informing the public, in particular, the identification of the media content provider or other information society service to be used.

Informing the public about the trial

Section 108 (1) All persons shall have the right to be informed about trials by way of the media system.

(2) For the purpose specified in paragraph (1), an image, sound, or audio-visual recording of the trial may be made with the permission of the single judge or the chair of a court panel; a person attending a trial, other than a proceeding member of the court, the keeper of minutes, a prosecutor, and a defence counsel, may not be included in such a recording without his consent.

(3) A limitation regarding the size of the audience shall not result in a violation of the public's right to information.

Restrictions on informing the public

Section 109 (1) The court, the prosecution service, and the investigating authority shall refuse to provide information or deny permission to make an image, sound, or audio-visual recording if

a) it would directly endanger the life, physical integrity, health, or right to privacy of a person participating in a criminal proceeding, including in particular a person requiring special treatment,

b) doing so is indispensable for protecting the personal data of a person participating in the criminal proceeding, including in particular a person requiring special treatment,

c) doing so is indispensable for a person participating in the criminal proceeding, including in particular a person requiring special treatment, to exercise his rights and perform his obligations under this Act without any influence or intimidation,

d) doing so is indispensable for protecting any classified data or, in case of a closed trial, the interests justifying the exclusion of the public from the trial,

e) failure to do so would interfere with either the effectiveness of the criminal proceeding or an individual procedural act, or the continuity or uninterrupted performance of the procedural act.

(2) The court, the prosecution service, and the investigating authority may refuse to provide information or deny permission to make an image, sound, or audio-visual recording only for reasons specified in paragraph (1) and to the extent and period required to achieve or ensure the goals specified there.

(3) The court may withdraw the permission granted under section 108 (2) by applying paragraphs (1) and (2) accordingly.

(4) The court, the prosecution service, and the investigating authority may, without giving any response, refrain from assessing a request for information or permission to make an image, sound, or audio-visual recording, if the person submitting the request failed to perform his obligation set out in section 107 (3).

Other information

Section 110 (1) A person, other than the persons specified by the provisions on inspecting case documents and informing the public, may be provided with information regarding the proceeding if he has a legal interest in the completion or result of the proceeding.

(2) The head of the prosecution office, before the indictment, or the president of the proceeding court, after the indictment, shall permit the inspection of the case documents or the provision of requested information after the corresponding legal interest is certified.

Signalisation

Section 111 (1) If the court, the prosecution service, or the investigating authority, in the course of its proceeding, establishes any fact or detects any circumstance that serves as a ground for initiating or conducting *ex officio* any other court, administrative, or other proceeding, it shall notify, to that end, the organ authorised to initiate or conduct such a proceeding. Of a soldier becoming a suspect, his military superior shall be notified.

(2) The court, the prosecution service and the investigating authority may provide information to any natural person, legal person and organisation or organ without legal personality about data relating to the commission of the criminal offence on the basis of which a measure required for remedying the violation that occurred can be taken or a further violation can be prevented.

Chapter XIX

ENSURING ATTENDANCE AT THE PROCEDURAL ACT

Summons and notifications

Section 112 (1) The court, the prosecution service and the investigating authority shall summon a person who is obliged to attend a procedural act, and notify a person who is not obliged, but permitted by an Act, to attend.

(2) A person summoned shall be obliged to appear before the court, prosecution office, or investigating authority that issued the summons.

The method of issuing a summons or notification

Section 113 (1) Summonses and notifications shall be issued by service, by electronic means providing audio connection only or, when the person concerned appears before the court, the prosecution office or the investigating authority, by oral communication.

(2) The paper-based summons or notification shall be served in a sealed document. The name of the notified persons shall not be indicated in a public notice.

(2a) If the summons and the notification are served by simplified electronic means, the court, the prosecution service and the investigating authority shall indicate on the summons and the notification its contact details for electronic or voice communication through which the summoned or notified person can verify the authenticity of the summons and the notification.

(3) The summons and the notification shall be served in a way that it is received by the addressee at least five days before the date of the procedural act. The summons and the notification may also be issued during the investigation, if justified by the urgency of the procedural act, in a way that it is received by the addressee twenty-four hours before the time of the procedural act.

(4) The summons or notification may also be issued to the defence counsel regarding a procedural act affecting the defendant, if justified by the urgency of a procedural act, in a way that the defence counsel receives it two hours before the time of the procedural act.

(5) The summons may also be issued with an interval that is shorter than the interval specified in paragraph (3) or (4) subject to the consent of the summoned person; the procedural act may be commenced within the interval specified in paragraph (3) or (4) subject to the consent of the notified person.

The content of the summons and the notification

Section 114 (1) The summons or the notification shall include

a) the name of the court, prosecution office, or investigating authority that issued the summons or notification, and the case number,

b) the place and time at, and the capacity in which, the summoned person is to appear,

c) the place and time at, and the capacity in which, the notified person may appear,

d) an advice about the consequences of absence.

(2) The summoned person may be requested to bring any of his notes or other items, in addition to his documents concerning the case, that may be used as evidence.

Section 115 (1) If the addressee is detained, the court, the prosecution service and the investigating authority shall also arrange for an escort for the addressee at the time of issuing the summons or notification.

(2) When summoning a minor, an adult person providing care for the summoned minor shall be notified and requested to ensure that the minor appears. If the minor has not attained the age of fourteen years, he shall be summoned or notified through an adult person providing care for him. The summons and notification to a minor shall also be communicated to his statutory representative.

(3) Except for a minor, a person specified in section 69 (5*) a)* or *b)* shall be summoned or notified through his statutory representative. The summons and the notification of a person who does not have full capacity to act under the rules of civil law shall be communicated also to his statutory representative.

The consequences of failing to appear upon a summons or a notification

Section 116 (1) If the summoned person fails to appear despite being summoned and fails to provide an excuse for his absence in advance immediately after becoming aware of an obstacle or, if doing so is not possible any more, fails to provide a well-grounded reason for his absence immediately after the obstacle is removed,

a) the forced attendance, or during the investigation, the compulsory attendance, of the defendant or the person reasonably suspected of having committed the criminal offence may be ordered,

b) the forced attendance of the witness may be ordered, and he may be subject to a disciplinary fine,

c) an expert or another person participating in the criminal proceeding may be subject to a disciplinary fine,

and the above persons shall be obliged to reimburse all criminal costs caused.

(2) If the person summoned under section 115 (2) or (3) fails to appear and the adult person providing care for the minor, or the statutory representative of the person summoned under section 115 (3), fails to demonstrate that he is not at fault concerning the failure to appear by the summoned person, then the adult person providing care for the minor, or the statutory representative of the person summoned under section 115 (3), may be subject to a disciplinary fine, and he shall be obliged to reimburse all criminal costs caused by the failure to appear.

(2a) Paragraph (1) *b)* and *c)* shall not apply if the summons was served on the witness, the expert or, with the exception of the aggrieved party, any other person participating in the criminal proceeding in accordance with section 132 (2) *c)*.

(3) If the defence counsel fails to appear despite being summoned and fails to arrange for a substitute, he may be subject to a disciplinary fine, and he shall be obliged to reimburse all criminal costs caused.

(4) The legal consequence provided for under paragraph (3) shall not be applied, if the defence counsel provides an excuse immediately after becoming aware of the obstacle or, if doing so is not possible, he provides a well-grounded reason for his absence immediately after the obstacle is removed.

(5) If the summoned person appears in a condition rendering him unfit for interrogation or unable to perform his procedural obligations due to his own fault, or if he leaves the place of the procedural act without permission, to perform his procedural obligations,

a) the forced attendance, or during the investigation, the compulsory attendance, of the defendant or the person reasonably suspected of having committed the criminal offence may be ordered,

b) the witness may be subject to a disciplinary fine or his forced attendance may be ordered,

c) the defence counsel, expert or another person participating in the criminal proceeding may be subject to a disciplinary fine,

and the above persons shall be obliged to reimburse all criminal costs caused.

(6) If the person was summoned by electronic means providing audio connection only, the provisions laid down in paragraphs (1) to (4) may be applied if the court, the prosecution service, or the investigating authority recorded the summons in a form suitable for confirming the authenticity of the recording retrospectively.

(7) If the prosecutor fails to appear despite being notified by the court, appears in a condition rendering him unable to perform his procedural obligations, or he leaves the place of the procedural act without permission, the court shall inform the head of the prosecution office accordingly.

Compulsory attendance

Section 117 (1) Compulsory attendance means temporarily depriving the defendant, or the person reasonably suspected of having committed the criminal offence, of his personal freedom to escort that person to the court, the prosecution office or the investigating authority for the performance of a procedural act, and to ensure his attendance at that procedural act.

(2) To perform a procedural act, the prosecution service and the investigating authority may order the compulsory attendance of the defendant, or the person reasonably suspected of having committed the criminal offence, if the conditions of issuing a summons are met, but ensuring the appearance of the person concerned by way of a summons would be impractical in light of the interests of the proceeding. In the event of compulsory attendance, the provisions laid down in section 116 (5) shall apply accordingly.

(3) Compulsory attendance shall be performed by the police organ established to carry out general policing tasks or, during its own investigations, by the National Tax and Customs Administration in accordance with an Act. The organ enforcing compulsory attendance may apply measures and use coercive means as provided for under an Act to enforce compulsory attendance.

(4) Compulsory attendance of a soldier may also be enforced through his military superior.

(5) The costs of compulsory attendance shall not constitute criminal costs and shall be borne by the State.

Forced attendance

Section 118 (1) Forced attendance means temporarily depriving a person who failed to comply with a summons of his personal freedom to escort that person to the court, the prosecution office or the investigating authority and to ensure his attendance at a procedural act.

(2) The court, the prosecution service, and the investigating authority may order the forced attendance of a person by adopting a decision in a case specified in this Act following the person's failure to comply with a summons. The court, the prosecution service, and the investigating authority shall serve a decision ordering forced attendance on the person specified in the decision through the organ enforcing the forced attendance.

(3) The police organ established to carry out general policing tasks shall enforce forced attendance. The National Tax and Customs Administration may also enforce forced attendance in its own investigations. For forced attendance, the police officer or the proceeding member of the National Tax and Customs Administration may also apply measures and use coercive means as provided for under an Act.

(4) Forced attendance shall be enforced between the sixth and twenty-second hours of the day, if possible.

(5) The court, the prosecution service, and the investigating authority may order the forced attendance of a person by way of supervising the departure of that person if it is reasonable to assume that the purpose of forced attendance may also be achieved this way.

(6) If it is reasonable to assume that the forced attendance of a summoned person may be enforced successfully within a reasonable time on the set due date, the court, the prosecution service and the investigating authority may also order to immediately enforce the forced attendance of the defendant, who failed to appear despite being duly summoned. In such an event, the court, the prosecution service, and the investigating authority may also draw up a written order for forced attendance retrospectively on the set due date.

(7) If the enforcement of the forced attendance is unsuccessful, the decision ordering forced attendance need not be served. If the enforcement of forced attendance is unsuccessful, the order for such forced attendance may be challenged by way of seeking legal remedy against the decision ordering the reimbursement of the costs of forced attendance.

(8) The forced attendance of a soldier may also be enforced through his military superior.

(9) The costs of forced attendance shall not constitute criminal costs. The person specified in the decision ordering forced attendance shall be obliged to reimburse the costs of forced attendance. Any legal remedy sought against such a decision shall have suspensory effect.

(10) If the enforcement of forced attendance is successful, only the cost of forced attendance may be challenged by way of seeking legal remedy against the decision ordering the reimbursement of the costs of forced attendance.

(11) If the enforcement of forced attendance is unsuccessful, the court, prosecution office, and the investigating authority which ordered the forced attendance may, upon a motion and in cases deserving special consideration, relieve the obliged person from reimbursing the costs of forced attendance; in such a situation, the State shall bear the costs of forced attendance.

Arrest warrant

Section 119 (1) When a criminal offence is punishable by imprisonment, the court, the prosecution service and the investigating authority may issue an arrest warrant, by adopting a decision, to take the defendant, or the person reasonably suspected of having committed the criminal offence into custody, provided that

a) the place of actual residence of the defendant or the person reasonably suspected of having committed a criminal offence is unknown, and his apprehension and custody is justified by the goals to be achieved by coercive measures affecting personal freedom subject to judicial permission,

b) the place of actual residence of the defendant or the person reasonably suspected of having committed a criminal offence is known, but his apprehension and custody is justified by the goals to be achieved by coercive measures affecting personal freedom subject to judicial permission,

c) the defendant or the person reasonably suspected of having committed a criminal offence is in detention in another country, the conditions for issuing an international or European arrest warrant are met, and surrendering or extraditing the defendant or the person reasonably suspected of having committed a criminal offence to Hungary is justified.

(2) If an arrest warrant is issued against a person and that person is apprehended, or surrendered or extradited to Hungary, his custody shall be ordered, and he shall be escorted

a) to the prosecution office or the investigating authority that issued, or is indicated in, the arrest warrant within twenty-four hours,

b) to the court that issued, or is indicated in, the arrest warrant within seventy-two hours,

or, if the relevant conditions are met, his attendance shall be ensured by using a telecommunication device.

(3) If an authority or public officer becomes aware of the whereabouts of a person against whom an arrest warrant was issued, he shall inform the issuing court, prosecution office, or investigating authority.

(4) No legal remedy shall lie against the issuance of an arrest warrant. If the defendant regarding whom an arrest warrant was issued, or the person reasonably suspected of having committed a criminal offence, appears voluntarily before the court, prosecution office, or investigating authority that issued the arrest warrant, the arrest warrant shall be withdrawn, and an order for taking that person into custody shall be issued, provided that the conditions laid down in paragraph (1) *b)* are met or any other reason can be established to order a coercive measure affecting personal freedom subject to judicial permission.

(5) If the defendant or the person reasonably suspected of having committed the criminal offence is apprehended based on the arrest warrant, all costs incurring after his apprehension with regard to bringing him before the court, the prosecution office, or the investigating authority shall constitute criminal cost.

(6) The arrest warrant shall be withdrawn without delay if

a) the grounds for ordering it have ceased, or

b) the proceeding has been terminated or concluded with final and binding effect.

(7) The court, prosecution office, or investigating authority proceeding in the case shall decide on withdrawing or amending an arrest warrant. Before the indictment, the arrest warrant issued by the investigating authority may also be withdrawn or amended by the prosecution service.

(8) If the court, prosecution office, or investigating authority that issued the arrest warrant is not the same as the one proceeding, or if there is a change in the proceeding court, prosecution office, or investigating authority while the conditions for the arrest warrant are still met, the proceeding court, prosecution office or investigating authority shall not withdraw the arrest warrant, but take action to have the change entered into the wanted notice register.

(9) No legal remedy shall lie against the withdrawal or amendment of the arrest warrant.

(10) In a proceeding specified by an Act and if the relevant statutory conditions are met, the proceeding court may issue an international or European arrest warrant when issuing or following the issuance of, an arrest warrant.

Chapter XX

USE OF A TELECOMMUNICATION DEVICE

The concept of using a telecommunication device

Section 120 (1) The attendance of a person obliged or authorised under this Act to attend a procedural act may also be ensured by using a telecommunication device (hereinafter jointly "using a telecommunication device").

(2) When using a telecommunication device, direct and bidirectional connection between the set location of the procedural act or the location specified by the prosecution service or investigating authority, and the other location (hereinafter "separate location") shall be ensured by transmitting

a) an audio-visual recording, or

b) a continuous sound recording.

(3) Paragraph (2) *b)* may apply only to

a) interrogating a witness,

b) ensuring the attendance of an interpreter, or

c) interviewing an expert or interrogating a defendant during the investigation.

Ordering the use of a telecommunication device

Section 121 (1) The court, the prosecution service, or the investigating authority may order using a telecommunication device *ex officio* or upon a motion filed by the person obliged or authorised to attend the procedural act.

(2) No legal remedy shall lie against the decision dismissing a motion for using or, unless an exemption is made in this Act, the decision ordering the use of a telecommunication device.

(3) The court, the prosecution service and the investigating authority shall communicate its decision ordering the use of a telecommunication device without delay if such use is ordered on the basis of a motion, or in any other case, concurrently with the corresponding summons or notification.

Section 122 (1) With the exception specified in paragraph (2), if the technical requirements for using a telecommunication device are met, the prosecution service and the investigating authority shall not refrain from using a telecommunication device

a) at a procedural act requiring the attendance of the aggrieved party requiring special treatment,

b) at a procedural act requiring the attendance of a witness or defendant, who is detained, under personal protection, or in a Protection Programme.

(2) Ordering the use of a telecommunication device may be dispensed with if

a) the goal to be achieved by using a telecommunication device may also be achieved by other means,

b) having the aggrieved party, the witness, or the defendant appear in person is indispensable due to the nature, or for the success, of the procedural act.

(3) If the technical requirements for using a telecommunication device are met, the court may refrain from the use of a telecommunication device only in particularly justified cases

a) at a procedural act requiring the attendance of the aggrieved party requiring special treatment,

b) at a procedural act requiring the attendance of a witness, or defendant, who is detained, under personal protection, or in a Protection Programme, or

c) at a session to be held for extending or maintaining pre-trial detention.

(4) Concerning protecting an aggrieved party or witness requiring special treatment, the court may refrain from the use of a telecommunication device if the aggrieved party or witness is afforded protection by other means.

(5) Using a telecommunication device may only be ordered with the consent of the defendant, to ensure the attendance of the defendant

a) at a session held concerning ordering a coercive measure affecting personal freedom subject to judicial permission,

b) at a preparatory session.

(6) The accused and the defence counsel may, within three days after the corresponding decision is communicated, file a motion requesting the court to ensure the presence of the accused in person at the location set for the trial. The court may dismiss the motion if

a) ensuring the presence in person of the accused is prohibited under this Act,

b) the safety of the accused or another person may not be guaranteed without using a telecommunication device.

Persons present during the use of a telecommunication device

Section 123 (1) When using a telecommunication device, only the following persons may be present at the separate location:

a) the person whose attendance is ensured by using the telecommunication device,

b) the aides to, and defence counsels of, the person specified in point *a)*,

c) the members of the investigating authority, the prosecutors, the junior prosecutors, the trainee prosecutors, the judges, the junior judges, and the trainee judges, the administrative court officers,

d) if the person concerned is detained, the employees of the institution enforcing detention who are authorised to verify the identity of the person detained,

e) if the person concerned is detained, the persons guarding him,

f) the experts, the consultants,

g) the personnel operating the telecommunication device.

(2) At least one person referred to in paragraph (1) *c)* or *d)* or specified by law shall be present at the separate location.

Procedural rules concerning the use of a telecommunication device

Section 124 (1) When using a telecommunication device, the proceeding court, prosecution office, or investigating authority shall

a) establish the address of the separate location, and the identity and personal data of the persons present with the assistance of a person specified in section 123 (2),

b) verify that no unauthorised person is present at the separate location by the appropriate use of the technical equipment in the case described in section 120 (2) *a)*, or, in any other case, with the assistance of a person specified in section 123 (2).

(2) The use of the telecommunication device may not interfere with the exercise of the right of a person participating in a criminal proceeding to ask questions, make observations, and file motions, or of any other procedural right.

(3) If the attendance of a defendant or a person reasonably suspected of having committed the criminal offence is ensured by using a telecommunication device, and the defendant or the person reasonably suspected of having committed the criminal offence is not at the same location as his defence counsel, discussions between the defendant or the person reasonably suspected of having committed the criminal offence and his defence counsel shall be enabled by electronic means providing at least a sound connection.

(4) When using a telecommunication device, it shall be ensured that the persons attending the procedural act can at least see and hear in a case described in section 120 (2) *a)*, or hear in a case described in section 120 (2) *b)* the persons present at the separate location. Persons present at a separate location shall be enabled to follow the procedural act in a meaningful manner.

(5) When using a telecommunication device, the proceeding court, prosecution office, or investigating authority may order, to facilitate the exercise of his rights and the performance of his obligations and to ensure that he is treated carefully and is protected that the person requiring special treatment is not to see or hear the defendant present at the other location.

Keeping minutes when using a telecommunication device

Section 125 (1) The following shall be recorded in the minutes taken of the procedural act applying the provisions pertaining to the content of the minutes accordingly:

a) the fact and manner of using the telecommunication device,

b) the designation of the person whose attendance is ensured by using the telecommunication device,

c) the address of the separate location,

d) the name of other persons present at the separate location and their capacity in which they attend the procedural act.

(2) When using a telecommunication device, the recordings shall be filed unless an exemption is made by law.

Protection of identity during the use of a telecommunication device

Section 126 (1) To protect the interests of a person requiring special treatment, the court, the prosecution service and the investigating authority may order all personally identifying characteristics to be distorted by technical means when using a telecommunication device.

Simplified telecommunication attendance

Section 126/A (1) In order to ensure attendance via telecommunication means, the court, the prosecution service and the investigating authority may order a person obliged or entitled to attend a procedural act to use the means available to him (hereinafter "simplified telecommunication attendance"). In the case of simplified telecommunication attendance, the provisions of sections 120 to 126 shall apply subject to the derogations laid down in this subtitle.

(2) In the case of simplified telecommunication attendance, the direct and bidirectional nature of the connection between the set place, or the place specified by the prosecution service and the investigating authority, of the procedural act and the separate location shall be ensured by the transmission of an audio-visual recording.

(3) Simplified telecommunication attendance may be ordered only with consent from the person obliged or entitled to attend the procedural act.

Section 126/B (1) A procedural act may also be carried out by means of simplified telecommunication attendance if only the person referred to under section 123 (1) *a)* is present at the separate location.

(2) In the case of simplified telecommunication attendance, the court, the prosecution service and the investigating authority shall verify the identity of the person at the separate location by validating his natural identification data or by other means suitable for determining the identity of the person concerned.

(3) The procedural act shall not be continued if

a) during the procedural act, reasonable doubt arises concerning

aa) the identity,

ab) the voluntary nature of the participation at the procedural act,

ac) the lack of undue influence as regards a testimony or statement

of the person concerned, or

b) a person whose attendance is prohibited by law is present at the separate location.

(4) In the case of simplified telecommunication attendance, the person in charge of the procedural act may determine what act should the person referred to under section 123 (1) *a)* carry out with the means available to him for checking whether a condition specified in paragraph (3) is met. If the acts are refused or carried out in a way that prevents them from being used for checking, the procedural act shall not be continued.

Section 126/C (1) The provisions of this subtitle shall apply to ensuring the simplified telecommunication attendance of a defence counsel subject to the derogations laid down in this section.

(2) The court, the prosecution service and the investigating authority may order ensuring the attendance of a defence counsel by means of simplified telecommunication attendance at the motion of the defence counsel.

(3) The court, the prosecution service and the investigating authority may dismiss a motion by the defence counsel to ensure his attendance by simplified telecommunication attendance only in particularly justified cases if the seat of the defence counsel is in a county other than the place of the procedural act and the technical conditions for ensuring telecommunication attendance are met.

Using a telecommunication device to ensure the attendance of a prosecutor or a member of the investigating authority

Section 126/D (1) The provisions of sections 120 to 126 shall apply to ensuring the attendance of a prosecutor or a member of the investigating authority at a procedural act via a telecommunication device, subject to the derogations laid down in this subtitle.

(2) Upon a motion by the prosecution service or the investigating authority, attendance shall be ensured using a device available to the prosecution service or the investigating authority, provided that the technical conditions are met for ensuring telecommunication attendance in such a manner.

(3) The attendance at a procedural act of a prosecutor or a member of the investigating authority by telecommunication means shall be ensured by the transmission of a continuous audio-visual recording.

(4) If the attendance of a prosecutor or a member of the investigating authority at a procedural act is ensured via a telecommunication device, the prosecutor or the member of the investigating authority concerned shall identify himself and cooperate in verifying the identity of persons at a separate location.

(5) The court may dismiss a motion by the prosecution service to ensure the attendance of the prosecutor at a procedural act via a telecommunication device only in particularly justified cases if the place of service of the prosecutor is in a county other than the place of the court proceeding and the technical conditions for ensuring telecommunication attendance are met.

(6) The court may order the use of a telecommunication device to ensure the attendance of the prosecutor at a procedural act upon a motion by the prosecution service.

Chapter XXI

MEASURES FOR MAINTAINING THE ORDER OF THE PROCEEDING

The disciplinary fine

Section 127 (1) To maintain the order of the proceeding or if a procedural obligation is violated, a disciplinary fine may be imposed in cases specified in this Act.

(2) A disciplinary fine may amount from

a) twenty thousand forints to one million five hundred thousand forints when imposed on an entity other than a natural person,

b) twenty thousand forints to one million forints when imposed on a defence counsel, legal representative, interpreter, expert, or expert organ or body,

c) five thousand forints to one million forints in any other case.

(3) When determining the amount of the disciplinary fine, the gravity and consequences of the act serving as the ground for the disciplinary fine, in particular its contribution to the protraction of the proceeding, and its repetitive nature, shall be taken into account.

(4) If an act serving as the ground for the disciplinary fine protracts the criminal proceeding by any period over one month, a disciplinary fine shall be imposed.

(5) A disciplinary fine may be imposed by the court, the prosecution service, or the investigating authority.

(6) The enforcement of the disciplinary fine shall become time-barred if one year passes after the day when

a) the non-conclusive order reaches administrative finality, or

b) the time limit for filing a complaint against the decision adopted by the prosecution service or the investigating authority passes without any complaint filed, or the prosecution service assesses the complaint filed in due time without repealing the provision on imposing the disciplinary fine.

(7) Any moratorium granted regarding the payment of a disciplinary fine, or the period of payment in instalments, shall not be calculated into the limitation period.

(8) The limitation period shall be interrupted when any measure is taken for enforcing any unpaid disciplinary fine. The limitation period shall start again on the day of interruption.

(9) The disciplinary fine may not be enforced if two years have passed since the day specified in paragraph (6).

(10) Upon an application, a payment moratorium or payment in instalments may be granted for the payment of the disciplinary fine, under the conditions and within the limits specified in section 42 (1) of the Sentence Enforcement Act. An application for a payment moratorium or for payment in instalments shall not have suspensory effect. The application shall be decided on by the court, the prosecution office or the investigating authority that imposed the disciplinary fine. No legal remedy shall lie against the decision on granting payment moratorium or payment in instalments.

Section 128 (1) Seeking legal remedy against a disciplinary fine shall have suspensory effect.

(2) Except for a disciplinary fine imposed under section 18 (2) or 28 (5), any unpaid disciplinary fine imposed on a natural person shall be converted by the court to confinement.

(3) When converting a disciplinary fine to confinement, five thousand forints shall be converted into one day of confinement. The period of the confinement replacing a disciplinary fine may not exceed one hundred days. The person concerned shall be advised of these provisions in the decision imposing the disciplinary fine.

(4) No appeal shall lie against the decision converting a disciplinary fine into confinement.

(5) The conversion of a disciplinary fine imposed by the prosecution service and the investigating authority shall be decided on by the investigating judge before the indictment, or by the court after the indictment.

(6) Action for the enforcement of a disciplinary fine or a confinement replacing a disciplinary fine shall be taken by the court before which the corresponding decision reaches administrative finality. Action for the enforcement of a disciplinary fine imposed by the prosecution service or the investigating authority shall be taken by the prosecution office or investigating authority that imposed the disciplinary fine.

Use of physical force

Section 129 (1) If it is reasonable to assume that the use of physical force is required to secure or carry out a procedural act, the court, prosecution office, or investigating authority that ordered the procedural act may order such use of physical force. The court, the prosecution office, or the investigating authority carrying out a procedural or evidentiary act may also order the use of physical force. If a person subject to the use of physical force files a motion for incorporating the order in a decision within three days after the use of physical force, the order shall be drawn up as a decision subsequently, and this decision shall be communicated to the person who filed the motion.

(2) Physical force may be used against the defendant, the person reasonably suspected of having committed the criminal offence, the aggrieved party, the witness, or any other person interfering with a procedural act.

(3) In order to use physical force, the court and the prosecution service shall make use of the assistance of a member of the professional personnel of the police or an employee of the National Tax and Customs Administration occupying an excise officer position.

(4) In exceptional cases, a member of the professional personnel of the prison service attending the procedural act may also be used to use physical force, but this may not include using physical force for evidentiary purposes.

Chapter XXII

SERVICE OF DOCUMENTS

Methods of serving documents

Section 130 (1) The court, the prosecution service and the investigating authority shall serve a case document on an addressee

a) by mail,

b) by means of electronic communication as defined in the Digital Citizenship Act,

c) in person,

d) by public notice,

e) through a process server of the court, the prosecution service, or the investigating authority, or

f) by simplified electronic means.

(2) The addressee may collect a case document addressed to him at the premises of the sender after verifying his identity.

Section 131 (1) If the aggrieved party, the party with a pecuniary interest, and the other interested party has an authorised representative, the court, the prosecution service and the investigating authority shall serve its case documents through the authorised representative unless otherwise provided in the authorisation.

(2) If the aggrieved party, the party with a pecuniary interest, and the other interested party does not have an authorised representative in a case described in section 69 (5) *a)* or *b)*, the court, the prosecution service and the investigating authority shall serve its case documents on the statutory representative. If the aggrieved party, the party with a pecuniary interest, and the other interested party has the capacity to act in the criminal proceeding under section 69, but his capacity to act is limited under the rules of civil law, the court, the prosecution service and the investigating authority shall serve its case documents on the statutory representative as well.

(3) Paragraphs (1) and (2) shall not apply to a summons.

(4) If a person participating in the criminal proceeding has an agent for service of process, the court, the prosecution service and the investigating authority shall serve its case documents through the agent.

(5) If the aggrieved party, the party with a pecuniary interest, and the other interested party is an entity other than a natural person without an authorised representative, the court, the prosecution service and the investigating authority shall serve its case documents to the seat or, in the absence of a seat, on the statutory representative of the aggrieved party, party with a pecuniary interest, and other interested party. If the aggrieved party, party with a pecuniary interest, and other interested party is an entity other than a natural person and service to its seat is unsuccessful, service to its statutory representative shall also be attempted.

(6) If the addressee is detained, case documents shall be served on him through the commander of the institution enforcing detention.

(7) If the addressee is a soldier, case documents may also be served on him through his military superior.

Service by mail and by simplified electronic means; fiction of service

Section 132 (1) A case document to be served by mail shall be considered duly served if it is received by the addressee or in place of the addressee, another person authorised by law to receive such a document.

(1a) A case document to be served by mail shall be considered unduly served if, in place of the addressee, it is accepted by another person authorised by law to receive such a document

a) whose interests are clearly in conflict with those of the addressee or

b) who was specified by the addressee as a person with opposing interest before the service.

(2) The case document to be served by mail shall be considered duly served

a) on the day when service is attempted, if the addressee, or another person authorised by law to receive such a document, refuses to accept the case document,

b) on the fifth working day following the second service attempt, if service failed because the case document is marked and returned as “nem kereste” (“unclaimed”) as the addressee, or in place of the addressee, another person authorised by law to receive such a document, did not accept the case document, or

c) on the fifth working day following the service attempt if service failed because the case document is returned from the contact address, place of actual residence or home address of the addressee marked as "a cím nem azonosítható" ("address not identifiable"), "címzett ismeretlen" ("addressee unknown"), "elköltözött" ("moved to another address") or "kézbesítés akadályozott" ("obstructed delivery").

(3) Paragraph (2) *c)* shall not apply to a case document to be served on the defendant.

(4) If the document to be served is a conclusive decision, indictment document or decision terminating the proceeding, and the court, the prosecution service or the investigating authority established the onset of the legal effects of fictitious service under paragraph (2), it shall notify the addressee accordingly via standard mail and within eight days and, at the same time, provide information about the provisions on service complaint and attach the case documents regarding which it established the onset of the legal effects of fictitious service.

(5) If the addressee notified the court, the prosecution service, or the investigating authority of his electronic mail address, a notice shall also be sent to the provided address of the addressee regarding the onset of the legal effects of fictitious service that is based on service by mail.

(6) Where the communication is paper-based, the court, the prosecution service and the investigating authority shall serve, if using simplified electronic means, the case document to the electronic mail address or to any other electronic contract address of the addressee. When using service by simplified electronic means, the court, the prosecution service and the investigating authority shall provide its contact details for electronic or voice communication through which the addressee can verify the authenticity of the case document.

(7) A case document shall be considered duly served by simplified electronic means if the addressee makes a verifiable statement, including also a recorded oral statement made through electronic means ensuring only voice communication, that the case document was served on the addressee. The case document shall be considered served on the day when the statement is made.

(8) Service by simplified electronic means shall not be considered communication by electronic means.

(9) Paragraph (6) may be applied to also a natural person communicating by electronic means if he submits a relevant motion or it is reasonable to assume that electronic communication would be disproportionately difficult for him. If the addressee does not make a statement on service under section (7) following service by simplified electronic means, the court, the prosecution service and the investigation authority shall serve the case document on him by means of electronic communication from then on.

Service complaint

Section 133 (1) The addressee and the representative or the defence counsel of the addressee may file a complaint with the court, the prosecution office or the investigating authority the proceeding of which involved the service of the document on the grounds specified in paragraph (3), within fifteen days of becoming aware

a) of the fact that the legal effects of fictitious service have become applicable, if the document is deemed served on the basis of a fiction of service,

b) of the service of a case document considered served without applying a fiction of service.

(2) No complaint may be filed beyond three months after the onset of the legal effects of fictitious service or after the day of service. No application for excuse shall be accepted for failing to meet this time limit.

(3) The court, the prosecution service or the investigating authority shall uphold the complaint if the addressee could not receive the case document because

a) it was served in violation of the laws pertaining to the service of mail, or unduly for any other reason, or

b) he was unable to receive the document for a reason other than those specified in point *a)* without any fault of his own.

(4) Concerning service on the legal representative and the defence counsel, the service complaint may be filed under paragraph (3) *a)*.

(5) The complaint against the service for the ground specified in paragraph (3) *b)* may be filed by a natural person only.

Section 134 (1) The facts and circumstances confirming the irregularity of the service or, in the cases described in section 133 (3) *b)*, substantiating the ground invoked by the addressee shall be presented in the complaint. At the time of submitting the complaint, the act that is deemed to have been omitted shall also be performed, if possible.

(2) The complaint shall be decided by the court, prosecution office, or investigating authority the proceedings of which involved the service. If the complaint is submitted late, it shall be dismissed without any examination as to its merits.

(3) A complaint submitted on the ground specified in section 133 (3) *b)* shall be assessed in an equitable manner.

(4) The complaint shall not have suspensory effect regarding the continuation of the proceedings or the implementation or enforcement of the decision. If the facts alleged in the complaint appear probable, the court, the prosecution service and the investigating authority may order, *ex officio,* the proceedings or the implementation or enforcement of the decision to be suspended.

(5) No legal remedy shall lie against a decision upholding the complaint and a decision on the suspension of the proceeding or on the suspension of the implementation or enforcement of a decision.

(6) If the court, the prosecution service, or the investigating authority upholds a complaint, the legal consequences of service shall be ineffective, and the service, as well as any measure or procedural act already taken or performed, shall be repeated to the necessary extent.

Service by public notice

Section 135 (1) The court, the prosecution service, and the investigating authority shall serve, by public notice,

a) case documents on a defendant or a person reasonably suspected of having committed the criminal offence whose whereabouts are unknown,

b)

c) the notification if doing so is justified by the large number of interested persons.

(2) In case of service by public notice, the public notice shall indicate the court, prosecution office, or investigating authority at which the addressee may receive the case document.

(3) The public notice shall be published for fifteen days

a) on the website and noticeboard for electronic information of the court, prosecution office, or investigating authority that ordered the service, and

b) using the publication platform specified in a decree by the Government.

(4) The case document shall be considered served on the fifteenth day calculated from the publication of the corresponding public notice under paragraph (3) *a)*.

(5) In a case described in paragraph (1) *a)*, the public notice shall also be published, for fifteen days, on the noticeboard of the local government of the defendant's last known home address or place of actual residence in Hungary.

Agents for service of process

Section 136 (1) The agent for service of process may act

a) for a defendant in a situation specified in this Act,

b) for an aggrieved party, party with a pecuniary interest, or other interested party who does not have either a home address, contact address or service address in Hungary, or a representative who has a home address, contact address, service address, or seat in Hungary.

(2) The following may act as agent for service of process:

a) for the defendant, his defence counsel,

b) for the aggrieved party, the party with a pecuniary interest, and the other interested party, an attorney-at-law or a law office, or another adult natural person or a legal person having a home address, contact address, or seat in Hungary.

(3) The defendant, the aggrieved party, the party with a pecuniary interest, and the other interested party may inform the proceeding court, prosecution office, or investigating authority about the use of an agent for service of process by submitting the agency contract concluded with the agent for service of process. The agency contract shall be drawn up either as a private deed of full probative value or as a public deed.

(4) In court, the defendant may also mandate his defence counsel orally to act as the agent for service of process; if the mandate is accepted, the agency contract shall be recorded by the court in the minutes.

(5) The agent for service of process shall be responsible for receiving case documents that are to be served on the principal and produced during the proceedings, and for transferring such documents to the principal; the agent for service of process shall be liable for these acts toward the principal under the rules of civil law.

(6) The agent for service of process acting for the defendant may be subject to a disciplinary fine if he violates his obligations specified in paragraph (5).

(7) A case document addressed to the defendant, the aggrieved party, the party with a pecuniary interest, and the other interested party and duly served on his agent for service of process shall be deemed served on the defendant, the aggrieved party, the party with a pecuniary interest, and the other interested party on the fifteenth day following service.

(8) The provisions pertaining to agents for service of process shall not apply to the service of documents on a defendant, aggrieved party, party with a pecuniary interest, and other interested party with a domicile, place of residence or seat in a country where only certain methods of service, other than those specified in these provisions, may be followed according to an international convention or a binding legal act of the European Union.

Chapter XXIII

THE TIME LIMIT AND THE DUE DATE

Setting a time limit or due date

Section 137 (1) The court, the prosecution service, or the investigating authority shall set a time limit within the limits specified by an Act.

(2) The time limit shall be set in hours, days, working days, months, or years.

(3) The time limit set in hours shall be calculated in full hours, and it shall expire at the minute which, according to its numbering, corresponds to the starting minute. The time limit set in days or working days shall not include the day when the circumstance serving as the reason for commencing the time limit takes place (hereinafter "starting day"). The time limit set in months or years shall expire on the day which, according to its numbering, corresponds to the starting day or, if there is no corresponding day in that month, on the last day of the month.

(4) If the last day of a time limit falls on a day on which work does not take place at the proceeding court, prosecution office, or investigating authority, the time limit shall expire on the next working day.

(5) The time limit for filing a submission with, or performing a procedural act before, the court, prosecution service, or investigating authority shall expire at the end of office hours.

(6) The due date shall be set either by the court, the prosecution service, or an investigating authority.

Omissions and their consequences

Section 138 (1) Unless otherwise provided in this Act, a person participating in the criminal proceeding or the prosecution service in the course of the court proceedings shall not be allowed to perform the omitted procedural act effectively any more, and any belatedly performed procedural act shall be ineffective. The court, the prosecution service, and the investigating authority shall notify the person concerned of the ineffectiveness of the belatedly performed procedural act unless this Act provides that the belated procedural act is to be dismissed or ignored without notification.

(2) The consequences of an omission shall apply *ipso jure* and without any prior notification, with the exceptions specified in this Act. If the consequences of the omission do not apply without prior notification, the omitted procedural act may be performed within the period specified in the notification.

(3) It shall not constitute an omission if a person participating in the criminal proceeding or the prosecution service in the course of the court proceedings was prevented from performing the procedural act by an unavertable obstacle.

(4) The consequences of failing to meet a time limit set in days, working days, months, or years shall not apply if the submission addressed to the court, prosecution service, or investigating authority was posted as registered delivery to the address of the proceeding court, prosecution office, or investigating authority on the last day of the time limit at the latest.

Submitting an application for excuse

Section 139 (1) If the defendant, the defence counsel, the aggrieved party, the party with a pecuniary interest and the other interested party, or the prosecution service in the course of the court proceedings failed to meet a time limit or due date through no fault of their own, an application for excuse may be submitted unless otherwise provided in this Act.

(2) The application for excuse may be submitted within eight days following the missed due date or the last day of the missed time limit. If the omitting person becomes aware of the omission only later, or the obstacle ceases to exist only later, the time limit for submitting an application for excuse shall start at the time when that person becomes aware, or the obstacle ceases to exist. No application for excuse may be submitted after three months.

(3) The reason for the omission and the circumstances substantiating the absence of any fault regarding the omission shall be presented in the application for excuse. In the case of failing to meet the time limit, the omitted act shall be performed simultaneously with submitting the application for excuse.

Assessing an application for excuse

Section 140 (1) The application for excuse shall be decided by the court, prosecution office, or investigating authority that set the time limit or due date. In the case of failing to meet the time limit for seeking legal remedy, the court or prosecution office with subject-matter jurisdiction over the legal remedy concerned shall decide the application for excuse.

(2) The court, the prosecution service and the investigating authority shall assess the application for excuse in an equitable manner.

(3) The court, the prosecution service, and the investigating authority shall dismiss the application for excuse without stating any reason as to its merits

a) in a case specified in section 80 (1) *a)* to *d)*, furthermore,

b) if a person seeking excuse for failing to meet a time limit fails to perform the omitted act simultaneously with submitting his application for excuse, even though he had the opportunity to do so.

(4) The application for excuse shall not have any suspensory effect on the proceeding or the implementation or enforcement of the decision. If the application for excuse substantiates the absence of any fault on the side of the omitting person, or that the omitted act was or will be performed, the court, prosecution office, or investigating authority assessing the application for excuse may suspend the proceeding or the implementation or enforcement of the decision.

(5) No legal remedy shall lie against the decision granting an application for excuse.

Legal effects of an excuse

Section 141 (1) If the court, the prosecution service, or the investigating authority grants an application for excuse,

a) the act completed by the person applying for excuse shall be considered as if it was performed within the missed time limit,

b) the procedural act carried out on the missed due date shall be repeated to the necessary extent.

(2) Taking account of the outcome of the repeated act, the court, the prosecution service, or the investigating authority shall also adopt a decision upholding or setting aside, in whole or in part, the previous procedural act or decision.

The general time limit for taking measures

Section 142 Unless otherwise provided by an Act, the court, the prosecution service, and the investigating authority shall take the necessary measures within up to one month calculated from

a) the receipt of a submission addressed to the court, the prosecution service, or the investigating authority,

b) the expiry of the time limit open for filing such a submission, or

c) the occurrence of any other circumstance serving as a ground for taking a measure.

Chapter XXIV

OBJECTION AGAINST THE PROTRACTION OF THE PROCEEDINGS

Section 143 (1) The defendant, the defence counsel, the aggrieved party, the party with a pecuniary interest and the other interested party and the prosecution service in the course of the court proceedings may file an objection against the protraction of the proceedings if

a) a time limit is set by an Act for the court, the prosecution service, or the investigating authority to conduct the proceedings, perform a procedural act, or adopt a decision, and this time limit expired without result, or

b) the court, the prosecution service, or the investigating authority set a time limit for performing a procedural act, and this time limit expired without result, and the court, the prosecution service, or the investigating authority did not apply the measures permitted by an Act against the omitting person.

(2) The objection may be filed with the court, prosecution service, or investigating authority proceeding in the case in writing, requesting the establishment of omission and the omitting court, prosecution service, or investigating authority to be instructed to

a) perform the omitted procedural act or adopt the omitted decision in a situation described in paragraph (1) *a)*,

b) take a measure that is most suitable in the case, in a case described in paragraph (1) *b)*.

(3) The objection may be withdrawn by the person who filed it until it is assessed on its merits. An objection withdrawn may not be submitted again.

Section 144 (1) The court, prosecution office, or investigating authority proceeding in the case shall examine a submitted objection within eight days after its receipt, and if it finds the objection well-grounded, it shall take the necessary measures to rectify the situation described in it within eight days or one month, depending on whether or not the indictment has already been brought, and shall simultaneously inform the person submitting the objection of the objection having been resolved.

(2) If the court, prosecution office, or investigating authority proceeding in the case finds the objection unfounded, it shall refer, within the time limit specified in paragraph (1), the case documents, and its corresponding statement regarding the objection, to the court or prosecution office assessing the objection.

(3) An objection filed against an omission by a district court shall be assessed by a panel of three professional judges of a regional court, an objection filed against an omission by a regional court shall be assessed by a panel of three professional judges of a regional court of appeal, an objection filed against an omission by a regional court of appeal shall be assessed by a panel of three professional judges of the Curia, and an objection filed against an omission by the Curia shall be assessed by another panel of the Curia in a panel session within fifteen days after the referral of the case documents.

(4) An objection filed against an omission by a prosecution office shall be assessed by the superior prosecution office, an objection filed against an omission by the Office of the Prosecutor General shall be assessed by the Prosecutor General and an objection against an omission by an investigating authority shall be assessed by the prosecution service within fifteen days after the referral of the case documents.

(5) If a court or prosecution office assessing an objection grants the objection, it shall, setting a time limit, call upon the omitting court, prosecution office, or investigating authority to take the measures necessary to continue the proceedings in a case described in section 143 (1) *a)*, or to take the most suitable measure in the given case in a case described in section 143 (1) *b)*. In its call, the court assessing the objection shall not instruct the proceeding court to perform a specific procedural act, except for a situation described in section 143 (1) *a)*.

(6) A court or prosecution office assessing an objection shall dismiss the objection with a decision if it is unfounded. No legal remedy shall lie against this decision.

(7) If a person submitting an objection files another unfounded objection during the same stage of the criminal proceeding, the court or prosecution office assessing his objection may impose a disciplinary fine on him in its decision dismissing the objection.

(8) In other respects, the provisions applicable to

a) the adjudication of appeals filed against an order, if the objection is filed against an omission by the court,

b) the assessment of complaints, if the objection is filed against an omission by the prosecution service or the investigating authority

shall apply accordingly to assessing the objection.

Chapter XXV

CRIMINAL COSTS

Section 145 (1) Criminal costs shall include, as defined by law,

a) fees and costs advanced by the State in the course of, or concerning, a criminal proceeding,

b) costs incurred by the defendants, the aggrieved parties, the parties with a pecuniary interest, and the other interested parties, even if not advanced by the State,

c) fees and costs of the appointed defence counsels, the statutory representatives, and the authorised representatives, even if not advanced by the State,

d) fees and costs of the aide performing interpretation tasks if advanced by the State in an administrative proceeding,

e) costs incurred in an infraction proceeding if, before the criminal proceeding, an infraction proceeding was conducted for the act that constitutes the criminal offence subject to the proceeding.

(2) Criminal costs, as defined in paragraph (1) *a)*, shall include, in particular, costs incurred by the witnesses, fees and costs of the experts and the consultants, and costs of transporting and keeping a seized thing.

Chapter XXVI

JOINING AND SEPARATION OF CASES

Section 146 (1) Different cases that are at the same procedural stage may be joined by the court after the indictment, or by the prosecution service or investigating authority during the investigation, if adjudicating such cases jointly seems practical with regard to, in particular, the subject matter of the proceedings or the persons participating in the criminal proceedings.

(2) A pending case may be separated into multiple cases by the court after the indictment, or by the prosecution service or investigating authority during the investigation, if adjudicating the matter of criminal liability in the same proceeding would be highly complicated due to the large number of defendants or to other reasons.

Section 147 (1) The court, the prosecution service, and the investigating authority shall decide on the matter of joining or separating cases *ex officio* or upon a motion.

(2) The matter of joining or not joining cases pending before different courts shall be decided by way of an order to be issued by the court with subject-matter and territorial jurisdiction to adjudicate the cases jointly; if there is more than one such court, the rules of precedence shall apply.

(3) The matter of joining or not joining cases pending before different prosecution offices or investigating authorities shall be decided by the prosecution office or investigating authority with subject-matter and territorial competence to adjudicate the cases jointly; if there are more than one such prosecution office or investigating authority, the rules of precedence shall apply.

(4) The court, prosecution office, or investigating authority specified in paragraphs (2) to (3) shall decide on whether the cases should be joined within one month after receipt of a case proposed for joining.

Chapter XXVII

COMMUNICATION BY ELECTRONIC MEANS

Section 148 (1) The provisions of this Act shall apply during communication by electronic means subject to the derogations laid down in this Chapter.

(2) In the criminal proceeding, only statements complying with section 30 (1) of the Digital Citizenship Act may be made by way of electronic communication.

Section 149

Electronic communication by the person participating in the criminal proceeding

Section 150 (1) With the exception provided for in paragraph (3), a person participating in the criminal proceeding shall file all submissions by means of electronic communication with the court, the prosecution service and the investigating authority; and the court, the prosecution service and the investigating authority shall also serve him by means of electronic communication.

(2) When first contacted, the court, the prosecution service and the investigating authority shall inform the person participating in the criminal proceeding who communicates by electronic means of the consequences of the violation of the rules on communication by electronic means and that a natural person may move for using another means of communication.

(3) A person participating in the criminal proceeding shall be exempted from communication by electronic means if his right to use electronic administration services is suspended.

(4)

Section 151

Section 152

Provisions concerning the authorised defence counsel and legal representative with regard to communication by electronic means

Section 153 (1) If a notice has not been given yet of the registration of his authorisation in the client settings register, the defence counsel and the legal representative, acting on the basis of an authorisation shall submit his authorisation, available as an electronic document or digitised by himself, as an attachment to his first submission filed with the court, the prosecution service, or the investigating authority. If reasonable doubt arises in relation to a digitised authorisation, the court, the prosecution service, or the investigating authority shall call upon the defence counsel or legal representative to present the original authorisation in order to establish that the documents are identical.

(2) If a person participating in the criminal proceeding who does not communicate by electronic means acts through an authorised defence counsel or a legal representative, he may file a statement on withdrawing his authorisation as a paper-based document. At the time of withdrawing the authorisation, the person participating in the criminal proceeding shall also declare if, following the filing of his statement, he intends to act with a legal representative or an authorised defence counsel or without any of those.

(3) If a person participating in the criminal proceeding acts with an authorised defence counsel or a legal representative after the withdrawal of his authorisation, he shall also submit the authorisation granted to his new defence counsel or legal representative at the time of withdrawing his authorisation.

Provisions on the time limit in the context of communication by electronic means

Section 154 (1) If communication is conducted during a criminal proceeding by electronic means, the consequences of failing to meet a time limit determined in days, working days, months, or years may not be applied, where a submission addressed to the court, the prosecution service, or the investigating authority is duly filed by means of electronic communication on the last day of the time limit at the latest.

(2) When using electronic means for communication, a day during which at least four hours are affected by a malfunction or planned outage, as defined by law, shall not be calculated into a statutory or other time limit set by the court, the prosecution service, and the investigating authority, and it shall not be considered as a date of expiry if the time limit is set in months or years.

Paper-based documents in the context of communication by electronic means

Section 155 (1) If an attachment to a submission is not available as an electronic document, a person participating in the criminal proceeding who is communicating by electronic means shall arrange for the digitisation and safeguarding of the paper-based attachment.

(2) If the court, the prosecution service, or the investigating authority is to serve or forward a paper-based case document by means of electronic communication, it shall have the document digitised within ten working days. The time needed for the digitisation of a case document, but not more than five working days, shall not be taken into account when calculating a time limit.

(3) In the case of communication by electronic means, the court, the prosecution service and the investing authority may order, *ex officio* or upon a motion, to file, forward or serve the submission or case document in a paper-based form or using a data-storage medium. This shall take place, in particular, if

a) digitisation would be disproportionally difficult or impossible due to the large volume, peculiar shape or nature of the submission or the case document,

b) the authenticity of the submission or the case document is questionable, or

c) serving or forwarding the submission or the case document by means of electronic communication would cause such a delay which would endanger the timely conclusion of the procedural act or would result in the disproportional protraction of the proceedings.

(4) The rules on communication by electronic means need not be applied concerning submissions filed in the course of a procedural act involving attendance in person, including the immediate filing of an original authorisation granted to a defence counsel or legal representative at the location or in the course of a procedural act.

Service in the context of communication by electronic means

Section 156 (1) If a paper-based submission filed by a person participating in a criminal proceeding, who does not communicate by electronic means, is to be served by means of electronic communication, it shall be digitised by the court, the prosecution service, and the investigating authority under section 155 (2), and shall be served by means of electronic communication on the other person participating in the criminal proceeding, who is authorised to inspect the case document.

(2) If a person participating in the criminal proceeding, who does not communicate by electronic means, acts during the proceeding through a legal representative, or another representative who communicates by electronic means, and a case document is to be served not on such representative, but on the person participating in the criminal proceeding, or if a case document cannot be served on such representative, the case document shall be served in a paper-based copy by the court, the prosecution service, and the investigating authority on the person participating in the criminal proceeding.

Data processing

Section 157 In the course of the criminal proceeding, the National Office for the Judiciary and other organisations providing digital services shall be entitled to process the data of persons communicating by electronic means received for ensuring communication by electronic means.

Electronic case documents

Section 158 (1) If a case document is to be served by means of electronic communication, it shall be signed by the court, the prosecution service, and the investigating authority with a qualified electronic signature or seal, or an advanced electronic signature or seal based on a qualified certificate.

(2) A case document produced by the court, the prosecution service, and the investigating authority and signed with a qualified electronic signature or seal, or an advanced electronic signature or seal based on a qualified certificate, shall be considered a public deed.

(3) For the purposes of this Act, signature shall be construed to also mean a qualified electronic signature or seal, or an advanced electronic signature or seal based on a qualified certificate, of the court, the prosecutor, and the investigating authority.

Forwarding a case document available in electronic format

Section 159 (1) A person participating in the criminal proceeding, and the prosecution service in the course of the court proceedings may request the court, the prosecution service, or the investigating authority to have a copy of the case document he is entitled to inspect forwarded in an electronic format on a data-storage medium, or to an electronic mail address specified by him, provided that the case document is available at the proceeding court, prosecution office, or investigating authority

a) in an electronic format,

b) as an electronic document or

c) as an electronic copy of a paper-based document.

(2) The case document shall be considered available in an electronic format if, as a paper-based case document, it was drafted by the court, the prosecution service, or the investigating authority using an information system. The case document that is available in an electronic format and is forwarded under paragraph (1) shall not be considered an authentic copy.

(3) If a copy of the case document cannot be forwarded under paragraph (1), the court, the prosecution service, or the investigating authority shall release the copy on a data-storage medium, or it shall inform the requesting person that he may inspect the case document under section 100.

Inspection of case documents by way of allowing electronic access

Section 160 To exercise rights relating to inspecting case documents, the court, the prosecution service, and the investigating authority shall ensure that the persons authorised to inspect case documents can access case documents by electronic means in accordance with the applicable legislation.

The consequences of violating the rules on communication by electronic means

Section 161 (1) A statement made by a person who communicates by electronic means shall be ineffective if it does not meet the provisions laid down in section 148 (2), except

a) for a crime report submitted by a natural person,

b) if the proceeding court, prosecution office or investigating authority permits, at a motion by the natural person who communicates by electronic means, the use of other means of communication in the course of the proceeding,

c) if the proceeding court, prosecution office or investigating authority considers the statement duly submitted.

(2) If paragraph (1) *b)* applies, the court, the prosecution office or the investigating authority shall decide without adopting a decision and inform the person filing the motion accordingly.

(3) If the court, the prosecution office or the investigating authority does not consider the statement duly submitted in accordance with paragraph (1), it shall, for the first time, inform the natural person submitting the statement that the unduly submitted statement is ineffective and he may duly submit it by electronic means or move for using another means of communication in the course of the proceeding. For an application for excuse, complaint, motion for revision, objection, appeal, motion for review and motion for retrial that was submitted unduly for the first time, the period between filing the motion and informing the natural person shall not be calculated into the time limit determined by an Act or set by the court, the prosecution office or the investigating authority for the submission of the motion. The person filing the motion shall be informed accordingly.

Section 162

PART FIVE

TAKING OF EVIDENCE

Chapter XXVIII

THE GENERAL RULES OF TAKING OF EVIDENCE

The subject matter of taking of evidence

Section 163 (1) Evidence shall be taken concerning facts that are relevant to the application of substantive and procedural criminal law. Evidence may also be taken concerning facts that are significant to adjudicating matters that are ancillary to the criminal proceeding.

(2) In a criminal proceeding, the court, prosecution service, or investigating authority shall decide on the basis of real facts.

(3) During sentencing, the court shall establish the facts of the case within the limits of the indictment.

(4) No evidence shall be required concerning facts that are

a) commonly known,

b) officially known to the proceeding court, prosecution office, or investigating authority, or

c) accepted as real by the prosecutor, the defendant, and the defence counsel jointly in the given case.

Section 164 (1) The prosecutor shall be responsible for discovering all facts required to prove the indictment, and making available, or moving to acquire, all supporting means of evidence.

(2) In the course of clarifying the facts of the case, a court shall acquire pieces of evidence on the basis of motions.

(3) In the absence of a motion, the court shall not be obliged to acquire or examine any pieces of evidence.

Means of evidence

Section 165 The following means shall be accepted as evidence:

a) witness testimonies,

b) defendant testimonies,

c) expert opinions,

d) opinions by a probation officer,

e) means of physical evidence, including documents and deeds, and

f) electronic data.

The lawfulness of taking of evidence

Section 166 (1) Any means of evidence shall be detected, collected, secured, and used in compliance with the provisions of this Act.

(2) The manner of performing and conducting evidentiary acts, and examining and recording means of evidence may be specified by law.

The assessment of pieces of evidence

Section 167 (1) Any means of evidence or evidentiary act specified in this Act may be used or applied freely in the criminal proceeding. This Act may also order the use of certain means of evidence.

(2) Any means of physical evidence produced or acquired by an authority before, or at the time of, instituting the criminal proceeding in the course of carrying out its statutory tasks may be used in the criminal proceeding.

(3) The probative value of individual means of evidence shall not be determined in advance by an Act.

(4) The court, the prosecution service, and the investigating authority shall assess pieces of evidence freely both individually and in their totality, and it shall determine the outcome of taking evidence according to its resulting conviction.

(5) A fact originating from a means of evidence may not be taken into account as evidence if the court, the prosecution service, the investigating authority, or another authority referred to in paragraph (2) acquired the given means of evidence by way of a criminal offence, a material violation of the procedural rights of a person participating in the criminal proceeding, or in any other prohibited manner.

Chapter XXIX

WITNESS TESTIMONY

Section 168 (1) A person may be interrogated as a witness if he may have knowledge concerning a fact to be proved.

(2) A witness shall be obliged to testify unless an exception is made in this Act.

(3) The proceeding court, prosecution office, or investigating authority shall establish and reimburse, upon a motion by the witness, the costs incurred by the appearance of the witness in person to the extent set out by law. The witness shall be informed about this option in his summons or at the end of his interrogation.

(4) An authorised attorney-at-law may act for the witness if the witness considers it necessary to receive information regarding his rights. The witness shall be informed about this option in his summons.

Impediments to providing testimony

Section 169 (1) The following shall be recognised as impediments to providing witness testimony:

a) prohibition of providing testimony,

b) refusal to provide testimony.

(2) An impediment to providing witness testimony shall be taken into account if it applied at the time of the commission of the criminal offence and also if it applies at the time of the interrogation.

(3) A testimony by a witness whose interrogation took place in violation of the provisions on impediments to providing testimony may not be taken into account as a means of evidence unless an exception is made in this Act.

Prohibition of giving testimony

Section 170 (1) The following persons shall not be interrogated as a witness:

a) the defence counsel concerning any fact he learned or communicated to the defendant in his capacity as defence counsel,

b) the church personnel or members of a religious association who perform on a professional basis religious rites concerning any fact covered by their professional obligation of confidentiality,

c) any person who clearly is unlikely to testify correctly due to his physical or mental condition,

d) a person who was not granted exemption from his obligation of confidentiality concerning any classified data.

(2) Any prohibition of interrogating a witness under paragraph (1) *a)* or *b)* shall remain in effect even after the underlying relationship is terminated. In such a situation, the witness may not be interrogated concerning any fact to be proved covered by his obligation of confidentiality.

(3) In a situation specified in paragraph (1) *d)*, the entity which classified the data, as defined in the Act on the protection of classified data, shall decide on granting an exemption or maintaining the obligation of confidentiality upon request by the court, the prosecution service, or the investigating authority. The matters for which an exemption is sought shall be specified in the request for exemption in an identifiable manner.

Refusal to give testimony

Section 171 Relatives of the defendant may refuse to give witness testimony.

Section 172 (1) A person who would incriminate himself or a relative of his of committing a criminal offence may refuse to give witness testimony regarding related matters, except for paragraph (2), even if

a) he did not refuse to give witness testimony as a relative of the defendant, or

b) concerning the given criminal offence

ba) the proceeding against him was terminated,

bb) he was subject to conditional suspension by a prosecutor, or

bc) his criminal liability was adjudicated with final and binding effect.

(2) A person may not refuse to give witness testimony under paragraph (1) if, by answering questions, he would incriminate himself of committing a criminal offence concerning which

a) a crime report filed against him was dismissed under section 382 (1),

b) a proceeding against him was terminated under section 398 (2) *c)* or 399 (1),

c) he may not be punished under the Special Part of the Criminal Code due to his cooperation with the authorities,

d) he entered into a plea agreement involving an obligation specified in section 411 (5) *a)*, or

e) the prosecution service adopted a decision or took a measure against him under section 404 (3) *a)*.

(3) A terminated proceeding may not be resumed regarding a criminal offence revealed in a witness testimony made under paragraph (2), and the witness testimony may not be considered new evidence for the purpose of retrial. This provision shall also apply to any criminal offence revealed in a witness testimony that was not covered by the criminal proceeding conducted against the witness earlier, provided that there is a ground for dismissing a crime report or terminating a proceeding concerning the revealed criminal offence.

Section 173 (1) A person who is under an obligation of confidentiality due to his profession or public mandate, not including an obligation of confidentiality concerning classified data, may refuse to give witness testimony if he would breach his obligation of confidentiality by giving witness testimony, unless, in line with applicable legislation,

a) he was granted exemption from his obligation by the authorised person or entity, or

b) an organ requested to provide data is obliged to transfer the data covered by its obligation of confidentiality upon request by the court, the prosecution service, or the investigating authority.

(2) An obligation of confidentiality shall remain in effect during the period specified by law unless the witness was not granted exemption from his obligation of confidentiality.

Section 174 (1) If a media content provider, or a person who is in an employment relationship or another employment-related relationship with a media content provider, would reveal the identity of a person who provided him with information in relation to media content provision activities by giving witness testimony, he may refuse to give witness testimony concerning any related matter unless he was ordered by the court to reveal the identity of the person providing the information.

(2) The court may order a media content provider, or a person who is in an employment relationship or another employment-related relationship with a media content provider, to reveal the identity of a person who provided him with information in relation to media content provision activities if

a) identifying the person providing the information is indispensable for detecting an intentional criminal offence punishable by imprisonment for three years or more,

b) the evidence expected from doing so may not be replaced in any other way, and

c) the interest in detecting that criminal offence is so significant, in particular, due to the material gravity of the criminal offence, that it clearly exceeds the interest in keeping the source of information secret.

(3) An impediment to testifying as a witness under paragraph (1) shall remain in effect even after the underlying relationship is terminated.

Section 175 (1) The proceeding court, prosecution office, or investigating authority shall decide on the lawfulness of a refusal to give witness testimony.

(2) If a witness refuses to testify by invoking an impediment to testifying, any legal remedy sought against a decision dismissing the refusal shall have suspensory effect.

(3) If a witness lawfully refuses to testify, he may not be confronted or asked any further question, unless he decides to testify.

Witness advice

Section 176 (1) The witness shall be advised at his first interrogation during the investigation or a first- or second-instance court procedure that

a) he may refuse to give witness testimony if the grounds for his refusal exist or existed at the time of his interrogation or the commission of the criminal offence,

b) if he testifies, he is obliged to tell the truth to the best of his knowledge and in good conscience,

c) perjury and unlawful refusal to give witness testimony in court constitute punishable acts under the Criminal Code, and

d) if he testifies, his testimony may be used in the given or any other case as means of evidence, even if he subsequently refuses to testify (points *a)* to *d)* hereinafter jointly "witness advice").

(2) If a witness is interrogated continuously, he shall be advised under paragraph (1) *a)*, provided that he may refuse to give witness testimony on the ground of a change to the circumstances concerning his exemption.

Section 177 (1) The witness advice and the response given by the witness to the advice shall be recorded in the minutes.

(2) If the witness advice or the response thereto is not recorded in the minutes, the testimony of the witness may not be used as a means of evidence, with the exception specified in paragraph (3).

(3) If the witness advice or the response thereto is not recorded in the minutes, statements made by the witness may be taken into account as a witness testimony, provided that the witness maintains his statements after he is provided witness advice. A witness may not withdraw such a statement.

(4) A witness testimony provided by a witness in the case earlier, or in another case, may be used as a means of evidence, even if the witness subsequently refuses to testify. Doing so shall be subject to the condition that the witness advice and the response by the witness thereto are clearly reflected in the minutes recording his witness testimony.

(5) If a witness was interrogated as a defendant in the case earlier or in another case, his testimony provided as a defendant may be used as means of evidence, provided that defendant advice and his response thereto is clearly reflected in the minutes recording his testimony. In this case, the testimony provided by the witness earlier as a defendant may be used, even if the witness subsequently refuses to testify.

Interrogating the witness

Section 178 (1) Witnesses shall be interrogated one by one.

(2) The identity of the witness shall be established at the commencement of his interrogation. To this end, the witness shall provide the following information:

a) name, birth name,

b) place and date of birth,

c) mother's name,

d) nationality,

e) identity document number,

f) home address, contact address, place of actual residence,

g) service address, phone number, electronic mail address or other electronic contact details,

h) profession.

(3) If the witness is interrogated continuously at the same stage of the proceeding, his personal data need not be recorded each time, provided that they remain unchanged.

Section 179 (1) After a witness is identified, any possible impediment to him testifying and any circumstance indicating his bias or interest in the case shall be clarified. The witness shall be obliged to answer these questions, even if there is an obstacle to him testifying, or he invokes such an obstacle.

(2) The witness shall be provided witness advice and he shall be informed of his rights concerning interrogation.

(3) An attorney-at-law acting in his interests may attend the interrogation of the witness; such an attorney-at-law may provide the witness with information about his rights, but he may not carry out any other activity or influence the testimony. After the interrogation, he may inspect the minutes of the interrogation and make observations in writing or orally.

Section 180 (1) During his interrogation, the witness shall provide his testimony without interruption, and then he shall answer questions. During the interrogation of the witness, it shall also be clarified, with due regard to the provisions on protecting witnesses, how the witness learned the information he provided in his testimony.

(2) If the testimony of the witness differs from an earlier testimony of the same witness, the reason for the differences shall be clarified.

(3) At a motion by the witness, individual parts of his witness testimony shall be recorded verbatim in the minutes.

(4) A witness may not be asked a question that

a) includes the answer or contains any guidance regarding the answer,

b) contains any promise that is inconsistent with the law, or

c) includes a false statement of fact.

Written witness testimony

Section 181 (1) The court, the prosecution service, or the investigating authority may allow the witness to provide a testimony in writing after, or in place of, being interrogated orally.

(2) If testifying in writing is permitted, the witness shall

a) write down and sign his testimony in his own hands,

b) sign his testimony with a qualified electronic signature or an advanced electronic signature based on a qualified certificate,

c) provide his testimony by means of electronic communication, or

d) have his testimony authenticated by a judge, notary, or another person specified by law.

(3) Where the witness provides testimony in writing, a reference shall be made in the written testimony to the fact that the witness provided his testimony being aware of the impediments to testifying and of the witness advice.

(4) Providing witness testimony in writing shall not exclude the witness from being summoned by the court, the prosecution service, or the investigating authority for interrogation, if necessary.

Measures against witnesses failing to perform their obligations

Section 182 If a witness refuses, without a lawful reason, to assist in a procedural act, or to testify, even after being advised of the consequences, a disciplinary fine may be imposed on him and he shall be obliged to reimburse any criminal cost caused.

Chapter XXX

DEFENDANT TESTIMONY

Section 183 (1) Any statement of fact made in the criminal proceeding orally or in writing before, or addressed to, the court, prosecution service, or investigating authority by the defendant after he was advised as a defendant regarding the subject matter of taking evidence shall be considered a defendant testimony.

(2) If the defendant wishes to give a testimony, he shall be granted an opportunity to do so.

(3) Defendants shall be interrogated one by one.

(4) Even if the defendant confesses his guilt, further pieces of evidence shall also be acquired, unless otherwise provided in this Act.

Establishing the identity of a defendant

Section 184 (1) The interrogation of the defendant shall begin with establishing and verifying the identity and contact details of the defendant.

(2) In the course of establishing his identity, the defendant shall state the following data to identify himself and enable communication with him:

a) name, birth name,

b) place and date of birth,

c) mother’s name,

d) nationality,

e) identity document number,

f) home address, contact address, place of actual residence,

g) service address, phone number, electronic mail address or other electronic contact details.

Defendant advice

Section 185 (1) After the defendant is identified, he shall be informed about his rights and advised that

a) he is not obliged to give a testimony; he may refuse to testify and to answer any question at any time during the interrogation; but he may decide to testify at any time, even if he refused to do so earlier,

b) refusing to testify does not hinder the continuation of the proceeding or affect the right of the defendant to ask questions, make observations, or file motions,

c) if he testifies, anything he says or makes available may be used as evidence,

d) he may not accuse falsely another person of having committed a criminal offence, and he may not violate any right to respect for the deceased by stating any false fact (hereinafter jointly "defendant advice").

(2) The defendant shall be provided defendant advice at his first interrogation during the investigation and the first- or second-instance court procedure.

(3) The defendant advice and the response given by the defendant to the advice shall be recorded in the minutes. If the defendant advice and the response thereto are not recorded in the minutes, the defendant testimony may not be used as a means of evidence, with the exception specified in paragraph (4).

(4) If the defendant advice and the response thereto is not recorded in the minutes, a statement made by the defendant may be taken into account as a testimony, if the defendant

a) was already advised as a defendant during the proceeding, and his defence counsel attended his continuous interrogation, or

b) maintains his statement after he is provided defendant advice.

Giving a testimony

Section 186 (1) If the defendant wishes to give a testimony, he shall be asked, after being provided defendant advice, about his

a) profession,

b) place of work,

c) level of education,

d) family situation,

e) health,

f) income,

g) financial situation,

h) military rank, titular rank, and distinctions.

(2) The defendant shall be granted an opportunity to give his testimony without interruption, and then he may be asked questions. If the testimony of the defendant differs from his earlier testimony, the reason for such differences shall be clarified.

(3) A defendant may not be asked a question that

a) includes the answer or contains any guidance regarding the answer,

b) contains any promise that is inconsistent with the law, or

c) includes a false statement of fact.

(4) If the defendant gives a testimony after refusing to do so, he may be asked questions.

Section 187 (1) A testimony given by the defendant as a witness in the case earlier, or in another case, may be used as a means of evidence, provided that the witness advice and his response thereto is clearly reflected in the minutes recording his witness testimony.

(2) A testimony provided by the defendant in another case may be used as a means of evidence, provided that the defendant advice and his response thereto are clearly reflected in the minutes recording his testimony.

Chapter XXXI

THE EXPERT OPINION

Employing an expert

Section 188 (1) If specialised expertise is required to establish or assess a fact to be proved, an expert shall be employed.

(2) In the criminal proceeding, an expert opinion may be provided by an expert or *ad hoc* expert (hereinafter jointly "expert") in accordance with the Act on judicial experts.

(3) A law may specify the technical matters regarding which only a specific expert shall be entitled to deliver an opinion.

The expert

Section 189 (1) The expert shall be employed by way of an appointment unless otherwise provided by an Act. No legal remedy shall lie against the decision on the appointment of the expert.

(2) If a partial examination needs to be carried out urgently to provide an expert opinion, this examination may be carried out on the basis of an oral order by the prosecution service or the investigating authority without a decision on the appointment. The prosecution service or the investigating authority shall send such an order to the expert concerned within fifteen days in writing.

(3) The head of an expert institution or institute, or a company, or the president of an expert body, as defined in the Act on judicial experts, shall notify the entity that arranged for the appointment about the acting expert, or members of the *ad hoc* committee, within eight days following receipt of the decision on the appointment.

(4) An entity that arranged for the appointment shall inform defendants, defence counsels, parties with a pecuniary interest, and other interested parties, and, if the expert was appointed by a court, the prosecution service about the acting expert, or members of the *ad hoc* committee, within eight days after the date of the decision on the appointment or, in a situation specified in paragraph (3), of the receipt of the notification.

(5) The proceeding court, prosecution office, or investigating authority may discharge from appointment an expert for a material reason in a decision. No legal remedy shall lie against such a decision.

(6) The period taken to submit an expert opinion, other than the opinion of a party-appointed expert, may not exceed two months. This time limit may be extended once by up to one month upon a request submitted by the expert before the expiry of the time limit.

Section 190 (1) The defendant and the defence counsel may move for the appointment of an expert, and the expert may be specified in the corresponding motion. The proceeding court, the prosecution office, or the investigating authority shall decide on the motion. No legal remedy shall lie against the decision.

(2) The defendant and the defence counsel may mandate an expert to provide an opinion as a party-appointed expert if

a) the court, the prosecution service, or the investigating authority dismissed their motion to appoint an expert, or

b) the prosecution service or the investigating authority decided to appoint an expert other than the one specified in the motion.

(3) If a motion by the defendant or the defence counsel is aimed at having a fact, which was already examined in an expert opinion provided by an expert appointed by the prosecution service or the investigating authority, established or assessed by an expert, then a party-appointed expert may be mandated to provide an opinion only if a motion filed by the defendant or the defence counsel to provide clarification or to supplement the expert opinion under section 197 (1) or to appoint a new expert under section 197 (2) was dismissed. If the expert specified in the motion of the defendant or the defence counsel provided the earlier expert opinion, no party-appointed expert may be mandated to provide an opinion.

(4) The defendant and the defence counsel may mandate only one expert to provide an opinion on the same technical matter.

(5) The defendant or the defence counsel shall notify, within eight days, the proceeding court, prosecution office, or investigating authority of mandating a party-appointed expert to provide an opinion, the termination of such a mandate, the mandated expert, and the time limit for providing the expert opinion. The time limit for notification shall be calculated from the date of the mandate or its termination.

Disqualification of the expert

Section 191 (1) A person shall not act as an expert if

a) he participates or participated in the case as a defendant, person reasonably suspected of having committed a criminal offence, defence counsel, aggrieved party, party with a pecuniary interest, party reporting a crime, an aide to any such person, or he is a relative of any such person,

b) he proceeds or proceeded in the case as a judge, a prosecutor, or a member of the personnel carrying out investigation tasks of an investigating authority, or he is a relative of such a person,

c) he participates or participated in the case as a witness or an aide to a witness,

d) in the context of exhumation or examination of the cause and circumstances of death, he is a doctor who treated the deceased person directly before his death or established his death,

e) he is an expert of an expert institution or organisation, or a member of an expert body, provided that the head of the expert institution, organisation, or body is affected by a ground for disqualification specified in point *a)*,

f) he is a member of a company, provided that the head or executive officer of the company is affected by a ground for disqualification specified in point *a)*, or if he is a member or employee of a company, a member or employee of which already acted in the given case,

g) he was used in the case as a consultant,

h) he is unlikely to provide an unbiased expert opinion for any other reason.

(2) For the purposes of paragraph (1) *b)*, a person shall not be considered to be a member of the personnel carrying out investigation tasks of an investigating authority if he does not serve as a member of the personnel of the investigating authority under the relevant legislation.

(3) The expert shall submit a notice of a ground for disqualification against himself to the entity that arranged for the appointment without delay. If an appointment is for a company or expert institution, organisation, or body, the notice shall be submitted through the head of the appointed company or organ.

(4) The proceeding court, prosecution office, or investigating authority shall decide on the matter of disqualifying an expert.

(5) The provisions on impediment to testifying as a witness shall also apply to experts accordingly.

Expert examination

Section 192 (1) An expert shall be obliged and entitled to access any data that is necessary for the performance of his task; to this end, he may

a) inspect case documents of the proceeding, except for documents specified by an Act,

b) attend procedural acts,

c) request information from defendants, aggrieved parties, witnesses, parties with a pecuniary interests, other interested parties, and experts appointed in the proceeding,

d) request further data, case documents, and information from the entity that arranged for the appointment,

e) inspect, examine, and sample, subject to an authorisation by the entity that arranged for the appointment, means of physical evidence or electronic data that was not handed over to him.

(2) During an examination, the expert may inspect and examine persons, means of physical evidence or electronic data, and he may question persons.

(3) If the expert examines a means of physical evidence or electronic data that changes or gets destroyed during the examination, part of the examined means of evidence or data shall be retained by the expert in its original condition, if possible, in a way that allows for its identification and the establishment of its origin.

(4) The entity that arranged for the appointment may specify certain examinations the expert is to carry out in the presence of the entity that arranged for the appointment.

(5) If more than one expert carries out expert examination in the criminal proceeding, the experts shall notify each other about the examination they wish to carry out, and the notified expert may attend the examination carried out by the other expert.

Section 193 (1) When the party-appointed expert prepares his opinion, the expert shall provide his opinion on the basis of data, case documents, and objects provided by his principal, but he may only examine a person if the person concerned consents.

(2) The proceeding of an expert mandated to provide an opinion as a party-appointed expert may not delay or disproportionally protract any examination to be carried out by the appointed expert.

Obligation to cooperate during the procedure of an expert

Section 194 (1) No expert examination affecting the inviolability of the subject's body may be carried out without a specific instruction by the entity that arranged for the appointment.

(2) The defendant, the aggrieved party, and the witness shall be obliged to subject themselves to an expert examination or intervention, except for surgeries and examination procedures qualifying as surgery.

(3) The aggrieved party and the witness shall be obliged also to facilitate the completion of an expert examination in other ways.

(4) On the basis of a specific instruction by the entity that arranged for the appointment, the defendant, the aggrieved party, the witness, and the holder of an inspection object shall tolerate that the expert examines the thing in his possession, even if the examination causes damage to the thing or destroys it .

(5) Pursuant to the applicable legislation, recompense may be claimed for any damage caused during an expert examination.

(6) If he fails to fulfil his obligation to cooperate,

a) the defendant may be subjected to forced attendance and the use of physical force,

b) the aggrieved party and the witness may be subjected to forced attendance and a disciplinary fine,

c) the defendant, the aggrieved party, and the witness shall be obliged to reimburse all criminal costs caused.

(7) The provisions laid down in paragraphs (1) to (6) shall not apply during the proceedings of a party-appointed expert mandated to provide an opinion.

Observation of mental condition

Section 195 (1) If the expert opinion concludes that observing the mental condition of the defendant for an extended period by an expert is necessary, the court may, before the indictment only upon a motion by the prosecution service, may order the observation of the mental condition of the defendant. If observation of mental condition is ordered, the detained defendant shall be referred to a forensic psychiatric and mental institution, while the defendant at liberty shall be referred to a psychiatric in-patient institute specified by law. The observation period may last up to one month; this time limit may be extended by the court by up to one month on the basis of an opinion by the institute performing the observation.

(2) If the observation of mental condition is ordered, no legal remedy sought shall have suspensory effect, unless the defendant is at liberty.

(3) During the observation of the mental condition of the defendant at liberty, the personal freedom of the defendant may be restricted as provided for by the Act on healthcare.

(4) If the defendant does not subject himself to the observation of his mental condition, the psychiatric institute shall notify the court that ordered the observation of his mental condition without delay.

Submitting the expert opinion

Section 196 (1) If more than one expert participated in the examination, the expert opinion shall specify which expert performed which examination.

(2) Before an expert opinion is submitted orally, the identity of the expert shall be verified, and it shall be clarified that he is not affected by a ground for disqualification. The expert shall be advised of the consequences of giving a false expert opinion. The advice and the response given by the expert to the advice shall be recorded in the minutes. The expert may be asked questions after he submitted his expert opinion.

(3) A statement made by the defendant, the witness, and the aggrieved party before an expert may not be used as evidence if it relates to data concerning the subject matter of the examination, any examination procedure or instrument, or any change to the examined object, or the act underlying the proceeding.

(4) The defendant or the defence counsel shall decide whether an opinion by a party-appointed expert sis to be submitted.

Assessing an expert opinion and using another expert

Section 197 (1) If an expert opinion may not be accepted without any reservation due to any deficiency and, in particular, if

a) it does not contain the mandatory statutory elements of an expert opinion,

b) it is not clear,

c) it is inconsistent with itself or any data provided to the expert, or

d) there is a serious doubt regarding its correctness,

the expert shall provide clarification, or supplement his expert opinion if called upon to do so by the court, the prosecution service, or the investigating authority.

(2) If the clarification or supplemented expert opinion requested from the expert does not produce any result, another expert shall be appointed. The concerns relating to the acceptability of the previous expert opinion shall be specified in a motion for the appointment of an expert or the decision on the appointment.

(3) If the opinions provided by the experts differ, the differences shall be clarified by interviewing the experts in the presence of each other.

(4) After taking the measures specified in paragraphs (1) to (3), a new expert may be appointed if any unresolvable difference continues to remain regarding a technical matter, which is key to deciding the case, between the expert opinions prepared on the basis of the same examination material regarding the same fact to be proved. The expert appointed in such an event shall provide an opinion on the ground for such differences between the expert opinions and the possible need to supplement any of the expert opinions or to obtain a new expert opinion in the case.

(5) The expert opinion prepared on the same technical matter by an expert appointed in another proceeding may be taken into account as an expert opinion in the criminal proceeding. The provisions laid down in paragraphs (1) to (4) shall apply to the assessment of the expert opinion accordingly, with the proviso that clarification may be requested, the expert opinion may be supplemented, or the experts may be interviewed in the presence of each other after the expert is appointed.

Section 198 (1) A submitted or presented opinion provided by a party-appointed expert shall be considered an expert opinion if the defendant or the defence counsel concerned acted in line with section 190 (2) to (4). In any other situation, an opinion by a party-appointed expert shall be considered an observation made by the defendant or the defence counsel, and the expert may not be interrogated as a witness regarding the technical matter at hand.

(2) If an opinion by a party-appointed expert qualifies as an expert opinion, its assessment shall be subject to the provisions laid down in paragraphs (1) to (4), with the proviso that clarification may be requested, the expert opinion may be supplemented, or the experts may be interviewed in the presence of each other after the expert is mandated or appointed accordingly.

(3) If an opinion by a party-appointed expert qualifies as an expert opinion and is submitted orally, or if a clarification is provided, the expert opinion is supplemented orally, or experts are interviewed in the presence of each other on the basis of a mandate, the expert shall be obliged to also answer questions asked by the court, the prosecution service, or the investigating authority.

The expert's fee

Section 199 (1) An expert shall be entitled to

a) a fee for carrying out the tasks of an expert, and appearing before the court, the prosecution service, or the investigating authority when summoned, and

b) reimbursement for all costs incurred in relation to his proceeding

(hereinafter jointly: "expert fee").

(2) The amount of the expert fee shall be determined based on a fee information document, filed by the expert, in a decision after the expert opinion is received or the expert is interviewed, if applicable, but no later than one month.

(3) The decision determining the amount of the expert fee shall be communicated to the expert concerned, the defendant and the defence counsel; if a court adopted the decision, it shall also be communicated to the prosecution service. These persons or entities may seek legal remedy against the decision on an expert fee.

(4) The expert fee shall be advanced by the court, the prosecution office, or the investigating authority, as specified by law.

(5) The defendant or the defence counsel shall advance the expert fee and costs of a party-appointed expert mandated to provide an opinion.

Consequences of violating the expert's obligations

Section 200 (1) A disciplinary fine may be imposed on the expert, and he shall be obliged to reimburse all criminal costs caused if he

a) refuses to provide assistance or an opinion without a lawful reason even after he was advised of the consequences of refusal,

b) fails to meet the time limit for submitting his expert opinion, or

c) protracts the proceeding by violating any other obligation.

(2) If the expert designated by the head of the appointed company or organisation fails to submit an expert opinion, the disciplinary fine and the obligation to reimburse all criminal costs caused shall be imposed on the appointed company or expert institution, organisation, or body.

(3) If an expert refuses to provide an opinion by invoking an obstacle to testifying as a witness, he shall not be obliged to assist until any legal remedy sought against a decision dismissing such refusal is adjudicated.

The interpreter

Section 201 (1) The provisions on experts shall also apply accordingly to interpreters, with the proviso that

a) the provisions on party-appointed experts shall not apply,

b) to the inspection of a case document translated by an interpreter, the provisions on the original case document shall apply,

c) a decision on the appointment or discharge of the interpreter shall be served only on the interpreter,

d) a decision determining the fee of the interpreter shall be communicated to the interpreter and a decision by the court shall be communicated also to the prosecution service.

(2) A person may be used as an interpreter if he meets all conditions specified by law. If that is not possible, a person with adequate language competence may also be appointed as an *ad hoc* interpreter. Interpreters shall be construed to mean also specialised translators.

(3) An interpreter shall be advised of the consequences of interpreting falsely at the time of his appointment.

(4) Persons attending a procedural act where an interpreter is used may move for the appointment of another interpreter due to the inadequate quality of interpreting.

Chapter XXXII

THE OPINION BY A PROBATION OFFICER

Section 202 (1) The court and the prosecution service may order that an opinion be sought from a probation officer before

a) imposing a penalty or applying a measure,

b) applying conditional suspension by the prosecutor, or

c) referring a case to a mediation procedure.

(2) Obtaining the opinion of a probation officer may be mandatory under an Act.

(3) It shall be the responsibility of the probation officer to give an opinion.

(4) The probation officer shall be obliged and entitled to access all data that is needed for giving an opinion; to this end, he may inspect case documents of the proceeding, and he may request information from the defendant, the aggrieved party, the witness, and any other person involved in the proceeding. He may also request further data, case documents, and information from the prosecution service or the court if doing so is necessary for performing his task.

(5) The provisions on experts shall also apply to probation officers giving an opinion, with the proviso that section 194, section 195, section 197 (2) to (5), and sections 198 to 200 shall not apply to a probation officer.

Section 203 (1) The opinion by the probation officer shall describe the facts and circumstances characterising the personality and living conditions of the defendant, in particular his family situation, health, any addiction, housing situation, education, qualification, workplace or, in the absence of a workplace, data on his occupation, financial situation and assets; it shall also present any relationship between the discovered facts, circumstances, and the commission of the criminal offence, as well as the risk of reoffending, and the needs of the defendant.

(2) In the opinion, the probation officer shall provide information on employment possibilities that would be suitable for the defendant considering his skills, as well as healthcare and social care options available to him; he may suggest individual rules of behaviour, or obligations, to be imposed on a defendant, as well as interventions to be taken to mitigate the risk of reoffending.

(3) If instructed by the court or the prosecution service, the opinion by the probation officer shall cover whether the defendant is willing and capable of complying with any foreseen rule of behaviour or obligation and if the aggrieved party consents to any reparation to be provided to him or to participating in a restorative proceeding under section 419 (2) *e)*.

Chapter XXXIII

MEANS OF PHYSICAL EVIDENCE, ELECTRONIC DATA

Means of physical evidence

Section 204 (1) Means of physical evidence means objects, including documents and deeds, that are capable of proving any fact to be proved, including, in particular, objects that

a) carry marks of a criminal offence or a perpetrator in relation to a criminal offence,

b) were created by way of committing a criminal offence,

c) were used as a means of committing a criminal offence, or

d) were the object of a criminal offence.

(2) Document means all means of physical evidence that carries data by technical, chemical, or any other method, including, in particular, texts, drawings, and illustrations recorded in a paper-based form or as electronic data.

(3) Deed means a document that was produced and is suitable for proving that a fact or data is true, an event occurred, or a statement was made. The provisions on deeds shall apply to also extracts of deeds.

Electronic data

Section 205 (1) Electronic data means any representation of facts, information, and terms that is suitable for being technically processed by an information system, including any program that implements a function of an information system.

(2) For the purposes of this Act, means of physical evidence also means electronic data, unless otherwise provided in this Act.

Chapter XXXIV

EVIDENTIARY ACTS

Section 206 An evidentiary act means, in particular, an inspection, on-site interrogation, reconstruction of a criminal offence, presentation for identification, confrontation, and instrumental credibility examination of a testimony.

The inspection

Section 207 (1) The court, the prosecution service, or the investigating authority may order and carry out an inspection if a person, object, or site needs to be inspected, or an object or site needs to be observed, to discover or establish a fact to be proved.

(2) In the course of an inspection, means of physical evidence shall be located and collected, and arrangements shall be made for the proper preservation of such evidence. In the course of an inspection, circumstances that are relevant to the taking of evidence shall be recorded in detail, including, in particular, the course, method, location, and status of locating and collecting the inspection object. In the course of locating, recording, and securing means of physical evidence, measures shall be taken to ensure that compliance with rules of procedure can be verified subsequently. An image, sound or audio-visual recording, drawing, or sketch shall be produced of the object of inspection, if possible and necessary, and it shall be attached to the minutes.

(3) If the object of inspection cannot be inspected on-site, or such inspection would cause considerable difficulties or costs, the inspection shall be carried out before the organ that ordered the inspection.

(4) Experts may be used during inspections.

(5) If for the identification of the perpetrator biometric sample needs to be captured in the course of the criminal proceeding, the prosecution service and the investigating authority may capture biometric sample from persons who came into contact with the person, object, location or other means of physical evidence concerned in order to be able to exclude the accidental contamination of another biometric sample.

On-site interrogations

Section 208 (1) The court, the prosecution service, or the investigating authority may interrogate the defendant and the witness on-site if it is necessary to give testimony at the scene of the criminal offence or another location related to the criminal offence or to present the place where the criminal offence was committed, another location related to the criminal offence, a means of physical evidence, or the progress of the criminal offence.

(2) Before conducting an on-site interrogation, the defendant or the witness shall be interrogated regarding the circumstances under which he detected a given location, act, or means of physical evidence, as well as the marks he would rely on for identification.

The reconstruction of a criminal offence

Section 209 (1) The court, the prosecution service, or the investigating authority may order and carry out a reconstruction of a criminal offence if it needs to be established or verified whether a given event or phenomenon could have happened at a specific time or location, in a specific manner or under specific circumstances.

(2) If possible, a criminal offence shall be reconstructed under circumstances that are identical to the circumstances under which the given event or phenomenon happened or may have happened.

The presentation for identification

Section 210 (1) The court, the prosecution service, or the investigating authority may order and carry out a presentation for identification if doing so is necessary for the identification of a person or object. At least three persons or objects shall be presented to the defendant or the witness for identification. A person or object may be presented to the defendant or the witness for identification by way of an image, sound or audio-visual recording if no other option is available.

(2) Before a presentation for identification, the person expected to identify shall be interrogated in detail regarding the circumstances under which he detected the given person or object, as well as his relationship to, and any known distinctive mark of, that person or object.

(3) When presenting persons for identification, the person in question shall be presented in a group of other persons who are not related to the case, unknown to the recognising person, and similar to the person concerned in terms of the prominent distinctive marks specified by the identifying person, in particular in terms of sex, age, build, colour, hygiene, and clothing. When presenting objects for identification, an object concerned shall be presented among similar objects. The placement of a person or object concerned shall not be considerably different from that of other persons or objects in the same group, and shall not be prominent in any way.

(4) If there is more than one identifying person, the presentation shall be carried out separately, in the absence of the other identifying persons.

(5) If it is necessary for the protection of the witness, presentation for identification shall be carried out in a manner that prevents the person concerned from recognising or detecting the witness. If personal data of the witness were ordered to be processed confidentially, such processing shall also be ensured also in the event of a presentation for identification.

Confrontation

Section 211 (1) If the testimonies of the defendants, the witnesses, or the defendant and the witness contradict each other, the court, the prosecution service, or the investigating authority may clarify the contradiction by way of a confrontation. During a confrontation, each person shall state his testimony orally in front of the other confronted person, and subsequently, each confronted person may be permitted to ask questions from the other confronted person.

(2) Confrontation of the witness or the defendant shall be dispensed with if doing so is necessary to treat carefully or protect the witness or the defendant.

Instrumental credibility examination of testimonies

Section 212 (1) In the course of the investigation, the prosecution service or the investigating authority may undertake an instrumental credibility examination of the testimony of the witness and the suspect. Such verification shall be subject to the consent of the witness or the suspect concerned.

(2) In the course of instrumental credibility examination, using a consultant shall be mandatory; the consultant used may subsequently be interrogated as a witness regarding the procedure and his findings.

Common provisions

Section 213 (1) The rules on inspection shall apply to reconstructions of criminal offences and presentations for identification accordingly.

(2) In order to carry out an inspection, reconstruction of a criminal offence, or presentation for identification, the court and the prosecution service may also make use of the investigating authority.

(3) The defendant, the witness, and another person, including in particular a person disposing of or possessing the subject of the inspection, shall subject himself to an inspection, reconstruction of a criminal offence, or presentation for identification, and he shall make the object in his possession available for inspection, reconstruction of a criminal offence, or presentation for identification. To enforce compliance with such obligations, the defendant may be subject to coercion, or the aggrieved party, the witness, and another person may be subject to coercion and a disciplinary fine.

(4) The inspection, the reconstruction of a criminal offence, and the presentation for identification shall be recorded using an audio-visual recording, if possible.

PART SIX

COVERT MEANS

Chapter XXXV

GENERAL PROVISIONS ON USING COVERT MEANS

Section 214 (1) The use of covert means means a special activity carried out by authorised organs in the criminal proceedings without the knowledge of the persons concerned, as such means restrict the fundamental rights of persons to the privacy of homes, personal secrets, the confidentiality of correspondence, and the protection of personal data.

(2) Covert means may be used by authorised organs to carry out their law enforcement tasks, as specified in applicable legislation, only according to the rules laid down in this Act.

(3) Paragraph (2) shall not affect any secret information gathering carried out by national security services and the counter-terrorism police organ for their law enforcement tasks according to the Act on national security services.

(4) Covert means that are

a) not subject to permission of a judge or a prosecutor,

b) subject to permission of a prosecutor, or

c) subject to permission of a judge

may be used in a criminal proceeding.

(5) A covert means may be used if

a) it is reasonable to assume that a piece of information or evidence to be acquired is indispensable for achieving the purpose of a criminal proceeding, and it cannot be acquired by other means,

b) its use does not restrict any fundamental right of the person concerned, or any other person, in a disproportional manner considering the attainable law enforcement goal, and

c) it is likely that information or evidence relating to a criminal offence may be obtained by its use.

Chapter XXXVI

COVERT MEANS NOT SUBJECT TO PERMISSION OF A JUDGE OR A PROSECUTOR

Section 215 (1) The organ authorised to use covert means may use persons cooperating in secret to acquire information regarding a criminal offence.

(2) A member of the organ authorised to use covert means may collect and verify information relating to a criminal offence while keeping the actual purpose of his proceeding secret.

(3) The organ authorised to use covert means may use a trap not causing injury or damaging health to interrupt a criminal offence, identify the perpetrator of a criminal offence, or take evidence.

(4) A member of the organ authorised to use covert means may, to interrupt a criminal offence, identify the perpetrator of a criminal offence, or take evidence, replace an aggrieved party or another person to protect his life and physical integrity.

(5) The organ authorised to use covert means may covertly surveil

a) a person, home, other room, fenced area, public area, premises open to the public, or vehicle, or

b) a thing serving as means of physical evidence,

that are associated with the criminal offence, and it may collect information on events taking place, and it may use technical means to record such events (hereinafter "covert surveillance").

(6) For the purpose of covert surveillance, the organ authorised to use covert means may also use persons cooperating in secret.

(7) The organ authorised to use covert means may, to interrupt a criminal offence, identify the perpetrator of a criminal offence, or take evidence, disclose false or misleading information to the person involved in the use of covert means by concealing the source of information. The organ authorised to use covert means may also use persons cooperating in secret to transfer such information.

(8) A covert means referred to in paragraph (7) may not

a) be used during the interrogation of a defendant or witness or during an evidentiary act,

b) contain any promise that is inconsistent with the law, or

c) constitute a threat or instigation, and it may not drive the person concerned towards the commission of a criminal offence, the gravity of which is greater than that of the criminal offence he initially planned to commit.

(9) The organ authorised to use covert means may secretly acquire, using technical means, the data necessary for interrupting the criminal offence, identifying the perpetrator of the criminal offence or, for the purpose of taking of evidence, establishing that communication was carried out using an electronic communications network or device or through an information system or identifying the electronic communications device or information system or determining the location thereof.

Chapter XXXVII

COVERT MEANS SUBJECT TO PERMISSION OF A PROSECUTOR

Surveillance of payment transactions

Section 216 (1) The organ authorised to use covert means may order, subject to the permission of the prosecution service, an organisation providing financial services or supplementary financial services as defined in the Act on credit institutions and financial undertakings (for the purposes of this section, hereinafter "service provider"), to record, keep, and transmit data pertaining to payment transactions, as defined in the Act on providing payment services, to the ordering entity during a specified period.

(2) In particular, the surveillance of payment transactions may be aimed at the recording and transmission of data pertaining to

a) all payment transactions relating to a payment account as defined in the Act on providing payment services,

b) payment transactions meeting pre-determined criteria.

(3) The ordering entity may order the specified data to be transmitted without delay or within a set time limit.

(4) The surveillance of payment transactions may be ordered for a maximum period of three months, with the proviso that the surveillance period, subject to the permission of the prosecution service, may be extended once for an additional period of three months.

(5) The following shall be specified in a decision ordering the surveillance of payment transactions:

a) data that are suitable for identifying the payment account concerned,

b) the starting and finishing date, specified in days, of the surveillance of payment transactions,

c) the exact scope of data to be transmitted,

d) the applicable conditions, if the ordering entity set any condition for recording or transmitting the data,

e) the method of, and time limit for, transmitting the data.

(6) In the course of the surveillance of payment transactions, the service provider shall record and transmit the data specified in the ordering decision in the manner, and by the time limit, specified in the decision.

Section 217 (1) Within the framework of the surveillance of payment transactions, the ordering entity may also order a service provider to suspend the execution of payment transactions between certain payment accounts and persons, or payment transactions that meet certain conditions.

(2) The period of suspending the execution of payment transactions may last for up to four working days following the notification of the ordering organ; this period may be extended once by up to three working days subject to the permission of the prosecution service.

(3) During the suspension of the payment transaction, the ordering entity shall examine whether the suspended payment transaction can be connected to a criminal offence. If the suspension of the payment transaction is unnecessary, the service provider shall be notified that the payment transaction may be executed. If further follow-up of a suspended payment transaction is necessary, the ordering entity, subject to the permission of the prosecution service, may also order other service providers to monitor the payment transactions, and then it shall notify the service provider that the suspended payment transaction may be executed.

(4) If the ordering entity establishes that the conditions for the seizure or sequestration of scriptural money or electronic money involved in the payment transaction are met, it shall order the seizure or sequestration.

(5) A service provider may execute a suspended payment transaction if

a) permitted by the ordering entity, or

b) the period specified in paragraph (2) passed without seizure or sequestration being ordered.

Section 218 (1) A service provider shall not inform any person about the surveillance of payment transactions, the content of the ordering decision, the content of data transfers completed, or the suspension of executing a payment transaction, and it shall ensure that such information is kept secret. If a person affected by the surveillance of payment transactions requests information concerning the processing of his own personal data, he shall be provided with information that does not reveal that his personal data were transferred for the surveillance of payment transactions. The service provider shall be advised about this provision when the surveillance of payment transactions is ordered.

(2) The restriction specified in paragraph (1) may remain in place until the preparatory proceeding or the investigation is completed unless the lifting of the restriction would jeopardise the success of another criminal proceeding conducted against the person concerned. The service provider shall be notified about the lifting of the restriction.

The prospect of avoiding the establishment of criminal liability

Section 219 (1) The organ authorised to use covert means may, with permission from the prosecution service, enter into an agreement with the perpetrator of a criminal offence, offering that no criminal proceeding would be instituted against him or a pending criminal proceeding would be terminated, if he provided information and evidence for detecting and proving the case, or another criminal case, provided that the national security or law enforcement interest that may be realised through such an agreement exceeds the interest in establishing the criminal liability of the perpetrator. When outlining the prospect of avoiding the establishment of criminal liability, it may be set out as a condition that the perpetrator pays, in whole or in part and through the State, damages and grievance awards he is liable to pay under civil law.

(2) No agreement may be concluded if a criminal proceeding is to be conducted against a perpetrator due to a criminal offence involving the intentional killing of another person or causing any permanent disability or serious degradation of health intentionally. An agreement shall be terminated if the organ authorised to use covert means learns that the person providing information committed any such criminal offence.

(3) An agreement offering avoidance of the establishment of criminal liability shall specify

a) data that are suitable for identifying the perpetrator of the criminal offence,

b) the classification under the Criminal Code and a short description of the facts of the criminal offence, the prospect of avoiding the establishment of criminal liability for which is outlined,

c) the classification under the Criminal Code and a short description of the facts of the criminal offence, concerning which the perpetrator agrees to provide information and evidence,

d) the commitment to provide information and evidence, including the method thereof, and

e) details of paying any damages or grievance award if doing so is part of the agreement.

(4) If the perpetrator of the criminal offence performs the agreement, no criminal proceeding may be instituted against him, and any pending criminal proceeding against him shall be terminated.

(5) If no criminal proceeding is instituted against the perpetrator, or any pending criminal proceeding is terminated, due to an agreement, the State shall pay the damages or grievance award the perpetrator is liable to pay under civil law, provided that the perpetrator has not paid it. To pay any damages or grievance award, the organ authorised to use covert means may initiate the conclusion of a confidentiality agreement with the aggrieved party, and it may draft documents that are necessary for doing so.

(6) If the matter of paying damages or grievance award is to be decided in a civil action, the legal basis for a corresponding claim shall be presumed. In a civil action, the State shall be represented by the Minister responsible for justice. Before adjudicating a claim, the court proceeding in the civil case shall obtain a statement from the organ authorised to use covert means regarding the act committed against the plaintiff, the damage caused, and the violation of any personality right. Such a statement may not include any fact based on which conclusion can be drawn regarding the identity of the perpetrator or the reason for offering the avoidance of the establishment of criminal liability.

Consented surveillance

Section 220 (1) Subject to the permission of the prosecution service and the written consent of the aggrieved party, the organ authorised to use covert means may use surveillance regarding

a) a criminal offence of usury, domestic violence, or harassment, or

b) any criminal offence committed by threat.

(2) Subject to the permission of the prosecution service and the written consent of the person who was invited, or sought to be induced, the organ authorised to use covert means may use surveillance

a) regarding an invitation to commit a criminal offence, provided that preparation constitutes a punishable act under the Criminal Code, or inviting another person to commit a given criminal offence constitutes a criminal offence, or

b) if seeking to induce to the act constitutes a criminal offence.

(3) In the course of consented surveillance, the organ authorised to use covert means may, subject to the consent of a person specified in paragraph (1) or (2), surveil and record by technical means events taking place at a home, other room, fenced area, or vehicle used by that person, except for public places, places open to the public, and means of public transport; it may also place the necessary technical means at such locations.

(4) In the course of consented surveillance, the organ authorised to use covert means may intercept, and record by technical means, communications conducted by a person specified in paragraph (1) or (2) through, or using, an electronic communications service, electronic communications network or device, or information system; it may also access personal data of persons engaging in such communication.

(5) The use of consented surveillance may be permitted for a period of up to forty-five days.

(6) A decision on using consented surveillance shall specify

a) data suitable for identifying a person referred to in paragraph (1) or (2),

b) the starting and finishing date of use, specified in days,

c) the classification under the Criminal Code and a short description of the facts of the criminal offence subject to the proceeding, and

d) data suitable for identifying clearly the place of using covert means, and the device or service to be subject to surveillance.

(7) The provisions laid down in sections 252 to 254 shall apply accordingly to the use of results of consented surveillance.

Simulated purchases

Section 221 Subject to the permission of the prosecution service, sham contracts

a) on acquiring things or samples, or using services that are presumably related to a criminal offence,

b) on acquiring a thing or using a service that would provide a means of physical evidence regarding a criminal offence, in order to reinforce trust in the seller,

c) on acquiring a thing or using a service, to apprehend the perpetrator of a criminal offence or secure a means of physical evidence,

may be concluded and performed.

Using undercover investigators

Section 222 (1) Subject to the permission of the prosecution service, an organ authorised to use covert means may use, in a criminal proceeding, members who conceal their identity and association with the organ permanently and are employed for such tasks specifically (hereinafter “undercover investigator”).

(2) An undercover investigator may be used to

a) infiltrate a criminal organisation,

b) infiltrate a terrorist group or an organisation that provides or collects material means to arrange the conditions that are necessary to commit terrorist acts, or supports the commission of terrorist acts or the operations of a terrorist group by providing material means or in any other way,

c) carry out simulated purchases,

d) carry out secret surveillance,

e) transfer information under section 215 (7), or

f) acquire information and evidence relating to the criminal offence.

(3) The undercover investigator may be used for a period required to achieve the purpose of his use, but not exceeding six months. If the conditions of ordering the use of an undercover investigator are still met, the use of an undercover investigator may be extended repeatedly, subject to the permission of the prosecution service, by up to six months each time.

(4) A decision on using an undercover investigator shall specify

a) the purpose of using an undercover investigator under paragraph (2),

b) the starting and finishing date of use, specified in days,

c) the classification under the Criminal Code and a short description of the facts of the criminal offence subject to the proceeding,

d) the specific criminal offence referred to in section 224 (2), if it is foreseeably necessary for using an undercover investigator successfully.

Section 223 (1) Under the provisions on using covert means subject to permission of a judge or prosecutor, an undercover investigator may be used

a) in combination with other covert means subject to permission of a judge or prosecutor, or

b) to enable the use of other covert means subject to permission of a judge or prosecutor.

(2) If, during the use of an undercover investigator, the need for any additional activity constituting a covert means subject to permission of a judge or a prosecutor arises for the undercover investigator to be successful, and the corresponding permission cannot be obtained under section 229 or 238 before using such a covert means, the proceeding undercover investigator may begin using the covert means subject to permission of a judge or prosecutor without permission.

(3) In a situation described in paragraph (2), the permission of the court or the prosecution service shall be obtained subsequently without delay. If the court or the prosecution service dismisses a motion for *ex-post* permission, the result of using a covert means subject to permission may not be used as evidence, and all data acquired in such a manner shall be erased without delay.

(4) The court or the prosecution service shall also dismiss a motion if permission could have been obtained before using a covert means subject to permission without endangering the success of using the undercover investigator.

Section 224 (1) The undercover investigator may not be punished for a criminal offence, infraction, or a violation punishable by an administrative fine that he committed while being used as an undercover investigator if committing the offence, infraction or violation

a) is necessary for the success, or to achieve the law enforcement objective, of using an undercover investigator, and the law enforcement interest to be achieved through using him exceeds the interest in holding the undercover investigator liable,

b) is necessary to ensure the safety, and prevent the exposure, of the undercover investigator, and the interest in ensuring the safety, and preventing the exposure, of the undercover investigator exceeds the interest in holding the undercover investigator liable or

c) is necessary to prevent or interrupt the commission of another criminal offence, and the interest in preventing or interrupting the other criminal offence exceeds the interest in holding the undercover investigator liable.

(2) If a criminal offence, infraction, or violation punishable by an administrative fine needs to be foreseeably committed for an undercover investigator to be successful, this shall be specified in the decision on using the undercover investigator.

(3) The undercover investigator may not commit any criminal offence that involves the intentional killing of another person or causing permanent disability or serious degradation of health intentionally.

(4) The undercover investigator may not induce another person to commit a criminal offence, and he may not drive a person concerned towards the commission of a criminal offence the gravity of which is greater than that of the criminal offence initially planned. Making a simulated purchase shall not constitute inducement in and of itself.

(5) If an undercover investigator may not be punished under paragraph (1) for a criminal offence, infraction, or violation punishable by an administrative fine he committed, the State shall pay any damages or grievance award the undercover investigator is liable to pay under civil law. To pay any damages or grievance award, the organ authorised to use covert means may initiate the conclusion of a confidentiality agreement with the aggrieved party, and it may draft documents that are necessary for doing so.

(6) If the matter of paying damages or grievance award is to be decided in a civil action, the legal basis for a corresponding claim shall be presumed. In a civil action, the State shall be represented by the Minister responsible for justice. Before adjudicating a claim, the court proceeding in the civil case shall obtain a statement from the organ authorised to use covert means regarding the act committed against the plaintiff, the damage caused, and the violation of any personality right. Such a statement may not include any facts that may serve as a ground for any conclusion regarding the identity of the undercover investigator.

Section 225 (1) In the course of using an undercover investigator, the organ of employment organ may engage in secret information gathering, according to the applicable Act, to protect the undercover investigator, ensure his traceability, and maintain the covert nature of the proceeding.

(2) The results of any secret information gathering carried out under paragraph (1) may be used in a criminal proceeding according to the provisions applicable to secret information gathering carried out under the Act on the police or the Act on the National Tax and Customs Administration.

Simulated purchases by members of organs authorised to use covert means and persons cooperating in secret

Section 226 (1) To make a simulated purchase,

a) a member of an organ authorised to use covert means may be used, and

b) an organ authorised to use covert means may also use a person cooperating in secret.

(2) An organ authorised to use covert means may use a person cooperating in secret to make a simulated purchase if the objective of making a simulated purchase may not be achieved, or may be achieved only with a significant delay, by using an undercover investigator or a member of the organ authorised to use covert means.

(3) The provisions on undercover investigators shall apply as appropriate to the use of members of organs authorised to use covert means and persons cooperating in secret for making simulated purchases.

Cover deeds, cover institutes, and cover data

Section 227 (1) Subject to the permission of the prosecution service, the organ authorised to use covert means may, in the course of using another covert means,

a) produce or use deeds or public deeds containing false data, facts, or statements (hereinafter "cover deed") to detect and prove a criminal offence,

b) establish and maintain an organisation by applying the provisions on cover institutions as laid down in applicable Acts, to detect and prove a criminal offence, or

c) have false data (hereinafter "cover data") entered in publicly certified registers to detect and prove a criminal offence, and to protect a cover deed or an organisation referred to in point *b)*.

(2) Cover deeds shall be destroyed, and cover data shall be erased from publicly certified registers when they are not needed in a criminal proceeding any longer.

Common rules of procedure regarding the use of covert means subject to permission of a prosecutor

Section 228 (1) The prosecution service shall decide on granting permission to use covert means upon a corresponding motion submitted by an authorised senior official of an organ authorised to use covert means within seventy-two hours after the prosecution service receives the motion.

(2) The following shall be stated or provided in the course of filing a motion:

a) the name of the organ authorised to use covert means, the date of ordering the preparatory proceeding or investigation, and the case number,

b) the classification under the Criminal Code and a short description of the facts of the criminal offence underlying the proceeding and the data serving as a ground for suspecting, or suggesting the possibility of, a criminal offence,

c) all data confirming that the statutory conditions of using such means are met,

d) the designation of the covert means to be used, and data required for granting permission to use such means, and

e) the decision underlying the permission of a prosecutor.

Section 229 (1) If granting permission to use a covert means subject to a permission of a prosecutor would significantly jeopardise the objective of using covert means due to the delay involved, an authorised senior official of the organ authorised to use covert means may begin using the covert means until the prosecution service makes a decision.

(2) In the event of beginning to use a covert means under paragraph (1), an authorised senior official of the organ authorised to use covert means shall file a motion with the prosecution service for *ex-post* permission within seventy-two hours after the decision on beginning the use of a covert means was made. The prosecution service shall decide on the motion within one hundred and twenty hours after the decision on beginning the use of a covert means was made.

(3) In the course of moving for an *ex-post* permission, the circumstances confirming that the conditions laid down in paragraph (1) are met, as well as the time of deciding on beginning to use the covert means, indicated in hours, shall be specified.

(4) A motion shall also be dismissed by the prosecution service if

a) the motion is late, or

b) the permission could have been obtained before beginning to use, under paragraph (1), a covert means subject to a permission of a prosecutor.

(5) If the prosecution service dismisses a motion for *ex-post* permission, the result of using a covert means may not be used as evidence, and all data acquired in such a manner shall be erased without delay.

Section 230 In the course of a preparatory proceeding conducted by the prosecution office, or of a prosecutorial investigation, the superior prosecution office shall carry out the tasks relating to granting permission to use a covert means subject to a permission of a prosecutor.

Chapter XXXVIII

COVERT MEANS SUBJECT TO PERMISSION OF A JUDGE

Section 231 In a criminal proceeding, the following covert means may be used subject to permission of a judge:

a) secret surveillance of an information system,

b) secret search,

c) secret surveillance of a locality,

d) secret interception of a consignment,

e) interception of communications.

Section 232 (1) In the course of secret surveillance of an information system, the organ authorised to use covert means may, with permission from a judge, secretly access, and record by technical means, data processed in an information system. For that purpose, any necessary electronic data may be placed in an information system, while any necessary technical device may be placed at a home, other room, fenced area, vehicle, or other object used by the person concerned, except for public areas, premises open to the public, and means of public transport.

(2) In the course of a secret search, the organ authorised to use covert means may, with permission from a judge, secretly search a home, other room, fenced area, vehicle, or other object used by the person concerned, except for public areas, premises open to the public, and means of public transport; it may also record its findings by technical means.

(3) In the course of secret surveillance of a locality, the organ authorised to use covert means may, with permission from a judge, secretly surveil and record events taking place at a home, other room, fenced area, or vehicle, except for public areas, premises open to the public, and means of public transport. For that purpose, any necessary technical means may be placed at the place of operation.

(4) In the course of secret interception of a consignment, the organ authorised to use covert means may, with permission from a judge, secretly open, and intercept, verify, and record the contents of a postal item or other sealed consignment.

(5) In the course of interception of communications, the organ authorised to use covert means may, with permission from a judge, intercept and record communications conducted through an electronic communications network or device, using an electronic communications service, or an information system.

Section 233 (1) Any technical means used, or electronic data placed in an information system, in the course of using a covert means subject to permission of a judge shall be removed without delay after finishing the use of the given covert means. If an obstacle prevents such removal, the technical means or electronic data concerned shall be removed without delay after the obstacle is eliminated.

(2) To place or remove a technical means or data used in the course of using a covert means subject to permission of a judge,

a) the organ authorised to use covert means may use covert means not subject to permission of a judge, and

b) the organ performing the use of a covert means may engage in secret information gathering under the Act applicable to that organ.

Section 234 (1) Covert means subject to permission of a judge may be used regarding intentional criminal offences punishable by imprisonment for five years or more.

(2) Covert means subject to permission of a judge may also be used regarding the following intentional criminal offences punishable by imprisonment for three years:

a) criminal offences committed on a commercial basis or in a criminal conspiracy,

b) abuse of drug precursors, counterfeiting of medicinal products, abuse of performance-enhancing substance, counterfeiting of medical products,

c) drug possession under section 178 (6) of the Criminal Code, provided that the condition referred to in section 180 (1) *c)* of the Criminal Code is not met, abuse of psychoactive substances, sexual abuse, procuring, facilitating prostitution, living on the earnings of prostitution, exploitation of child prostitution, child pornography,

d) damaging the environment, damaging natural values, game poaching, organising illegal animal fights, violation of waste management regulations,

e) criminal offences against justice, except for breach of seal,

f) corruption criminal offences, except for failure to report a corruption criminal offence,

g) criminal offence against the order of election, referendum and European citizens' initiative, illegal employment of a third-country national, organising illegal gambling,

h) insider trading and illegal market manipulation.

(3) Covert means subject to permission of a judge may also be used regarding any intentionally committed misuse of classified data, abuse of office, violence against a public officer, violence against an internationally protected person, counterfeiting non-cash payment instruments, unauthorised financial activity, or organising a pyramid scheme.

(4) If preparation for a criminal offence is punishable under the Criminal Code, covert means subject to permission of a judge may also be used in criminal proceedings instituted regarding any preparation for a criminal offence specified in paragraphs (1) to (3).

Granting permission to use covert means subject to permission of a judge

Section 235 (1) Covert means that are subject to permission of a judge may be used on the basis of, and within the limits specified in, a permission granted by a court.

(2) The covert means subject to the permission of a judge that may be used against the person concerned shall be specified in the court's permission.

(3) The court may

a) extend the period of its permission,

b) withdraw its permission,

c) extend the scope of its permission to other covert means, and

d) prohibit any further use of a covert means already covered by a permission.

Section 236 (1) The court shall decide on granting permission to use any covert means subject to permission of a judge upon a motion submitted by the prosecution service.

(2) Such a motion shall include the following:

a) the name of the organ authorised to use covert means, the date of ordering the preparatory proceeding or investigation, and the case number,

b) available data identifying the person concerned,

c) the planned date and time, indicated in days and hours, of starting and finishing the use of the covert means subject to permission of a judge against the person concerned,

d) detailed reasons confirming that the conditions of permitting the use of the covert means subject to permission of a judge are met, including the following:

da) the classification under the Criminal Code and a short description of the facts of the criminal offence underlying the proceeding, and the data serving as a ground for suspecting, or suggesting the possibility of, a criminal offence,

db) data confirming that the conditions laid down in section 214 (5) are met, and

dc) the purpose of using covert means subject to permission of a judge,

e) the designation of the covert means to be used,

f) data clearly identifying the information system subject to secret surveillance; the room, vehicle, or object subject to a secret search; the room or vehicle subject to secret surveillance of a locality; the place of posting and receipt, and the sender or recipient in case of the secret interception of a consignment; the electronic communications service or device, or information system subject to interception of communications.

(3) A motion shall be accompanied by documents serving as a ground for the content of the motion.

Section 237 (1) The court shall decide within seventy-two hours after the filing of the motion. On the basis of a motion, the court shall grant a permission, in whole or in part, or dismiss the motion.

(2) A permission shall be granted by the court in part, if it permits the use of covert means subject to permission of a judge, but dismisses any part of the motion regarding the use of certain covert means in its decision.

(3) If the court permits, in whole or in part, the use of covert means, it shall specify the following in its corresponding decision:

a) available data identifying the person concerned,

b) the date and time, indicated in days and hours, of starting and finishing the use of the covert means subject to permission of a judge,

c) the relevant criminal offence and the purpose of use, indicating the classification under the Criminal Code and a short description of the facts of the criminal offence,

d) the covert means subject to permission of a judge for which permission is granted, and

e) the data specified in section 236 (2) *f)*.

Ex-post permission

Section 238 (1) If granting or extending a permission to use a covert means subject to permission of a judge would significantly jeopardise the objective of using covert means due to the delay involved, the prosecution service may order a secret search or the use of a covert means until the court adopts its decision, but no longer than one hundred and twenty hours.

(2) If the use of a covert means is ordered under paragraph (1), the prosecution service shall file a motion with the court for *ex-post* permission within seventy-two hours after issuing the order. The court shall decide on the motion of the prosecution service within one hundred and twenty hours after the order was issued.

(3) The circumstances confirming that the conditions laid down in paragraph (1) are met, as well as the time of issuing the order, indicated in hours, shall be specified in a motion for *ex-post* permission.

(4) The court shall dismiss a motion also if

a) the motion is late, or

b) permission could have been obtained before issuing an order to use under paragraph (1).

(5) If the court dismisses a motion for *ex-post* permission to use covert means or certain means specified in the motion, the result of using any non-permitted covert means may not be used as evidence, and all data acquired in such a manner shall be erased without delay.

(6) If the court dismisses a motion for *ex-post* permission, using a covert means subject to permission of a judge may not be ordered again under paragraph (1) for the same purpose and on the basis of the same reason or facts.

(7) If an *ex-post* permission to use covert means is granted, the period of use shall be calculated from the date of issuing an order under paragraph (1).

The period and extension of use

Section 239 (1) Permission to use covert means subject to permission of a judge may be granted for a period of up to ninety days; this period may be extended repeatedly by up to ninety days each time.

(2) In a criminal proceeding, the total period of using a covert means subject to permission of a judge against a person concerned may not exceed three hundred and sixty days.

(3) If the use of a covert means against a person concerned is terminated in the criminal proceeding, and the use of covert means is permitted again subsequently, the periods of using such covert means shall be added together, and the period specified in paragraph (2) shall be calculated accordingly.

Section 240 (1) Not later than five days before the expiry of the permitted period, the prosecution service may move for the extension of the period of using a covert means; the court shall decide on the motion within seventy-two hours after it is filed.

(2) The court shall either extend the period of use or dismiss the motion.

(3) If the period of use is extended, the court shall prohibit the use of any covert means concerning which the statutory conditions of use are not met.

(4) If the period of using a covert means is extended, the finishing date of use shall be calculated from the finishing date specified in the previous permission.

(5) Any document produced since the previous permission shall be attached at the time of submitting a motion.

Extending the scope of use

Section 241 (1) The scope of use may be extended if, before the date of finishing the use of covert means as specified in the permission, it is necessary to use a covert means

a) not covered by the permission, or

b) already included in the permission concerning another information system subject to secret surveillance; another room, vehicle, or object subject to a secret search; another room or vehicle subject to secret surveillance of a locality; another place and another sender or recipient subject to the secret interception of a consignment; another electronic communications service or device, or information system subject to interception of communications

against the person concerned.

(2) The court shall decide on extending the scope of use in accordance with sections 236 and 237 upon a motion from the prosecution service, and it shall amend the permission to use covert means accordingly.

(3) A motion to extend the scope of use shall include all data pertaining to the extension, as specified in section 236 (2) *e)* and *f)*, and circumstances supporting such an extension; all documents supporting the extension and produced since the previous permission shall also be attached.

(4) The extension of the scope shall not affect the finishing date of using covert means against a person concerned, as specified in the previous permission or extension of the period of use.

(5) Motions to extend the scope and period of use may be submitted simultaneously.

Withdrawing a permission and prohibiting the use of covert means

Section 242 (1) Upon a call from the court, the organ authorised to use covert means shall present all data available to it at the time of such call and acquired during the use of a covert means subject to permission of a judge.

(2) The court shall also examine the legality of using covert means when deciding on a motion to extend the period or scope of use.

(3) The court shall withdraw a permission to use covert means if

a) the organ authorised to use covert means fails to present the data within the time limit specified in paragraph (1),

b) the limits of the permission were exceeded, or

c) a covert means was used in violation of a provision laid down in this Act regarding its use.

(4) The court shall prohibit the use of any covert means concerning which the statutory conditions of use are not met.

(5) If the court

a) withdraws its permission to use a covert means, all data acquired during its use

b) prohibits the use of a covert means, all data acquired using the prohibited covert means shall be erased without delay.

Chapter XXXIX

COMMON RULES OF USING COVERT MEANS

Implementing the use of covert means

Section 243 (1) The use of covert means shall be recorded in minutes or memorandum.

(2) The minutes or memorandum of the proceeding of an undercover investigator shall be signed by an authorised senior official of the organ authorised to employ undercover investigators. The minutes or memorandum shall be drafted in a way that it does not allow for any conclusion regarding the identity of an undercover investigator.

Section 244 (1) The organ authorised to use covert means shall implement the use of a covert means itself, or with assistance from a police organ designated to assist in the implementation of the use of covert means, or by engaging a national security service designated to perform such services by the Act on national security services.

(2) In the course of a preparatory proceeding or investigation conducted regarding a criminal offence falling within its subject-matter competence under the Act on the police, the police organ performing internal crime prevention and crime detection tasks, or the counter-terrorism police organ, shall assist, upon request, in implementing the use of a covert means used by an investigating authority.

(3) Upon invitation, the following shall participate in implementing the use of a covert means used by the prosecution service:

a) the investigating authority or the police organ performing internal crime prevention and crime detection activities, or

b) the counter-terrorism police organ in a proceeding conducted for a criminal offence within its subject-matter competence under the Act on the police.

(4) If the preparatory proceeding is conducted by the police organ performing internal crime prevention and crime detection activities, or the counter-terrorism police organ, and the investigation is ordered while covert means are already in use, the organ conducting the preparatory proceeding shall assist in implementing the use of covert means until instructed otherwise by the investigating authority or the prosecution service.

(5) If a covert means subject to permission of a judge or a prosecutor is used in the course of a preparatory proceeding or investigation conducted against a member of the professional personnel of national security services, or the counter-terrorism police organ, for committing a criminal offence, the national security service, or the counter-terrorism police organ concerned shall assist, upon invitation, in implementing the use of the covert means.

(6) An organisation providing electronic communications services or engaged in the transfer, technical processing or processing of postal items, other sealed consignments, or data stored in information systems shall be obliged to enable the use of covert means and cooperate with organs authorised to use such means.

Terminating the use of covert means

Section 245 (1) The head of the organ authorised to use covert means, or the prosecution service, shall terminate the use of covert means, or certain covert means, if

a) it is clear that no result may be expected from any further use, including situations where extending the scope of use would be in order, but the data necessary to do so are not available,

b) it is clear that the use of a covert means may not be continued any longer within the limits specified in the corresponding permission,

c) the purpose specified in the permission is achieved,

d) the period set or extended in the permission expired,

e) the motion for *ex-post* permission is dismissed by the court or the prosecution service,

f) the court withdrew the permission or prohibited the use of certain covert means under section 242,

g) the time limit for a preparatory proceeding expired during a use ordered in a preparatory proceeding, without an investigation being ordered, or

h) the proceeding has been terminated or the time limit for an investigation expired.

(2) The decision terminating the use of a covert means subject to permission of a judge shall be sent to the court.

Chapter XL

COMMON RULES CONCERNING DATA ACQUIRED DURING THE USE OF COVERT MEANS

Erasing data acquired during the use of covert means

Section 246 (1) Within thirty days after the use of a covert means is terminated, the following data shall be erased from among data acquired during the use of the covert means:

a) data that are not related to the purpose of using covert means,

b) all personal data that are not necessary for the criminal proceeding,

c) data that may not be used as evidence in the criminal proceeding, except for data specified in section 346 (2).

(2) If it was not the organ authorised to use covert means itself that used the covert means, the time limit specified in paragraph (1) shall be calculated from the day when the data-storage medium, the document containing the results of using the covert means, or an extract thereof, arrives at the organ authorised to use covert means.

The confidentiality of data acquired during the use of covert means

Section 247 (1) In the course of permitting and implementing the use of covert means, or using any data generated as a result of such use, it shall be ensured that no unauthorised person may access, or get informed of, any measure or data.

(2) The organ authorised to use covert means, prosecution office, and court proceeding in a given case shall be responsible for ensuring compliance with the requirement specified in paragraph (1).

(3) To ensure compliance with the requirement specified in paragraph (1), the organ authorised to use covert means, the prosecution service, and the court may protect any data related to the use of a covert means by classifying such data in accordance with the rules laid down in the Act on the protection of classified data, provided that the relevant conditions are met.

Section 248 (1) If the organ authorised to use covert means classified any data related to the use of a covert means in accordance with the rules laid down in the Act on the protection of classified data, the review provided for under the Act shall be carried out immediately after terminating the use of the covert means and every two years thereafter.

(2) If data related to the use of covert means are processed as classified data in the criminal proceeding, the court, the prosecution service, or the investigating authority may initiate the review or revision of classification.

Handling case documents produced in the course of using covert means

Section 249 (1) Pursuant to the provisions of this Act, the case documents of a proceeding include

a) means of evidence produced during the use of covert means, including, in particular, data recorded by technical means, and

b) any permission to use covert means.

(2) The organ authorised to use covert means, or the prosecution service may order any case document referred to in paragraph (1) to be handled confidentially; unless otherwise provided in this Act, this confidential handling shall be terminated by the date specified in section 352 at the latest.

Section 250 (1) Unless ordered otherwise by the prosecution service, means of evidence produced by using a covert means, including, in particular, data recorded by technical means and any permission to use a covert means, shall not form part of the case documents of a proceeding before finishing the use of the covert means concerned.

(2) Before finishing the use of a covert means, a means of evidence or document specified in paragraph (1) may be inspected only by

a) a member of the organ authorised to use covert means,

b) the prosecutor, the senior official of the prosecution service, or

c) the judge or the senior court official

who proceeds concerning the use of the covert means.

(3) Before finishing the use of a covert means, a means of evidence or document specified in paragraph (1) may also be inspected, to perform its tasks specified by an Act, by

a) another court, prosecution office, or organ authorised to use covert means,

b) a police organ designated to assist in the implementation of the use of a covert means, and

c) a national security service.

Section 251 (1) If doing so does not jeopardise the success of another criminal proceeding or any secret information gathering carried out under the Act on the prosecution service, the Act on the police, the Act on the National Tax and Customs Administration, or the Act on national security services, a person concerned specified in a permission from a judge shall be informed about the fact of the use of covert means subject to permission of a judge

a) after the completion of a preparatory proceeding, if no investigation is launched, or

b) after the completion of an investigation, if the person concerned is neither interrogated as a suspect nor indicted.

(2) A person concerned may not be informed about any other data relating to the use of a covert means subject to permission of a judge. A request for information regarding such data shall be denied in writing and with reference to this provision.

Chapter XLI

THE RESULT OF USING COVERT MEANS

Section 252 (1) With the exceptions specified in paragraphs (2) and (3), the result of using a covert means subject to permission of a judge may be used to prove a criminal offence, because of which, and against the person concerned, as regards whom the court permitted the use of the covert means.

(2) As regards whom a court permitted the use of covert means subject to permission of a judge, the result of such use may also be used to prove a criminal offence not specified in the permission, provided that the conditions for using such means, as specified in this Act, are met with regard to the latter criminal offence as well.

(3) Where the court permitted the use of a covert means subject to permission of a judge to prove a criminal offence, the result of such use may be used against all perpetrators.

(4) In a situation described in paragraph (2) or (3), the result of using a covert means may be used where the organ authorised to use covert means orders or initiates launching a preparatory proceeding or investigation, or using such a result in the pending criminal proceeding, regarding the person or criminal offence not specified in the permission within thirty days after finishing the use of a covert means subject to permission of a judge. The organ authorised to use covert means shall, through the prosecution service, notify the court that granted permission to use the covert means about doing so.

(5) If the organ authorised to use covert means does not use the covert means itself, the time limit specified in paragraph (4) shall be calculated from the day when every data-storage medium document or an extract thereof containing the results of using the covert means arrives at the organ authorised to use covert means after the use of covert means has been terminated.

Section 253 (1) Concerning a criminal offence not specified in the permission committed by a person not specified in the permission, the result of using a covert means subject to permission of a judge may only be used to prove a criminal offence involving the intentional killing of a person; kidnapping; a criminal offence against the State under Chapter XXIV of the Criminal Code that is punishable by five or more years of imprisonment; a terrorist act; terrorism financing; or causing public danger intentionally, provided that

a) the other conditions of using such means as specified in this Act are met,

b) the organ authorised to use covert means orders or initiates a preparatory proceeding or investigation to be launched regarding a criminal offence not specified in the permission committed by a person not specified in the permission, or orders or initiates using such data in a pending criminal proceeding, within eight days after acquiring the data to be used in a criminal proceeding, and

c) the court permits, under paragraph (4), the result of using covert means to be used concerning the criminal offence not specified in the permission committed by the person not specified in the permission.

(2) The organ authorised to use covert means shall initiate that the use of the result of using covert means be permitted by the prosecution service within three working days after a preparatory proceeding or investigation is instituted under paragraph (1) *b)* or after using such a result in a pending criminal proceeding. The prosecution service shall file a motion with the court for permission to use the result of using covert means within seventy-two hours after such initiative.

(3) The court shall decide within seventy-two hours after the filing of the motion.

(4) The court shall permit the result of using covert means to be used concerning a criminal offence not specified in the permission that was committed by a person not specified in the permission if

a) the use of the covert means, and the result of such use, meets the conditions specified in paragraph (1), and

b) the proceeding of the organ authorised to use covert means and of the prosecution service complies with the provisions laid down in paragraph (2).

(5) If the use of a covert means subject to permission of a judge needs to be continued in the course of a preparatory proceeding or investigation ordered under paragraph (1) *b)* or a criminal proceeding which was already pending due to a criminal offence specified in paragraph (1), permission to use a covert means subject to permission of a judge regarding a criminal offence not specified in the previous permission of a judge that was committed by a person not specified in that permission shall be moved for and granted under Chapter XXXVIII. If the court permits, in accordance with paragraph (4), the result of using covert means to be used concerning the criminal offence not specified in the permission committed by the person not specified in the permission, the period specified in section 239 (2) shall be calculated from the date and time of acquiring, under paragraph (1), the data to be used.

(6) If the organ authorised to use covert means does not use the covert means itself, the time limit specified in paragraph (1) *b)* shall be calculated from the day when the data-storage medium or document containing the results of using the cover means, which are to be used in accordance with paragraph (1), or an extract thereof, arrives at the organ authorised to use covert means.

Section 254 (1) The result of using a covert means subject to permission of a judge may not be used as evidence if

a) the person concerned is a defence counsel against whom a covert means subject to permission of a judge could not have been used under section 357 or

b) the person concerned is a relative against whom a covert means subject to permission of a judge could not have been used under sections 343 or 357.

(2) The result of using a covert means subject to permission of a judge may not be used as evidence for any data concerning which the person specified in the permission may not be interrogated as a witness under section 170 (1) *b)* or *d)*, unless, in the case of the impediment to testifying as a witness specified in section 170 (1) *d)*, the person concerned was granted exemption from his obligation of confidentiality.

(3) The result of using a covert means subject to permission of a judge may not be used as evidence for data concerning which the person specified in the permission may refuse to give witness testimony under section 173 or 174, unless

a) the person concerned was interrogated as a witness, and he gave witness testimony regarding the data subject to the obligation of confidentiality,

b) for section 173, the person concerned was granted exemption by the authorised person or entity, or the organ requested to provide data is obliged to transfer the data covered by its obligation of confidentiality, or

c) the court ordered a media content provider, or a person who is in an employment relationship or another employment-related relationship with a media content provider, to reveal the identity of a person who provided him with information in relation to his media content provision activities.

(4) A restriction provided for under paragraph (2) or (3) shall not prevent the result of using a covert means from being used as evidence for a criminal offence committed by the person specified in the permission.

Section 255 (1) When using an undercover investigator, a memorandum of implementation and a permission from a prosecutor to use an undercover investigator shall be attached to the case documents of a proceeding.

(2) The undercover investigator may be interrogated as a witness only after obtaining the position of the organ employing the undercover investigator. After the indictment, the undercover investigator may be interrogated as a witness, and any other evidentiary act requiring his presence in person may be carried out only upon a motion filed by the prosecution service and subject to the condition that his testimony may not be substituted by any other means.

(2a) In a situation under paragraph (2), the undercover investigator shall be summoned or notified through the organ employing him and any case document to be served on him shall be served through the organ employing him. The identity of the undercover investigator shall be certified by the member of the organ employing the undercover investigator who is responsible for the preparation of the implementation of using the undercover investigator, for continuous communication with the undercover investigator and the organ of employment and for the protection of the undercover investigator. If that person is prevented from acting, his superior shall substitute for him.

(3) If it is necessary to interrogate an undercover investigator as a witness or to carry out any other evidentiary act requiring his presence in person, the undercover investigator shall be considered a specially protected witness without any decision by the court. The court may not cancel the status of an undercover investigator as a specially protected witness without the consent of the organ employing the undercover investigator concerned.

(3a) The attendance of the undercover investigator at a procedural act may be ensured using a telecommunication device only with consent from the organ employing the undercover investigator. If consent is granted, the organ employing the undercover investigator shall specify the following to ensure the attendance of the undercover investigator:

a) whether the distortion by technical means of the individual identifying characteristics of the person concerned is to be ordered in accordance with section 92 (3),

b) whether distorting by technical means the individual identifying characteristics of the person concerned is to be omitted,

c) the separate location where the undercover investigator is to be present, and

d) in a situation under point *a)*, the method to be used for distorting by technical means the individual identifying characteristics of the person concerned.

(3b) The member of the organ employing the undercover investigator specified in paragraph (2a) may be present at the separate location. On the basis of a decisions taken by the organ employing the undercover investigation and by way of derogation from the provisions of section 123, if it is necessary for keeping the identity of the undercover investigator secret and for his security, only the member of the organ employing the undercover investigator specified in paragraph (2a) may be present at the separate location, who shall, in this case, carry out the tasks of the person under section 123 (2).

(4) If the undercover investigator is permitted to provide witness testimony in writing, the testimony of the undercover investigator written by other means shall be authenticated by the member of the organ employing the undercover investigator specified under paragraph (2a).

(5) In the course of using the result of using an undercover investigator as evidence, all necessary measures shall be taken to keep the identity of the undercover investigator secret and ensure his security.

(6) When using an undercover investigator for a purpose specified in section 222 (2) *a)*, *b)*, *d)* and *f)*, the prosecution service may order case documents relating to the use of an undercover investigator to be handled confidentially if

a) the prosecution service does not intend to use the result of using the undercover investigator as evidence, and

b) the life, physical integrity, or personal freedom of the undercover investigator would be directly endangered if the fact of using an undercover investigator became known.

(7) In a situation described in paragraph (6), the result of using an undercover investigator may not be used as evidence, and the confidential handling of the case documents may not be cancelled without permission from the prosecution service.

(8) Paragraphs (1) to (7) shall apply accordingly to a person cooperating in secret, with the proviso that an organ employing the undercover investigator shall be construed to mean an organ authorised to use covert means that uses the person cooperating in secret.

Chapter XLII

THE RELATIONSHIP BETWEEN SECRET INFORMATION GATHERING AND CRIMINAL PROCEEDINGS

Section 256 (1) If the criminal proceeding is instituted on the basis of data acquired by secret information gathering under the Act on the prosecution service, the Act on the police, the Act on the National Tax and Customs Administration, or the Act on national security services, any covert means shall be applied in compliance with this Act after the criminal proceeding is instituted.

(2) At the time of instituting a criminal proceeding, the use of covert means subject to permission of a judge or a prosecutor shall be permitted under this Act, even if secret information gathering subject to permission of a judge, an external person or entity, or a prosecutor was conducted earlier.

Section 257 (1) Documents confirming the legality of a means subject to permission of a judge used in the course of secret information gathering and of the ordering and the conduct of secret information gathering subject to permission of an external person or entity shall be attached to the result of the secret information gathering.

(2) The president of a regional court shall certify the fact of carrying out secret information gathering subject to permission of a judge. Such a certificate shall include the designation of the court, the number and subject matter of the case affected by the permission, the name of the person concerned, and the limits of the submission to permit, and the permission granted for, the secret information gathering.

Section 258 The result of secret information gathering subject to permission of a judge or an external person or entity may be used as evidence in a criminal proceeding if the organ entitled to institute a criminal proceeding decides, on the basis of secret information gathering, to institute a criminal proceeding or to use such results in a pending criminal proceeding within three working days after receipt of the results.

Using the result of secret information gathering subject to permission of a judge or an external person or entity

Section 259 (1) The result of secret information gathering subject to permission of a judge and carried out under the Act on the prosecution service, the Act on the police, the Act on the National Tax and Customs Administration, or the Act on national security services may be used as evidence in a criminal proceeding if

a) it is to be used to prove a criminal offence that may serve as a ground for using covert means subject to permission of a judge under this Act,

b) the organ that engaged in secret information gathering initiated the institution of a criminal proceeding within eight days after acquiring the data to be used in a criminal proceeding.

(2) If secret information gathering is not carried out by the organ engaged in the secret information gathering itself, the time limit specified in paragraph (1) shall be calculated from the day when the data-storage medium or document containing the results of secret information gathering, which are to be used in accordance with paragraph (1), or an extract thereof, arrives at the organ engaged in the secret information gathering.

(3) If instituting a criminal proceeding was initiated in due time under paragraph (1) *b)* on the basis of data produced by secret information gathering under the Act on the prosecution service, the Act on the police, the Act on the National Tax and Customs Administration, the result of secret information gathering subject to permission of a judge carried out between initiating and instituting a criminal proceeding may also be used as evidence.

Section 260 (1) The result of secret information gathering carried out, subject to permission of an external person or entity, under the Act on national security services may be used in a criminal proceeding if

a) it is to be used to prove a criminal offence that may serve as a ground for using covert means subject to permission of a judge under this Act, and

b) after acquiring the data to be used in a criminal proceeding, the national security service engaged in the secret information gathering or the counter-terrorism police organ initiated the institution of a criminal proceeding within thirty days after acquiring the data to be used in a criminal proceeding.

(2) By way of derogation from paragraph (2), the national security service or the counter-terrorism police organ may initiate the institution of a criminal proceeding within, at the latest, one year after acquiring the data to be used if

a) it would jeopardise the success of its statutory tasks by initiating a criminal proceeding sooner, and

b) the data to be used in a criminal proceeding is related to a criminal offence within the competence of the organ concerned under the Act on national security services.

(3) If secret information gathering is not carried out by the organ that engaged in secret information gathering itself, the time limit specified in paragraph (1) or (2) shall be calculated from the day when the data-storage medium or document containing the results of secret information gathering, which are to be used in accordance with paragraph (1) or (2), or an extract thereof, arrives at the organ that engaged in secret information gathering.

(4) If a criminal proceeding is initiated under paragraph (1), the result of secret information gathering subject to permission of an external person or entity carried out under the Act on national security services may only be used to prove a criminal offence committed by the person specified in the permission. If a person concerned is not specified in the permission, the result of secret information gathering subject to permission of an external person or entity may be used against any person.

PART SEVEN

ACQUISITION OF DATA

Data request

Section 261 (1) In the criminal proceeding, the court, the prosecution service, and the investigating authority or, in cases specified in an Act, the organ conducting a preparatory proceeding may request any organ, legal person, or other organisation without a legal personality to provide data.

(2) After the indictment, the prosecution service may request the provision of data with a view to submitting a motion for evidence or locating or securing a means of evidence.

(3) Within the framework of a data request,

a) the transfer of data that is relevant to the criminal proceeding and is in the possession of the organisation,

b) the transfer of electronic data or documents that are relevant to the criminal proceeding and are in the possession of the organisation, or

c) the provision of information relevant to the criminal proceeding that can be provided by the organisation

may be requested.

(4) A data request may also be aimed at the transfer or receipt of data processed in a register of the State or a local government.

(5) The following shall be specified in a data request:

a) the conditions and purpose of the data request pursuant to this Act,

b) data identifying the subject matter of the data request, which is required for compliance with the data request, such as, in particular, data on the person, object, or service concerned,

c) the scope of data to be provided,

d) the method and time limit for data provision.

Section 262 (1) The investigating authority, the police organ performing internal crime prevention and crime detection activities, and the counter-terrorism police organ may not request data without the permission of the prosecution service from

a)

b)

c) an electronic communications service provider,

d) a postal service provider or a person or organisation pursuing the activities of a postal contributor,

e) an organisation processing data constituting bank, payment, securities, fund or insurance secret, pertaining to such data,

f) an organisation processing health data and personal data as defined in the Act on the processing and protection of health data and related personal data, pertaining to such data.

(2) The case documents justifying the data request shall be attached to the motion for the permission required for the data request.

(3) If obtaining permission for a data request would cause any delay that would significantly jeopardise the purpose of the data request, data provision may be requested even without a permission. Data provision may not be refused on the ground that the permission of a prosecutor is missing. In such a situation, the permission of the prosecution service shall be obtained *ex-post* without delay. If the prosecution service does not permit the data request, data obtained in this manner may not be used as evidence and shall be deleted without delay.

(4) The investigating authority, the police organ performing internal crime prevention and crime detection activities, and the counter-terrorism police organ may request data provision without permission of the prosecution service from the following:

a) a service provider and an organisation referred to in paragraph (1) *c)* or *e)* as regards the identity and personal identification data of a person who is a party to a contract with them;

b) the registration organ keeping the central bank account register as regards data in the central bank account register; and

c) a service provider and an organisation referred to in paragraph (1) if the person participating in a criminal proceeding concerned consents to requesting data provision or complying with such a request.

(5) If paragraph (4) *c)* applies, data provision may be requested without permission of the prosecution service concerning all data relating to the person participating in the criminal proceeding processed by the service provider or the organisation.

Section 262/A (1) The prosecution service may grant permission to a data request pursuant to section 262 (1) *c)* or *e)* also concerning more than one request for data provision, specifying the limits of the permission, if the proceeding is pending for information system fraud, money laundering, budget fraud or fraud that was committed by means of an electronic communications network, including an information system.

(2) Within the limits of the permission referred to in paragraph (1), the investigating authority may request data provision subsequently without individual permission from the prosecution service to request data in accordance with section 262 (1) *c)* or *e)*. The investigating authority shall indicate in the data request that the data is requested with permission of the prosecution service under paragraph (1).

(3) After the data request or data requests are complied with, the prosecution service shall examine whether data provision under paragraph (2) was requested in accordance with the permission of the prosecution service. The outcome of the data request shall not be used as evidence until it has been examined by the prosecution service.

(4) Data shall not be used as evidence and shall be erased without delay if it became known to the organ requesting data provision by exceeding the limits of the permission of the prosecution service referred to in paragraph (1).

(5) In other respects, the provisions of section 262 and sections 264 to 265 shall apply to a data request under this section.

Section 263 (1) If permitted by an Act, an organ requesting data shall receive the necessary data by accessing the records or data files directly and may make use, for requesting data, of the assistance of the national security service designated by the Act on national security service for the performance of such services.

(2) A time limit of

a) at least one and up to thirty days if the data is to be provided by electronic means,

b) at least eight and up to thirty days if the data is to be provided by any other means,

may be set for the provision of the requested data.

Section 264 (1) Unless otherwise provided by an Act, the organ requested to provide data shall comply with the request within the set time limit or indicate a detected obstacle, if any, without delay. A data request shall be performed even if only incomplete or partial data can be provided.

(2) The organ requested to provide data shall comply with the request free of charge, including in particular the processing, as well as the recording and transfer of the data in writing or by electronic means.

(3) If the data has been encrypted or otherwise rendered inaccessible, it shall be restored by the organ requested to provide data into its original condition, or it shall be rendered accessible to the organ requesting the data prior to disclosure or provision.

(4) The volume and extent of any personal data requested under a data request shall be limited to data that is indispensable for achieving the purpose of the data request.

(5) If, as a result of a data request, any personal data that is not relevant for the data request is disclosed to the organ requesting the data, it shall be deleted without delay. If the data to be deleted is contained in an original document, an extract of the personal data that is relevant for the data request shall be produced, and the original document shall be returned to the organ requested to provide data.

(6) Any original document acquired by the organ requesting the data shall be returned to the organ requested to provide data by the completion of the proceeding at the latest.

(7) If providing any information about the data request would jeopardise the success of the criminal proceeding, the organ requested to provide data, if specifically instructed by the organ requesting the data, may not provide any information to any other person or entity about, and shall ensure the secrecy of, the request, its content, or any data transferred in the course of complying with the request. If a person affected by the request requests information concerning the processing of his own personal data, he shall be provided with information that does not reveal that his personal data were transferred for the purpose of a data request. The organisation requested to provide data shall be advised about this provision in the data request.

(8) The restriction specified in paragraph (7) may remain in place until the preparatory proceeding or the investigation is completed unless the lifting of the restriction would jeopardise the success of another criminal proceeding conducted against the person concerned. The organisation requested to provide data shall be notified about the lifting of the restriction.

Section 265 (1) A disciplinary fine may be imposed on the organisation requested to provide data if it fails to comply with the request within the time limit specified in the request, refuses to comply without reason or violates its obligation laid down in section 264 (7). In addition to a disciplinary fine, another coercive measure specified in this Act may also be applied where the applicable conditions are met.

(2) If an organisation requested to provide data fails to comply with the request because doing so is prohibited by an Act, no further procedural act may be taken concerning the requested organisation to obtain data held by the requested organisation.

Section 265/A The prosecution service and the investigating authority may, if doing so is not in conflict with the interests of the criminal proceeding, request data by inviting, without referring to any sanctions, the organ requested to provide data to comply on a voluntary basis.

Conditional data request

Section 266 (1) Should a specified condition be met, a State organ, a local government organ, an organ of a national minority self-government, a budgetary organ or a statutory professional body may be requested to provide data by

a) the prosecution service, or

b) the investigating authority, the police organ performing internal crime prevention and crime detection activities, and the counter-terrorism police organ, subject to the permission of the prosecution service.

(2) A conditional data request may be issued for a period of up to three months, which may be extended repeatedly for an additional period of three months each time. The total period of a conditional data request may not exceed one year.

(3) If the condition specified in accordance with paragraph (1) is met during the period of the conditional data request, the organisation requested to provide data under the conditional data request shall send the data specified in the request to the organ requesting the data.

(4) If the condition is not met during the period of the conditional data request, the organisation requested to provide data under the conditional data request shall erase the data indicated in the request of the organ requesting the data.

(5) The following shall be specified in a conditional data request:

a) the conditions and purpose of the data request under this Act,

b) data identifying the subject matter of the data request, which is required for compliance with the data request, such as, in particular, data on the person, object, or service concerned,

c) the scope of data to be provided,

d) the period of the conditional data request,

e) the method and time limit for data provision, and

f) the condition, the occurrence of which makes data provision mandatory.

(6) In other respects, the provisions on data requests shall apply to conditional data requests, with the proviso that, under a conditional data request, the data may be requested to be provided without delay when the specified condition is met.

Data collection

Section 267 (1) The prosecution service, the investigating authority, the police organ performing internal crime prevention and crime detection activities, and the counter-terrorism police organ may collect data to establish the suspicion of a criminal offence or whether there are any means of evidence and where they are located.

(2) After the indictment, the prosecution service may collect data and may also make use of an investigating authority and the asset recovery organ of the investigating authority to submit a motion for evidence, to locate or secure a means of evidence and to detect and secure things or assets that may be confiscated or are subject to forfeiture of assets.

(3) In the course of data collection,

a) data may be collected from the registers specified in the Act on the prosecution service, the Act on the police, and the Act on the National Tax and Customs Administration,

b) data may be collected from a data file or source prepared for publication or published in a lawful manner,

c) information may be requested from any person,

d) the selection or identification of a person or object may be requested by presenting an image, sound, or audio-visual recording, and

e) the scene of a criminal offence may be inspected.

(4) A member of the authority carrying out a data collection shall draw up a memorandum of the data collection.

(5) A statement recorded in the memorandum of a data collection may be used as a testimony, provided that the person who made that statement maintains his statement during his interrogation as a defendant or witness.

Other activities to acquire data

Section 268 (1) The court, the prosecution service, and the investigating authority may issue, by adopting a decision, a wanted notice for

a) a thing that serves as a means of evidence, to determine the location of a thing at an unknown location or to identify a thing of an unknown source,

b) a thing that may be subject to confiscation or forfeiture of assets, to determine the location of the thing at an unknown location or to identify a thing of an unknown source,

c) a witness or a person reasonably suspected of having committed a criminal offence if his identity is unknown,

d) a witness, a person reasonably suspected of having committed a criminal offence or a defendant, whose whereabouts are unknown, to determine his contact details,

e) a corpse, or part of a corpse, that serves as a means of evidence, to identify the corpse or part of a corpse concerned.

(2) A wanted notice shall be withdrawn if the reason for its issuance ceases to exist. A wanted notice issued under paragraph (1) *a)*, *c)*, or *d)* shall be withdrawn after the proceeding is terminated or concluded with final and binding effect.

(3) The court, prosecution office, or investigating authority of the proceeding shall decide on withdrawing or amending a wanted notice. A wanted notice issued by an investigating authority before the indictment may also be withdrawn or amended by the prosecution service.

(4) If the court, prosecution office, or investigating authority that issued the wanted notice is not the same as that of the proceeding, or if the proceeding court, prosecution office, or investigating authority changes during the proceeding, while the conditions of the wanted notice are still met, the proceeding court, prosecution office, or investigating authority shall not withdraw the wanted notice, but take action, in justified cases, to have the change entered into the wanted notice register.

(5) No legal remedy shall lie against the issuance, withdrawal or amendment of a wanted notice.

Section 269 (1) The prosecution service, the investigating authority, or the police organ performing internal crime prevention and crime detection activities, and the counter-terrorism police organ may

a) request data to be transferred from the register of criminal and policing biometric data as provided for by an Act,

b) make use the facial image analysis activities of an organ responsible for keeping the register of facial image analyses and operating the system of facial image analysis as provided for by an Act, and

c) order the placement of an alert for checking the person or object concerned in the Schengen Information System as provided for by an Act.

(2) After the indictment, the prosecution service may pursue any other data acquisition activity, as specified in paragraph (1) *a)* or *b)*, to move for evidence or locate or secure a means of evidence.

Section 270 (1) The prosecution service, the investigating authority, or the police organ performing internal crime prevention and crime detection activities, and the counter-terrorism police organ may use a consultant if specialised knowledge is needed to detect, search for, acquire, collect, or record a means of evidence. After the indictment, the prosecution service may make use of a consultant for submitting a motion for evidence or locating or securing a means of evidence.

(1a) The court shall use a consultant following the indictment if it orders a procedural act to be performed as set out in section 87 (1) *b) bb)*.

(2) If an act affecting the inviolability of the subject's body needs to be carried out in the course of the proceedings of a consultant, the prosecution service or the proceeding investigating authority shall issue orders on the matter separately.

(3) The provisions pertaining to the disqualification of a prosecutor, or a member of the investigating authority shall also apply, as appropriate, to the disqualification of a consultant.

(4) The fact of using a consultant, as well as the method and extent of his involvement, shall be indicated in the minutes or memorandum of the given procedural act.

(5) A consultant may be interrogated as a witness regarding a procedural act carried out with his involvement.

(6) In accordance with paragraph (1), an official of Europol may be used as a consultant in a criminal proceeding.

PART EIGHT

COERCIVE MEASURES

Chapter XLIII

GENERAL PROVISIONS ON APPLYING COERCIVE MEASURES

Section 271 (1) When ordering or enforcing a coercive measure, efforts shall be made to ensure that the application of the coercive measure leads to restricting the fundamental rights of the person concerned only to the extent and for the time strictly necessary.

(2) A more restrictive coercive measure may be ordered, if the objective of the coercive measure may not be achieved by applying a less restrictive coercive measure or any other procedural act.

(3) A coercive measure shall be enforced with consideration for the person concerned and observing his fundamental rights that are not affected by the restriction. While enforced a coercive measure, it shall be ensured that the coercive measure does not affect any person other than the person concerned to any unnecessary extent.

(4) A coercive measure restricting the right to privacy, or of ownership, shall be enforced between the sixth and twenty-second hours of the day, if possible.

(5) It shall be ensured that the circumstances of the private life, and personal data, of the person concerned that are not related to the criminal proceeding are not revealed to the public in the course of enforcing a coercive measure.

(6) Any unnecessary damage shall be avoided in the course of enforcing a coercive measure.

(7) For enforcing a coercive measure, the ordering court or prosecution office may make use of an investigating authority.

Section 272 (1) A coercive measure may affect

a) personal freedom or

b) assets.

(2) Coercive measures affecting personal freedom shall be the following:

a) custody,

b) restraining order,

c) criminal supervision,

d) pre-trial detention,

e) preliminary compulsory psychiatric treatment (points *b)* to *e)* hereinafter jointly "coercive measures affecting personal freedom subject to judicial permission"), and

f) supervision for the purpose of crime prevention.

(3) Coercive measures affecting assets shall be the following:

a) search,

b) body search,

c) seizure,

d) sequestration,

e) rendering electronic data temporarily inaccessible, and

f) suspension of hosting service provision.

Apprehending a perpetrator caught in the act

Section 273 Any person may apprehend a person caught while committing a criminal offence, with the proviso that he shall hand the apprehended person over to an investigating authority without delay or - if doing so is not possible - inform the police.

Chapter XLIV

CUSTODY

Conditions and length of the custody

Section 274 (1) Custody means the temporary deprivation of a defendant, or a person reasonably suspected of having committed a criminal offence, of his personal freedom.

(2) Upon reasonable suspicion that a criminal offence punishable by imprisonment was committed, the court, prosecution service, or investigating authority may order the defendant, or a person reasonably suspected of having committed the criminal offence, to be placed in custody if

a) caught in the act and his identity cannot be established,

b) a coercive measure affecting personal freedom subject to judicial permission is likely to be ordered against him, or

c) he disturbed the order of a trial.

(3) Custody may last until a decision is adopted on a coercive measure affecting personal freedom subject to judicial permission, but shall not exceed seventy-two hours.

(4) If the circumstances remain unchanged, the custody of a defendant or a person reasonably suspected of having committed a criminal offence may not be ordered again.

(5) When detained by an authority before custody is ordered, the period of detention shall be calculated into the period of custody.

(6) If an investigating authority orders custody, it shall notify the prosecution service accordingly within twenty-four hours. In a situation described in paragraph (2) *c)*, the court shall notify the prosecution office with subject-matter and territorial competence over the criminal offence that is the cause of the disturbance.

Measures after custody is ordered

Section 275 (1), An adult person designated by the defendant or the person reasonably suspected of having committed a criminal offence shall be informed about the fact that custody was ordered, as well as the place of detention, within eight hours.

(2) To ensure the success of a criminal proceeding, or protect the life or physical integrity of a person, the court, prosecution office, or investigating authority that ordered the custody may refuse to inform the person referred to in paragraph (1).

(3) If the provision of information is refused, the defendant or the person reasonably suspected of having committed a criminal offence shall be allowed to designate another adult person who shall be notified by applying paragraphs (1) and (2) accordingly.

(4) If the information may not be provided within eight hours even by applying paragraph (3), the defendant, the person reasonably suspected of having committed a criminal offence, or a defence counsel may seek legal remedy against the refusal to provide information.

(5) The court, prosecution office, or investigating authority that ordered the custody shall make arrangements for the placement of any unattended minor child of, or other person cared for by the defendant or the person reasonably suspected of having committed a criminal offence, and for safeguarding the unattended assets or home of the defendant or the person reasonably suspected of having committed a criminal offence.

(6) If the custody of a soldier is ordered, his military superior shall also be informed accordingly.

Chapter XLV

GENERAL RULES CONCERNING COERCIVE MEASURES AFFECTING PERSONAL FREEDOM SUBJECT TO JUDICIAL PERMISSION

The purpose and conditions of a coercive measure affecting personal freedom subject to judicial permission

Section 276 (1) In a proceeding conducted for a criminal offence punishable by imprisonment, a coercive measure affecting personal freedom subject to judicial permission may be ordered, extended, or maintained against the defendant if

a) the defendant is reasonably suspected of having committed a criminal offence, or he was indicted, and

b) doing so is necessary to achieve the objective of the coercive measure affecting personal freedom subject to judicial permission, and that objective may not be achieved by any other means.

(2) A coercive measure affecting personal freedom subject to judicial permission may be ordered to

a) ensure the attendance of a defendant if

aa) he escaped, attempted to escape, or hid from the court, prosecution service, or investigating authority, or

ab) it is reasonable to assume that he would become unavailable in a criminal proceeding in particular by escaping or hiding,

b) prevent the complication or frustration of the taking of evidence if

ba) the defendant, with a view to frustrating the taking of evidence, intimidated or illegally influenced a person involved in the criminal proceeding or any other person, or destroyed, falsified, or hid any means of physical evidence, electronic data, or thing subject to forfeiture of assets, or

bb) it is reasonable to assume that the defendant would jeopardise the taking of evidence in particular by intimidating or illegally influencing a person involved in the criminal proceeding or any other person, or by destroying, falsifying, or hiding any means of physical evidence, electronic data, or thing subject to forfeiture of assets,

c) eliminate the possibility of reoffending if

ca) the defendant continued the criminal offence subject to the proceeding after he was interrogated as a suspect, or he was interrogated as a suspect regarding any other intentional criminal offence, punishable by imprisonment, that was committed after he was interrogated as a suspect, or

cb) it is reasonable to assume that the defendant would complete the criminal offence he attempted or prepared, continue the criminal offence subject to the proceeding, or commit another criminal offence punishable by imprisonment.

Section 277 (1) A restraining order may be issued to avoid the complication or frustration of the taking of evidence, or to eliminate the possibility of reoffending with regard to the aggrieved party.

(2) Criminal supervision may be ordered to ensure the attendance of a defendant, avoid the complication or frustration of the taking of evidence, or eliminate the possibility of reoffending.

(3) Criminal supervision may be ordered in combination with issuing a restraining order.

(4) Pre-trial detention may be ordered to ensure the attendance of a defendant, avoid the complication or frustration of the taking of evidence, or eliminate the possibility of reoffending if, considering

a) the nature of the criminal offence,

b) the state and interests of the investigation,

c) the personal and family situation of the defendant,

d) the relationship between the defendant and another person involved in the criminal proceeding or any other person,

e) the behaviour of the defendant before and during the criminal proceeding,

in particular, the objective of the coercive measure affecting personal freedom subject to judicial permission may not be achieved by way of a restraining order or criminal supervision.

(5) Preliminary compulsory psychiatric treatment may be ordered to eliminate the possibility of reoffending if it is reasonable to assume that the defendant is to be subjected to compulsory psychiatric treatment.

Ordering a coercive measure affecting personal freedom subject to judicial permission

Section 278 (1) The court shall decide, before the indictment only upon a motion by the prosecution service, on ordering a coercive measure affecting personal freedom subject to judicial permission.

(2) A motion for restraining order may also be submitted by an aggrieved party. Before the indictment, the aggrieved party may submit a motion for a restraining order to the proceeding prosecution office. The prosecution office shall forward the motion by the aggrieved party, together with all case documents, to the court without delay.

(3) Before the indictment, the court may

a) issue a restraining order, order criminal supervision, or issue a restraining order and order criminal supervision in place of pre-trial detention,

b) order criminal supervision with more lenient rules of behaviour in place of a restraining order moved for by the prosecution service,

c) issue a restraining order in addition to ordering criminal supervision, or issue a restraining order in place of ordering criminal supervision,

d) issue a restraining order, order criminal supervision, order criminal supervision and issue a restraining order, or order pre-trial detention in place of preliminary compulsory psychiatric treatment,

e) impose rules of behaviour that are more lenient than, or differ from, the rules of behaviour moved for.

Termination or lifting of a coercive measure affecting personal freedom subject to judicial permission

Section 279 (1) The court, prosecution service, or investigating authority shall strive to ensure that the period of the coercive measure affecting personal freedom subject to judicial permission is as short as possible.

(2) The coercive measure affecting personal freedom subject to judicial permission shall terminate if

a) its period expires without being extended or maintained,

b) the time limit for an investigation expires without an indictment,

c) the proceeding is terminated or suspended,

d) the proceeding is concluded with final and binding effect.

(3) A coercive measure affecting personal freedom subject to judicial permission shall be lifted if

a) the grounds for ordering it ceased to exist,

b) another coercive measure affecting personal freedom subject to judicial permission is ordered in its place, or

c) the pre-trial detention, or preliminary compulsory psychiatric treatment of the defendant is ordered in another case.

(4) A coercive measure affecting personal freedom subject to judicial permission may be lifted if the defendant is serving imprisonment, confinement, or special education in a juvenile correctional institution.

(5) A restraining order or criminal supervision may be lifted if a restraining order is issued or criminal supervision is ordered in another case, provided that, having regard to the person protected by restraining order or the rule of behaviour imposed, achieving the purpose of the restraining order or criminal supervision is ensured by the restraining order issued or criminal supervision ordered in the other case.

(6) The custody of the defendant may be ordered anew if, at the time of his release, the conditions of ordering the coercive measure affecting personal freedom subject to judicial permission are still met, and the coercive measure affecting personal freedom subject to judicial permission

a) was lifted because the pre-trial detention or preliminary compulsory psychiatric treatment of the defendant is ordered in another case, or

b) was lifted under paragraph (4).

(7) A coercive measure affecting personal freedom subject to judicial permission shall be lifted by a court, or it may be lifted, before the indictment, by the prosecution service, with the exception of a restraining order issued upon request by an aggrieved party.

Chapter XLVI

RESTRAINING ORDER AND CRIMINAL SUPERVISION

Restraining order

Section 280 (1) A restraining order shall restrict the defendant in freely keeping contact and shall to this end, restrict his right to move, and to choose a place of residence or place of domicile, freely.

(2) When a restraining order is issued, a court shall impose, as a rule of behaviour, that the defendant may not contact, directly or indirectly, and is to stay away from a specified person (hereinafter “person protected by restraining order”).

(3) To achieve the objective specified in paragraph (2), the court may impose as a rule of behaviour that the defendant is to

a) leave, and stay away from, a specified home, or

b) stay away from the place of actual residence or workplace of, or any institute or other establishment regularly visited by, the person protected by restraining order, including, in particular, any upbringing or upbringing-educational institution, or healthcare institution visited for the purpose of medical treatment, or a building visited in the course of practicing a religion.

(4) When applying paragraph (3) *b)*, rules of behaviour shall be imposed in a manner that does not render it impossible for the defendant to exercise such rights that are, with respect to the person protected by restraining order, subject to the rules of behaviour.

(5) When issuing a restraining order, the court shall serve the decision on its issuance that reached administrative finality on

a) the person who filed the motion,

b) the person protected by restraining order, and

c) the prosecution service if the aggrieved party moved for the restraining order.

(6) The protected person shall be notified when the restraining order is terminated or lifted.

Criminal supervision

Section 281 (1) Criminal supervision shall restrict the right of the defendant to move, or to choose a place of residence or domicile, freely.

(2) When the criminal supervision is ordered, the court shall prescribed that the defendant is

a) not to leave a specified area, home, other premises, institute or related fenced area without permission,

b) not to visit public places or attend public events of a specific nature, or not to visit certain public spaces, or

c) to report to a police organ established to carry out general policing tasks at specific intervals and in a specific manner.

(3) To ensure that the objective of the criminal supervision is achieved, the court may also impose additional rules of behaviour, including rules of behaviour that may be imposed as special rules of behaviour relating to supervision by a probation officer to eliminate the possibility of reoffending..

(4) When applying paragraph (2) *a)*, the court shall specify, as a rule of behaviour, the purpose for and the conditions under which the defendant may leave the designated place or area, including, in particular, the satisfaction of common everyday needs, work, or medical treatment.

Measures ensuring compliance with the rules of behaviour relating to a restraining order or criminal supervision

Section 282 Measures ensuring compliance with the rules of behaviour relating to a restraining order or the criminal supervision shall be the following:

a) technical tracking device, and

b) bail.

Section 283 (1) The court may order that compliance with the rules of behaviour relating to a restraining order or criminal supervision is to be monitored by a police organ established to carry out general policing tasks by using a technical tracking device.

(2) The court may order a police organ established to carry out general policing tasks to monitor compliance with the rules of criminal supervision by using a technical tracking device, provided that criminal supervision was ordered solely because the maximum length of pre-trial detention had been reached.

(3) If the defendant does not cooperate in handling the technical device, his behaviour shall constitute a violation of the rules of behaviour. The defendant shall be advised accordingly when the use of a technical tracking device is ordered.

(4) The court shall clarify the conditions for installing a technical tracking device at the time of ordering its installation.

Section 284 Bail means a sum determined by a court to facilitate compliance with the rules of behaviour relating to a restraining order or criminal supervision, as well as the attendance of a defendant at the procedural acts. Unless otherwise provided in this Act, bail may be set if any of the reasons applies for ordering a coercive measure affecting personal freedom subject to judicial permission under section 276 (2).

Section 285 (1) A defendant or his defence counsel may move for setting the amount of bail by the court and, should the bail be posted, to

a) issue a restraining order, to order criminal supervision, or to issue a restraining order and order criminal supervision in place of a pre-trial detention,

b) issue a restraining order in place of a criminal supervision,

c) lift the criminal supervision when both criminal supervision is ordered and a restraining order issued, or

d) impose more lenient rules of behaviour when the criminal supervision is ordered, or when both criminal supervision is ordered and a restraining order is issued.

(2) The motion for setting the amount of the bail shall indicate the amount to be posted.

(3) On the basis of the motion, the court shall

a) dismiss the motion to set the amount of the bail and to order a more lenient coercive measure or to impose more lenient rules of behaviour, or

b) set the amount of the bail and, should the bail be posted,

ba) order a more lenient coercive measure affecting personal freedom subject to judicial permission,

bb) lift the criminal supervision in a situation described in paragraph (1) *c)*, or

bc) impose more lenient rules of behaviour.

(4) A court may also set the amount of the bail when it orders, extends, or maintains a coercive measure affecting personal freedom subject to judicial permission, or adjudicates a motion to lift a coercive measure affecting personal freedom subject to judicial permission.

(5) If the motion is dismissed by the court, the defendant or his defence counsel may file a motion to set the amount of the bail again, provided that he invokes any new circumstance.

(6) The bail may not be set if

a) preliminary compulsory psychiatric treatment is ordered, or

b) a restraining order is issued, for the purpose of imposing more lenient rules of behaviour.

Section 286 (1) The bail shall be paid in the form of money, and it may be posted by a defendant or his defence counsel.

(2) The amount of bail may not be lower than five hundred thousand forints; it shall be set by the court appropriate to the threat pertaining to ensuring attendance, complicating or frustrating the taking of evidence and reoffending, on the basis of the material gravity of the criminal offence and having regard to the personal circumstances and financial situation of the defendant.

(3) The amount of bail may be also subject to an appeal.

Section 287 (1) The bail may be posted within three months after the decision setting the amount reaches administrative finality. The bail may not be withdrawn once posted.

(2) After the act of posting the bail is certified, on the basis of a court order,

a) the defendant in pre-trial detention shall be released without delay, and the more lenient coercive measure affecting personal freedom subject to judicial permission, as specified in the court decision, shall be enforced according to the imposed rules of behaviour,

b) where a restraining order is issued or criminal supervision is ordered, the coercive measure affecting personal freedom subject to judicial permission specified in the court decision shall be enforced, applying the rules of behaviour specified.

(3) If a defendant or his defence counsel fails to post the bail within the time limit specified in paragraph (1), he may file a motion to set the amount of the bail again, provided that he invokes any new circumstance.

Section 288 (1) The person posting a bail shall be deprived of his right to the amount posted as bail if the court orders the pre-trial detention of the defendant

a) on the basis of section 293 (3) or (4), or

b) due to his behaviour displayed after the bail is posted.

(2) The person posting a bail shall also be deprived of his right to the amount posted as bail if the pre-trial detention of the defendant may not be ordered because the defendant became unavailable.

(3) Once the bail is lost, a bail may not be set again.

(4) The amount of the bail shall be returned to the person posting it if the coercive measure affecting personal freedom subject to judicial permission applied against the defendant is terminated or lifted, except for the situation described in paragraph (1) or (2).

The duration of a restraining order and of criminal supervision

Section 289 (1) A restraining order that is issued and a criminal supervision that is ordered before the indictment shall remain in effect until a decision is adopted by the court of first instance during the preparation of a trial, but no longer than four months.

(2) The period of a restraining order or criminal supervision may be extended repeatedly by a court by up to four months each time.

(3) Before the indictment, a motion to extend the period of a restraining order or criminal supervision may be filed with a court by

a) the prosecution service,

b) the aggrieved party or the prosecution service if the restraining order was issued upon a motion filed by the aggrieved party,

at least five days before the duration of the coercive measure expires.

Section 290 (1) If a court of first instance issues or maintains a restraining order or orders or maintains criminal supervision after the indictment, it shall be effective until the announcement of the conclusive decision of the court of the first instance.

(2) If a court of first instance issues or maintains a restraining order or orders or maintains criminal supervisions after the conclusive decision is announced, or if the court of second instance issues or maintains a restraining order or orders or maintains criminal supervision, it shall be effective until the second-instance proceeding is concluded.

(3) If the court of the second instance issues or maintains a restraining order or orders or maintains criminal supervision after the conclusive decision is announced, or if the court of third instance issues or maintains a restraining order or orders or maintains criminal supervision, it shall be effective until the conclusion of the third-instance proceeding.

(4) If the conclusive decision adopted by the court of first or second instance is set aside and the court is instructed to conduct a new proceeding, a restraining order issued or maintained, and a criminal supervision ordered or maintained by the court of second or third instance shall be effective until the adoption of the decision in the repeated proceeding by the court instructed to conduct the repeated proceeding during the preparation of a trial or, if an appeal was filed, until the adoption of the decision under section 630 (5) by the court competent to adjudicate the appeal.

(5) The period of a restraining order that is issued or maintained, and a criminal supervision that is ordered or maintained after the adjudication of an appeal filed against the setting aside order adopted by the court of second or third instance shall be effective until the adoption, during the preparation of a trial, of the decision by the court instructed to conduct or repeat a proceeding.

Section 291 (1) The necessity of a restraining order or criminal supervision shall be reviewed

a) by the court of first instance if, without a conclusive decision being adopted by the court of first instance, six months have passed,

b) by the court of second instance if, without a conclusive decision being adopted by the court of first instance, one year has passed,

c) by the court of second instance at least every six months until the court of first instance adopts a conclusive decision if the time limit set out in point *b)* has passed

after the court of first instance maintained or ordered criminal supervision or maintained or issued the restraining order following the indictment.

(2) The necessity of a restraining order issued or maintained, or criminal supervision ordered or maintained, after the adoption of a conclusive decision by the court of first or second instance shall be reviewed, every six months, by the court of second or third instance, respectively.

(3) If the criminal supervision is ordered or maintained, or the restraining order is issued or maintained by the proceeding court under section 290 (2) to (4), the six-month time limit specified in paragraph (2) shall be calculated from that date.

Partial lifting and modification of a restraining order and criminal supervision

Section 292 (1) If the living conditions of the defendant or the person protected by restraining order change substantially during the period of the restraining order or criminal supervision, as a result of which

a) it is necessary to deviate from, or suspend, the imposed rules of behaviour temporarily, the rules of behaviour relating to a restraining order or criminal supervision may be partially lifted *ex officio*, or upon a motion by the defendant, the defence counsel or the person protected by restraining order, by the prosecution service before the indictment or by the court after the indictment or if the restraining order was issued upon a motion by the aggrieved party,

b) it is necessary to modify the imposed rules of behaviour with permanent or final effect, the court, acting upon a motion from the prosecution service, the defendant, the defence counsel, or the person protected by restraining order, shall modify the rules of behaviour relating to the restraining order or criminal supervision.

(2) If a motion to partially lift or modify the rules of behaviour is submitted, the court or the prosecution office authorised to assess the motion under paragraph (1) shall

a) dismiss the motion,

b) grant the motion in part and partially lift or modify the rules of behaviour, and dismiss the remainder of the motion, or

c) grant the motion and partially lift or modify the rules of behaviour.

(3) The decision partially lifting or modifying the rules of behaviour relating to the restraining order shall be communicated

a) to the person protected by restraining order as well,

b) to the prosecution service as well, where the motion to partially lift or modify the rules of behaviour was submitted by the person protected by restraining order.

(4) With the exception specified in paragraph (5), no legal remedy shall lie against partially lifting or modifying, according to a corresponding motion, any rule of behaviour relating to the criminal supervision or the restraining order. The person who filed such a motion may seek legal remedy against the dismissal of his motion or a dismissing provision of the decision on his motion.

(5) If a motion to partially lift or modify the rules of behaviour relating to the restraining order was filed by the person protected by restraining order, legal remedy against the decision granting the motion in whole may be sought by the defendant or the defence counsel, while against the decision granting the motion in part, legal remedy may be sought also by the defendant or the defence counsel.

(6) Unless the possibility of doing so is excluded by the court at the time of ordering the given coercive measure affecting personal freedom subject to judicial permission, the defendant subject to the restraining order or the criminal supervision may deviate, without a specific permission, from the rules of behaviour relating to the restraining order or the criminal supervision for the period and to the extent necessary to perform his obligation to appear arising from being summoned by the court, prosecution service, investigating authority, another authority, or expert, or to exercise his right to appear in relation to any such notice. In that event, the defendant shall

a) inform the authority monitoring his compliance with the rules of behaviour about the summons or notice, together with enabling their inspection, on the next working day after the receipt thereof at the latest,

b) prove that he appeared before the summoning or notifying authority, including the duration of doing so, within three working days after his appearance.

(7) Any failure to perform the obligations related to information and proof specified in paragraph (6) shall constitute a violation of the rules of behaviour.

Enforcing a restraining order and criminal supervision, and violating the applicable rules of behaviour

Section 293 (1) If it is established after ordering the criminal supervision or issuing the restraining order that the conditions for enforcing the coercive measure affecting personal freedom subject to judicial permission are not met, including in particular when the technical tracking device may not be installed, the custody of the defendant shall be ordered, and the court shall adopt a new decision on the coercive measure affecting personal freedom subject to judicial permission.

(2) The court may impose a disciplinary fine on a defendant who violates the rules of behaviour relating to the restraining order or the criminal supervision.

(3) The defendant who violates the rules of behaviour repeatedly, or in a serious manner, may be taken into custody and

a) if he violated the rules of behaviour prescribed in connection with a restraining order, he may be subject to criminal supervision in place of, or in addition to, a restraining order,

b) using a technical tracking device may be ordered,

c) more adverse or other rules of behaviour may be set, or

d) the pre-trial detention of the defendant may be ordered.

(4) If the defendant fails to appear at a procedural act he was summoned to without providing a well-grounded excuse for his absence in advance or immediately after the obstacle is removed, a disciplinary fine may be imposed on him or, with a view to applying a measure specified in paragraph (3), he may be taken into custody.

Lifting a restraining order and criminal supervision, and modifying the rules of behaviour

Section 294 (1) A motion to lift a restraining order or criminal supervision, or to set more lenient rules of behaviour, may be filed by

a) the prosecution service, the defendant, or the defence counsel, or

b) the defendant, his defence counsel or the aggrieved party if the restraining order was issued upon a motion by the aggrieved party.

(2) The motion to lift the restraining order or criminal supervision, or to set more lenient rules of behaviour, shall be examined on its merits, and a decision shall be adopted on it by the court. If the motion was not filed by the prosecution service, the court shall obtain the observations of, or a motion from, the prosecution service.

(3) The court

a) shall not adjudicate the motion if the defendant is not subject to a coercive measure affecting personal freedom subject to permission by a judge, or he is subject to another coercive measure affecting personal freedom subject to judicial permission, at the time of adjudicating the motion,

b) may decide not to adopt a decision on the motion and notify the defendant accordingly if it extended or maintained the coercive measure affecting personal freedom subject to judicial permission at any time during the period between submitting and adjudicating the motion.

Section 295 (1) If a restraining order or criminal supervision is extended or maintained, the court may set more lenient rules of behaviour *ex officio*, if the objective to be achieved by the coercive measure affecting personal freedom subject to judicial permission may also be achieved by such rules.

(2) The court, before the indictment only upon a motion by the prosecution service, may set more adverse rules of behaviour for the defendant if this is necessary for achieving the objective of the coercive measure affecting personal freedom subject to judicial permission.

Chapter XLVI/A

SUPERVISION FOR THE PURPOSE OF CRIME PREVENTION

Section 295/A Supervision for the purpose of crime prevention shall restrict the freedom to act of the defendant with a view to the prevention of further drug consumption.

Section 295/B (1) The prosecution service shall order the supervision for the purpose of crime prevention of the suspect in a proceeding against the defendant who is reasonably suspected of having committed the criminal offence of drug trafficking or drug possession if

a) a coercive measure affecting personal freedom subject to judicial permission was not ordered against the suspect, and

b) the suspect can be reasonably suspected of having committed the criminal offence of drug possession by consuming drugs or keeping drugs for the purpose of consumption.

(2) Ordering supervision for the purpose of crime prevention may be dispensed with in a case deserving special consideration.

Section 295/C (1) Supervision for the purpose of crime prevention shall terminate if

a) its period expires without being extended,

b) the time limit for the investigation expired,

c) the investigation is completed, or

d) the proceeding is suspended.

(2) Supervision for the purpose of crime prevention shall be terminated if

a) the grounds for ordering it have ceased,

b) a coercive measure affecting personal freedom subject to judicial permission is ordered against the suspect,

c) pre-trial detention or preliminary compulsory psychiatric treatment of the suspect is ordered in another case, or

d) the suspect is serving a sentence of imprisonment, confinement or special education in a reformatory.

Section 295/D If supervision for the purpose of crime prevention is ordered, the prosecution service shall prescribe for the suspect

a) to report to a police organ established to carry out general policing tasks at specific intervals and in a specific manner, and

b) to cooperate during a drug test by the police.

Section 295/E The period of supervision for the purpose of crime prevention shall be three months, which may be extended by the prosecution service once, for three months.

Section 295/F (1) If the living conditions of the suspect change substantially during the period of supervision for the purpose of crime prevention, as a result of which

a) it is necessary to deviate from, or suspend, the prescribed rules of behaviour temporarily, the prosecution service shall, acting *ex officio* or upon a motion from the defendant or the defence counsel, partially lift the rules of behaviour relating to the supervision for the purpose of crime prevention, or

b) it is necessary to modify the prescribed rules of behaviour with permanent or final effect, the prosecution service, acting upon a motion from the suspect or the defence counsel, shall modify the rules of behaviour relating to the supervision for the purpose of crime prevention.

(2) Legal remedy may not be sought against partially lifting or modifying, according to a corresponding motion, a supervision for the purpose of crime prevention.

(3) A suspect subject to supervision for the purpose of crime prevention may deviate, without a specific permission, from the rules of behaviour relating to supervision for the purpose of crime prevention for the period and to the extent necessary to perform his obligations arising from being summoned by the court, prosecution service, investigating authority, another authority, or expert, or to exercise his right to appear in relation to any such notice.

(4) In a situation under paragraph (3), the suspect shall

a) inform the authority monitoring his compliance with the rules of behaviour about the summons or notice, enabling their inspection, on the next working day after the receipt thereof at the latest,

b) certify that he appeared before the summoning or notifying authority, including the duration of doing so, within three working days after his appearance.

(5) Any failure to perform the obligations related to information and certification specified in paragraph (4) shall constitute a violation of the rules of behaviour.

Section 295/G (1) If a suspect violates the rules of behaviour relating to supervision for the purpose of crime prevention, the prosecution service may impose a disciplinary fine on the suspect.

(2) A suspect who violates the rules of behaviour repeatedly, or in a serious manner, may be taken into custody.

Chapter XLVII

PRE-TRIAL DETENTION

Section 296 Pre-trial detention means the act of depriving the defendant of his personal freedom by a judge before a final and binding conclusive decision is adopted.

The duration of the pre-trial detention

Section 297 (1) The period of a pre-trial detention that is ordered before the indictment shall last until a decision adopted by the court of first instance during the preparation of the trial, but for not longer than one month.

(2) The period of pre-trial detention may be extended repeatedly by the court by up to three months each time for one year after ordering the pre-trial detention, and up to two months each time afterwards.

(3) Before the indictment, the prosecution service may submit a motion to the court to extend the period of pre-trial detention at least five days before the period of pre-trial detention expires.

(4) After the indictment, the provisions on the duration of the criminal supervision shall apply, as appropriate, to the duration of the pre-trial detention subject to the derogations laid down in section 298, and with the proviso that the duration of a pre-trial detention ordered or maintained after the conclusive decision of the court of first or second instance is announced may not exceed the period of imprisonment imposed in a judgment that is not final and binding.

The maximum duration of pre-trial detention

Section 298 (1) The pre-trial detention may last up to

a) one year if a criminal offence punishable by imprisonment for up to three years

b) two years if a criminal offence punishable by imprisonment for up to five years

c) three years if a criminal offence punishable by imprisonment for up to ten years

d) four years if a criminal offence punishable by imprisonment for more than ten years,

e) five years if a criminal offence punishable by life imprisonment

serves as basis for the criminal proceeding conducted against the defendant.

(2) Paragraph (1) shall not apply if

a)

b) the pre-trial detention was ordered or maintained after the announcement of a conclusive decision,

c) a proceeding to adjudicate an appeal against a setting aside order of the court of second or third instance is pending, or

d) a proceeding repeated due to setting aside is pending.

(3) The pre-trial detention of the defendant who violates the rules of behaviour relating to criminal supervision ordered after his pre-trial detention is terminated pursuant to paragraph (1) may be ordered anew. In such an event, the duration of pre-trial detention shall be calculated, for the purposes of paragraph (1), from the day of ordering his repeated pre-trial detention.

(4) The maximum length of the pre-trial detention under paragraph (1) *e)* shall be extended by another year if

a) indictment was brought because of a criminal offence committed in a criminal organisation,

b) issuing a request for legal assistance in a criminal matter as regards a country other than a Member State of the European Union was necessary after the indictment,

c) indictment was brought because of the felony of terrorist act,

d) indictment was brought because of the felony of homicide committed with premeditation, out of greed, against multiple persons or as set out in section 160 (2) *l)*, having regard to paragraph (7) *a)*, of the Criminal Code,

e) the court establishes that, after the indictment, the defendant, who is in pre-trial detention, escaped or attempted to escape or, with a view to frustrating the taking of evidence, intimidated or illegally influenced a person involved in the criminal proceeding or any other person, or destroyed, falsified, or hid any means of physical evidence, electronic data, or thing subject to forfeiture of assets.

(5) If the court orders criminal supervision solely because the maximum length of pre-trial detention under paragraph (1) *e)* was reached, then the court

a) shall prescribe for the defendant that he is not to leave a specific home, other premises, or a fenced area of it without permission,

b) shall prescribe for a defendant without a domicile suitable for the enforcement of criminal supervision to spend the period of criminal supervision at the accommodation provided by the State,

c) shall be forbidden to permit for the defendant to leave for work the place designated for him.

The enforcement of the pre-trial detention

Section 299 (1) If the pre-trial detention of a defendant is ordered, the measures specified in section 275 shall be taken without delay by the investigating authority or the prosecution service before the indictment, or the court after the indictment.

(2) If it is necessary for the performance of a procedural act, the pre-trial detention shall be enforced in a police detention facility as instructed by the prosecution service; the duration of such a pre-trial detention may not exceed sixty days in total.

(3) No complaint shall lie against the decision to place a defendant into a police detention facility.

(4) In the absence of grounds for exclusion specified by law, if a defendant is a woman caring for her child below the age of one, the court, upon a motion from the defendant or the defence counsel, shall order the defendant and her child to be held in a unit allowing for their joint placement.

Adjudicating a motion to terminate the pre-trial detention

Section 300 (1) A motion to terminate the pre-trial detention or to order a more lenient coercive measure affecting personal freedom subject to judicial permission may be submitted by the prosecution service or the defendant or his defence counsel.

(2) The motion to terminate pre-trial detention or to order a more lenient coercive measure affecting personal freedom subject to judicial permission shall be examined on its merits, and a decision shall be adopted on it by the court. If the motion was not filed by the prosecution service, the court shall obtain the observations of, or a motion from, the prosecution service.

(3) If another motion to terminate the pre-trial detention is submitted with identical content, it may not be dismissed without stating any reason as to its merits, provided that three months have passed since the pre-trial detention was ordered, extended, or maintained.

(4) The court

a) shall not adjudicate the motion if the defendant is not subject to a coercive measure affecting personal freedom subject to judicial permission any longer, or he is subject to another coercive measure affecting personal freedom subject to judicial permission,

b) may decide not to adjudicate the motion and, at the same time, notify the defendant and the defence counsel accordingly if the pre-trial detention was extended or maintained at any time during the period between submitting and adjudicating the motion.

Chapter XLVIII

PRELIMINARY COMPULSORY PSYCHIATRIC TREATMENT

Section 301 (1) Preliminary compulsory psychiatric treatment means that the defendant affected by a mental disorder is deprived by a judge of his personal freedom before a final and binding conclusive decision is adopted.

(2) With the exception of section 298, the rules on pre-trial detention shall apply to a preliminary compulsory psychiatric treatment accordingly, subject to the derogations laid down in this Chapter.

(3) The spouse or cohabitant of the defendant shall also be entitled to file an appeal against ordering, extending, or maintaining preliminary compulsory psychiatric treatment.

(4) A motion to terminate preliminary compulsory psychiatric treatment may also be filed by the spouse or cohabitant of a defendant.

(5) If the preliminary compulsory psychiatric treatment is ordered before the indictment, it shall remain in effect until a decision is adopted by the court of first instance during the preparation of a trial, but for no longer than six months.

(6) Before the indictment, the court may extend the period of preliminary compulsory psychiatric treatment by up to six months each time.

(7) If terminating the preliminary compulsory psychiatric treatment is justified, the institute enforcing preliminary compulsory psychiatric treatment shall inform the prosecution service, before the indictment, or the court, after the indictment, without delay.

Chapter XLIX

SEARCH, BODY SEARCH

Search

Section 302 (1) Search means searching a home, other premises, fenced area, or vehicle for the purpose of conducting a criminal proceeding successfully. The search may also include searching an information system or a data-storage medium.

(2) A search may be ordered, if it is reasonable to assume that it leads to

a) the apprehension of a perpetrator of a criminal offence,

b) the detection of traces of a criminal offence,

c) the discovery of a means of evidence,

d) the discovery of a thing that may be subject to confiscation or forfeiture of assets, or

e) the examination of an information system or data-storage medium.

Section 303 (1) A search may be ordered by the court, prosecution service, or investigating authority.

(2) If a search is to be conducted in the offices of a notary, or in a law office, for the purpose of gaining access to protected data related to the activities of a notary or an attorney-at-law, it shall be ordered by a court. At any search conducted in the offices of a notary, or in a law office, the attendance of a prosecutor shall be obligatory.

(3) A search may be conducted even without a court decision if adopting a court decision required for ordering a search would cause any delay that would significantly jeopardise the purpose of the search. In such a situation, the permission of the court shall be obtained *ex-post* without delay. If such a search is not ordered by a court, the result of the search may not be used as evidence.

Section 304 (1) A decision ordering a search shall specify the purpose of the search and the facts supporting ordering the search.

(2) If possible, the decision ordering a search shall specify the person, means of evidence, thing that may be subject to confiscation or forfeiture of assets, information system, or data-storage device to be found during the search.

Section 305 (1) With the exception specified in paragraph (2), the search shall be conducted in the presence of the owner, possessor, or user of the real estate or the vehicle concerned.

(2) The search may also be conducted in the presence of the defence counsel or a representative of, or an adult person authorised by, the owner, possessor, or user of the real estate or vehicle concerned. If such a person is not present, the search shall be conducted, in order to protect the interests of the person concerned, in the presence of an adult person who does not have any interest in the case.

(3) Before starting the search, the content of the decision ordering the search shall be presented, and the decision shall be served on the spot, if possible.

(4) If the purpose of the search is to find a specific person, a means of evidence, a thing, an information system, or a data-storage medium, the owner, possessor, user of the real estate or vehicle concerned, or the person authorised by that person shall be called upon to reveal the location of the means of physical evidence or person sought, and to make the electronic data sought accessible. If the call is complied with, the search may not be continued unless it is reasonable to assume that any other means of evidence, thing, information system, or data-storage medium may also be found.

(5) A disciplinary fine may be imposed on any person other than the defendant who is impeding the search.

Body search

Section 306 (1) Body search means searching and inspecting the clothing and body of a person subject to body search for the purpose of finding a means of evidence or a thing that may be subject to confiscation or forfeiture of assets. In the course of a body search, things found on the searched person may also be inspected.

(2) A body search may be ordered concerning a defendant, a person reasonably suspected of having committed a criminal offence or a person with regard to whom it is reasonable to assume that he has a means of evidence or a thing that may be subject to confiscation or forfeiture of assets on him.

(3) A body search may be ordered by the prosecution service or the investigating authority.

Section 307 (1) If a body search is aimed at finding a specific thing, the searched person shall be called upon to hand over the thing sought. If such call is complied with, the body search may not be continued.

(2) A body search shall not be conducted in an indecent manner.

(3) Body cavities may be searched by a doctor only; healthcare workers may also attend the examination.

(4) An adult person who is present at the location of the body search and is specified by the person subject to body search may attend the body search, provided that his presence does not harms the interests of the proceeding.

(5) With the exception of situations of extreme urgency, the body search shall be conducted by a person of the same sex as the person subject to body search, and only persons of the same sex may be present during the body search. The doctor conducting a cavity search, the healthcare worker assisting during the examination, and the adult person specified by the person searched may be of the opposite sex as the person subject to body search.

(6) A disciplinary fine may be imposed on any person other than a defendant and a person reasonably suspected of having committed a criminal offence who is impeding the body search.

Chapter L

SEIZURE

Ordering a seizure

Section 308 (1) The purpose of a seizure shall be to secure a means of evidence, or a thing or asset that may be subject to confiscation or forfeiture of assets, in order to conduct the criminal proceeding successfully. The seizure restricts the right of ownership over the subject of the seizure.

(2) A seizure shall be ordered if its subject

a) is a means of evidence, or

b) may be subject to confiscation or is subject to forfeiture of assets.

(3) A movable thing, scriptural money, electronic money, or electronic data may be seized.

Section 309 (1) A seizure may be ordered by the court, prosecution service, or investigating authority.

(2) Seizure of a means of evidence kept in the offices of a notary, or a law office, and containing protected data related to the activities of a notary or an attorney-at-law may be ordered by a court.

(3) The prosecution service, before the indictment, or a court, after the indictment, shall order the seizure of

a) a postal item or other sealed consignment yet to be delivered to the addressee,

b) any communication or consignment not yet delivered to the addressee that is set to be transferred through an electronic communications service, or

c) a means of evidence kept in the editorial offices, and relating to the activities, of a media content provider as defined in the Act on the freedom of the press and the fundamental rules on media contents.

(4) If passing a court or prosecutorial decision required for ordering a seizure would cause any delay significantly jeopardising the purpose of seizure, the prosecution service or the investigating authority may enforce the seizure, or prohibit the sending of any communication or consignment, until the entity authorised to order the seizure passes a decision. In such a situation, the decision of the entity authorised to order a seizure shall be obtained without delay. If seizure is not ordered by the entity authorised to order a seizure, any means of evidence or consignment seized shall be returned to the person concerned and any prohibition on sending shall be lifted.

Section 310 (1) The following may not be seized:

a) any communication or consignment by and between a defendant or a person reasonably suspected of having committed a criminal offence and his defence counsel, and

b) any note on the case by a defence counsel.

(2) With the exception specified in paragraph (4), the following may not be seized:

a) any communication or consignment by and between a defendant or a person reasonably suspected of having committed a criminal offence and a person entitled to refuse to give witness testimony, and

b) any means of evidence with regard to which giving a witness testimony may be refused,

provided that it is kept by a person who may refuse to give a witness testimony.

(3) With the exception specified in paragraph (4), a document or electronic data may not be seized if it is kept in an office used, for the purpose of practicing or fulfilling his profession or public mandate, by a person, who may refuse to give a witness testimony under section 173, and it relates to his profession or public mandate.

(4) In a case specified in paragraph (2) or (3), seizure may be ordered if

a) the criminal offence was committed with regard to the means of evidence to be seized,

b) the item to be seized is an instrument of the criminal offence,

c) the means of evidence to be seized carries traces from the perpetrator,

d) the person entitled to refuse to give a witness testimony is reasonably suspected of being an offender, accessory, accessory after the fact, or money launderer concerning the case,

e) a person who may refuse to give a witness testimony hands over, or makes available, the means of evidence to be seized voluntarily and after being advised of the provisions of paragraphs (2) and (3), or

f) a person who may refuse to give a witness testimony under section 174 was obliged by a court to reveal the identity of his informant.

Carrying out the seizure

Section 311 (1) The seizure may be enforced by

a) taking possession,

b) ensuring safekeeping by other means,

c) leaving the thing in the possession of the person concerned, or

d) with regard to electronic data, in a manner described in section 315 (1).

(2) Seizure may be enforced by leaving the thing in the possession of the person concerned or by ensuring safekeeping by other means if

a) the thing concerned cannot be taken into possession,

b) doing so is justified by the interests of the possessor or processor of the thing or electronic data concerned in using such thing or electronic data, or

c) doing so is necessary for any other important reason.

(3) In a situation described in paragraph (2), the possession of a seized thing or electronic data may not be transferred to any other person without permission from the court, prosecution office, or investigating authority that ordered its seizure. If such permission is granted, the new possessor shall be responsible for safekeeping the seized thing.

(4) The seizure of a thing under special protection granted by the Act on the special protection of borrowed cultural goods may be enforced after the period of special protection expires.

(5) The manner of carrying out the seizure shall be specified in the decision ordering the seizure.

(6) The necessity to maintain the seizure during the criminal proceeding shall be examined pursuant to the applicable legislation. If the seizure is not necessary any longer for the purposes of a proceeding, arrangements shall be made without delay to terminate the seizure and release the thing seized, or a motion to confiscate the seized thing shall be submitted.

Section 312 (1) With a view to enforcing seizure, the possessor or processor of a thing or electronic data shall be called upon to reveal the location of the thing, or make accessible the electronic data sought. If compliance with the call is refused, the thing or the electronic data sought shall be located by conducting a search or body search. The person concerned shall be advised about these provisions.

(2) If a person concerned fails to comply with a call, a disciplinary fine may be imposed on him, with the exception of

a) a defendant or a person reasonably suspected of having committed the criminal offence,

b) a person who may refuse to give witness testimony, or

c) a person who may not be interrogated as a witness.

(3) A disciplinary fine may be imposed on any person other than a defendant, or a person reasonably suspected of having committed the criminal offence, who impedes a seizure.

Seizing documents

Section 313 (1) An original document shall be seized if

a) it may be confiscated,

b) it is a deed that confirms a title to, or a right of disposal regarding, any asset subject to forfeiture of assets,

c) it carries the traces of a criminal offence,

d) the volume of documents to be examined is significant or cannot be determined in advance,

e) doing so is indispensable for taking evidence successfully.

(2) If the original document is not necessary in the course of the proceeding, a copy of it shall be produced as soon as possible, taking into account the technical capacities of the ordering entity and the volume of documents seized. In such an event, seizure of an original document shall be lifted when a copy is produced, but within two months at the latest.

(3) Upon his motion, a certified true copy of a seized original document shall be produced for its possessor, unless doing so would jeopardise the interests of the proceeding.

Section 314 (1) If the possessor of a document, or his defence counsel or representative believes that giving a witness testimony regarding the content of a given document may be refused under section 172 and he does not consent to inspecting the document concerned, he shall make the document, or the data-storage medium containing the document, available to the investigating authority or the prosecution service in a sealed container. In such an event, members of the proceeding investigating authority or the organ of the prosecution service carrying out prosecutorial investigation may not inspect the content of the document.

(2) After accessing the content of a sealed document or data-storage medium, the prosecution service, where the investigation is conducted by an investigating authority, or the superior prosecution office, where the investigation is conducted by a prosecution office, shall decide without delay on ordering the seizure or shall, if it is not authorised to do so, submit a motion to a court to order seizure. If no seizure is ordered by the prosecution service or the court, the document concerned may not be used as means of evidence in the pending, or any other, criminal proceeding.

Seizing and ordering the preservation of electronic data

Section 315 (1) The seizure of electronic data may be carried out by

a) copying the electronic data,

b) moving the electronic data,

c) producing a copy of the whole content of the information system or data-storage medium containing the electronic data,

d) seizing the information system or data-storage medium containing the electronic data, or

e) other means specified by law.

(2) The seizure of electronic data used for making payments may also be carried out by an operation that prevents the person concerned from disposing of the material value represented by the electronic data.

(3) The provisions laid down in sections 313 to 314 shall apply as appropriate to the seizure of a document that exists as a set of electronic data.

(4) The seizure of electronic data shall be carried out in a manner ensuring, if possible, that the electronic data not necessary for the criminal proceeding are not affected by it, or such data are only affected by the seizure for the shortest period possible.

(5) An information system or data-storage medium containing electronic data may be seized if

a) it may be subject to confiscation or forfeiture of assets.

b) it is significant as a means of physical evidence, or

c) it contains a significant volume of electronic data that needs to be examined for the purpose of taking evidence, or the volume of such data cannot be determined in advance.

(6) When seizing an information system or data-storage medium, the person authorised to dispose of the electronic data shall be provided, upon his request, with a copy of the pieces of electronic data specified by him, unless doing so would jeopardise the interests of the proceeding.

Section 316 (1) With a view to detecting or proving a criminal offence, an order to preserve electronic data may be issued. An order to preserve electronic data means restricting the right of the possessor, processor, or controller of electronic data (hereinafter jointly "preserving entity") to dispose of such electronic data.

(2) An order to preserve electronic data may be issued by the court, the prosecution service, or the investigating authority.

(3) An order to preserve electronic data may be issued if doing so is necessary to

a) detect a means of evidence,

b) secure a means of evidence, or

c) determine the identity, or place of actual residence, of a suspect.

(4) From the time when the corresponding decision is communicated to him, the preserving entity shall preserve the electronic data specified in the decision in an unaltered form, and provide secure storage for such data separately from other data files as necessary. A preserving entity shall protect the electronic data against modification, deletion, destruction, transfer, unauthorised copying, and unauthorised access.

(5) An entity that ordered the preservation may sign the electronic data to be preserved with a qualified electronic signature or seal, or an advanced electronic signature or seal based on a qualified certificate.

(6) If preserving electronic data at its original location would significantly impede the activities of the person concerned relating to the technical processing, processing, storage, or transfer of the electronic data, he may, with the permission of the entity that ordered the preservation, copy the electronic data to be preserved into another information system or on another data-storage medium. After such copying, the ordering entity may lift the restrictions, in whole or in part, concerning the information system or data-storage medium containing the original electronic data.

(7) During the period of such a coercive measure, the electronic data to be preserved may be accessed only by the court, prosecution service, investigating authority, or, with the permission of the entity that ordered the preservation, the preserving entity. During the period of such a measure, the preserving entity may not provide information to any other person regarding any electronic data to be preserved without the permission of the ordering entity.

(8) If any electronic data to be preserved is modified, deleted, destroyed, transferred, copied, accessed without authorisation, or any attempt to do so is detected, the preserving entity shall inform the entity that ordered preservation without delay.

(9) After an order to preserve electronic data is issued, the entity that ordered the preservation shall start the examination of the electronic data concerned without delay. As the result of such examination, the entity that ordered the preservation shall decide whether to order the seizure to be enforced in another way, or lift the order of preservation.

(10) The period of an order of preservation may not exceed three months. An order of preservation shall terminate when the corresponding criminal proceeding is concluded. A preserving entity shall be informed about the conclusion of the criminal proceeding.

Section 317 The provisions on redeeming, selling, and confiscating a seized thing, as well as on lifting a seizure or retaining a seized thing shall apply to electronic data accordingly.

Ordering the safekeeping of scriptural money or electronic money and seizure after safekeeping

Section 317/A (1) The court, a prosecution office or an investigating authority may order the safekeeping of scriptural money or electronic money if

a) seizure of the scriptural money or electronic money would be in order,

b) the party with a pecuniary interest concerned holds a payment account within the meaning of the Act on providing payment services, a client account within the meaning of the Act on capital markets, or an account for recording electronic money, that does not qualify as a payment account and is maintained by an electronic money institution in accordance with the Act on certain payment service providers (for the purposes of this section, hereinafter jointly "account"), to which scriptural money or electronic money is expected to be credited, and

c) there is reason to believe that scriptural money or electronic money is not available or is only partially available for seizure on the payment account or electronic money account under the disposal of the party with a pecuniary interest concerned.

(2) The period of ordering the safekeeping of scriptural money or electronic money shall not exceed three months, which may be extended repeatedly by three months each time for up to one year. After the expiry of this period, the decision shall cease to have effect.

(3) The following shall be specified in a decision ordering the safekeeping of scriptural money or electronic money:

a) data suitable for identifying the account concerned,

b) whether seizing the scriptural money or electronic money is required, and the relevant legal grounds,

c) the starting and finishing date of the period for which safekeeping of scriptural money or electronic money is ordered, specified as a day,

d) if safekeeping of scriptural money or electronic money is ordered for safekeeping a specific amount (for the purposes of this section, hereinafter jointly the "amount concerned"), the amount concerned, and

e) the interval at which the service provider is obliged to inform the ordering court, prosecution office or investigating authority.

(4) The decision ordering the safekeeping of scriptural or electronic money shall be communicated to the party with a pecuniary interest and to the payment service provider, investment service provider or electronic money institution maintaining the account (for the purposes of this section, hereinafter jointly "service provider"). No legal remedy shall be available to the service provider to challenge the decision.

(5) If scriptural money or electronic money is credited to or is available on an account subject to ordering the safekeeping of scriptural or electronic money, the service provider shall inform the ordering court, prosecution office or investigating authority accordingly at the interval specified in paragraph (3) *e)*. During the period for which safekeeping is ordered, the service provider shall suspend the right of disposal of the account holder over the account with regard to which safekeeping is ordered as regards the total balance on the account or, if paragraph (3) *d)* applies, as regards the amount concerned, in such a manner that during the period for which safekeeping is ordered, the service provider shall decline and not perform any payment transaction against the total balance or the amount concerned on the account; this also includes that the service provider shall not accept any instruction charged to the client account, however, it shall credit all amounts received to the account.

(6) After the receipt of the information referred to in paragraph (3) *e)*, the court, the prosecution office and the investigating authority shall decide whether to seize, in part or in whole, the scriptural money or electronic money included in the information provided by the service provider for the period concerned, or whether the conditions for seizure are not met as regards the scriptural money or electronic money included in the information provided by the service provider. If the court, the prosecution office or the investigating authority establishes that the conditions for seizure are not met as regards the scriptural money or electronic money included in the information provided by the service provider, the order for safekeeping shall no longer apply to the scriptural money or electronic money.

(7) An order for safekeeping scriptural money or electronic money shall be lifted if the reason for ordering it has ceased or the criminal proceeding is completed. No legal remedy shall lie against this decision.

(8) An order for safekeeping scriptural or electronic money shall terminate if

a) the amount the safekeeping of which was ordered is seized or it has been established that the conditions for seizure are not met as regards the scriptural money or electronic money included in the information provided by the service provider, or

b) the time limit for which safekeeping was ordered expires.

(9) For a violation of the obligations specified in this section, the service provider may be subject to disciplinary fine. A disciplinary fine shall not be imposed where the service provider fails to fulfil the obligation referred to in paragraph (5) within 12 hours of the service of the decision.

Redeeming a seized thing

Section 318 (1) If a thing is seized for the sole purpose of securing the forfeiture of assets and no well-grounded claim for its release was submitted, the person from whom the thing was seized may move for accepting the redemption of the thing concerned.

(2) The prosecution service, before the indictment, or a court, after the indictment, shall decide on accepting the redemption of the seized thing.

(3) The redemption amount shall be determined by the prosecution service or the court. The redemption amount shall be set at the estimated value of the thing concerned.

(4) The motion to accept the redemption of a thing shall be dismissed if

a) the person concerned disputes the amount determined,

b) determining the redemption amount would protract the proceeding, or

c) determining the redemption amount would involve disproportional costs.

(5) No legal remedy shall lie against the dismissal of a motion to accept the redemption of a thing.

(6) An amount paid as redemption shall take the place of the thing seized and shall be subject to the seizure without a separate decision to that effect; upon such a redemption, the seizure of the originally seized thing shall cease. In such an event, forfeiture of assets shall be ordered with regard to the amount replacing the thing concerned.

Selling a seized thing

Section 319 (1) If a thing seized during a proceeding is not necessary any longer for the purpose of taking of evidence, it shall be examined *ex officio* and without delay if seizure of the thing may be lifted or the thing may be sold.

(2) The thing seized may be sold if

a) the thing seized is not necessary any longer for the purpose of taking of evidence,

b) its seizure may not be lifted, and

c) no well-grounded claim was submitted concerning the thing seized.

(3) If the conditions specified in paragraph (2) are met, the court, before the indictment only upon a motion by the prosecution service, shall order the seized thing to be sold, provided that the thing seized

a) is a perishable good,

b) is unfit for extended storage,

c) could be handled, stored, or safeguarded only at disproportional and considerable cost, taking into account its value or the foreseeably long period of storage, or

d) would be significantly depreciated during the expected period of seizure, or it is reasonable to assume that such a risk exists.

(4) Where a seized thing is not needed any longer for the taking of evidence and its seizure may not be lifted, the court, before the indictment only upon a motion by the prosecution service, may order the seized thing to be sold also if a well-grounded claim was submitted regarding the seized thing and the person who submitted the well-grounded claim agrees to the sale.

(5) Before the indictment, the sale of a thing may also be ordered by the prosecution service or an investigating authority.

(6) Any consideration received for the seized thing shall take the place of the seized thing and shall be subject to the seizure without a separate decision to that effect; the seizure of the originally seized thing shall cease when it is sold. In such an event, confiscation or forfeiture of assets shall be ordered with regard to the amount replacing the thing concerned.

(7) If a seized thing is sold and it is necessary for the subsequent taking of evidence, a sample of the seized thing shall be retained, or an image or audio-visual recording of the thing shall be made, that is suitable for proving the relevant features of the thing concerned beyond a reasonable doubt at a subsequent stage of the proceeding.

(8) If the seizure of an organism cannot be enforced by leaving the thing in the possession of the person concerned,

a) than provisions should be made as soon as possible to ensure that the organism is not required for the taking of evidence, and

b) provided that the conditions set out in paragraph (2) are met,

ba) the court, before the indictment only upon a motion by the prosecution service, shall order the sale of the organism or

bb) the prosecution service or the investigating authority shall order, before the indictment, the sale of the organism subject to consent by the person submitting a well-grounded claim if a well-grounded claim was submitted concerning the organism seized,

(9) If the conditions set out in paragraph (2) are met, the court, or before the indictment, the prosecution service or the investigating authority, may order, in place of the sale of the organism, the free transfer of its ownership subject to consent by the owner of the organism and, if a well-grounded claim was submitted as regards the organism seized, the person submitting the well-grounded claim.

Lifting the seizure and confiscating a seized thing

Section 320 (1) Seizure shall be lifted if

a) it is not necessary any longer for the proceeding,

b) the thing seized has been redeemed, with regard to the thing originally seized,

c) the proceeding is terminated, or

d) the time limit for an investigation expired.

(2) With the exception of live vertebrate animals, if a seized thing does not have any value and it is not claimed by any person, it shall be destroyed after the seizure is lifted.

(3) A court-ordered seizure may also be lifted by the prosecution service before the indictment.

(4) If possessing a seized thing is in breach of the law or threatens public safety, the court shall decide, before the indictment only upon a motion by the prosecution service and if the conditions under paragraph (5) are met, to confiscate the seized thing in place of lifting its seizure.

(5) If a seized thing is confiscated or destroyed and it is necessary for the taking of evidence, a sample of the seized thing shall be retained, or an image or audio-visual recording of the thing shall be made, that is suitable for proving the relevant features of the thing concerned beyond a reasonable doubt at a subsequent stage of the proceeding.

(6) If the court, the prosecution service or the investigating authority notifies, on the basis of section 111, an organ authorised to initiate or conduct the proceeding, in the proceeding of which the seized thing may be confiscated, the measure under paragraph (4) may be dispensed with for up to five working days.

(7) The court, the prosecution service or the investigating authority shall immediately arrange for the confiscation of the seized thing if

a) the time limit set out in paragraph (6) has passed,

b) the organ under section 111 did not order the seizure.

(8) If the organ under section 111 ordered the seizure of the thing, the court, the prosecution service or the investigating authority shall lift the seizure and release the seized thing to the organ under section 111.

Section 321 (1) When the seizure is lifted, the seized thing shall be released to the person who was its owner at the time when the act the criminal proceeding is based on was committed, provided that no reasonable doubt arises concerning his right of ownership.

(2) If there is no person to whom a thing is to be released under paragraph (1), and such a person cannot be identified on the basis of the data available in the proceeding at the time of the release, the thing shall be released to any person who submits a well-grounded claim for it.

(3) If there is no person to whom a thing could be released under paragraph (2), and such a person could not be identified on the basis of data available in the proceeding at the time of release, the thing shall be released to any person from whom it was seized.

(4) If a proceeding is terminated because a given act does not constitute a criminal offence, the thing seized shall be released to the person from whom it was seized.

(5) The ownership of a thing seized from a defendant or a person reasonably suspected of having committed the criminal offence shall be acquired by the State on the basis of a court decision if it is owned by another person beyond any doubt, but that person could not be identified. If such a person is identified subsequently, he may file a claim for releasing the thing concerned or any consideration received from its sale. Such a claim shall be decided by a court with subject-matter and territorial jurisdiction under the Act on the Code of Civil Procedure.

(5a) A thing shall be acquired by the State if the court, the prosecution service or the investigating authority lifts seizure and orders the thing to be released, but the party with a pecuniary interest entitled to receive the thing does not take over the thing within three months following the communication of the decision lifting seizure and releasing the thing or the invitation to take over the thing or, following indictment, the decision with final and binding effect or administrative finality. A provision to this effect shall be included in the decision lifting seizure.

(5b) The legal consequences referred to in paragraph (5a) shall not apply if

a) the decision lifting seizure and releasing the thing is communicated by means of fiction of service or service by public notice; and

b) the party with a pecuniary interest entitled to receive the thing did not become aware of the legal consequences referred to in paragraph (5a).

(6) If the court, the prosecution service or the investigating authority notifies, on the basis of section 111, an organ authorised to initiate or conduct the proceeding, in the proceeding of which seizure, impounding or sequestration is allowed, the enforcement of the lifting of seizure may be suspended for up to five working days.

Section 321/A (1) The provision of section 321 shall apply subject to the derogations laid down in this section when the seizure of a fungible thing, scriptural money, electronic money or electronic data used for making payments (for the purpose of this section, hereinafter jointly “fungible thing”) is lifted.

(2) If, as regards a fungible thing, it can be established that it originates directly from the owner referred to in section 321 (2), the fungible thing shall be released to him.

(3) If paragraph (2) does not apply because the fungible thing originates from more than one party with a pecuniary interest referred to in section 321 (2) and the party from whom the fungible thing directly originates cannot be established from among them, and the amount of the fungible thing is insufficient, the fungible thing shall be divided.

(4) A fungible thing shall not be divided if it does not originate from the owner referred to in section 321 (2). Division shall not be permissible if it is reasonable to assume that a further party with a pecuniary interest is likely to take action in the future.

(5) Division shall take place among the parties with a pecuniary interest referred to in section 321 (2) from whom it can be established that the fungible thing originates, in accordance with the relative proportion of their ownership at the time when the criminal offence was committed.

Section 322 If a thing originally seized cannot be released any more, any consideration received from the sale or redemption of the thing, reduced by the cost of handling, storage and safekeeping, shall be released to the person concerned. If seizure was ordered without ground, the consideration received for the thing may not be reduced by the cost of handling, storage or safekeeping. The court, prosecution office, or investigating authority passing a decision lifting the seizure of the thing concerned shall decide on this matter in its decision. The person concerned may enforce claims exceeding this amount according to the provisions of civil law.

Retaining a seized thing

Section 323 (1) A thing to be released to a defendant may be retained to secure the payment of any financial penalty, forfeiture of assets, or criminal costs payable by him; provisions to this end shall be included in the conclusive decision.

(2) When the seizure is lifted, a thing to be released to a defendant may be retained, upon a motion from a civil party, to secure a civil claim; provisions to this end shall be included in the conclusive decision.

(3) The retention to secure a civil claim shall be lifted if the civil party concerned does not file and application for enforcement within two months after the time limit set for payment expires, or the civil party concerned does not apply for a protective measure in a civil action within two months after he is ordered to enforce his civil claim by other legal means.

Chapter LI

SEQUESTRATION

Ordering sequestration

Section 324 (1) Sequestration means the suspension of a right of disposal over the sequestrated thing for the purpose of securing the forfeiture of assets or a civil claim.

(2) Sequestration may be ordered regarding

a) a thing,

b) scriptural money or electronic money,

c) a financial instrument as defined in the Act on investment undertakings,

d) any other right of pecuniary value, or

e) any other claim of pecuniary nature (points *a)* to *e)* hereinafter jointly “assets”)

(3) Sequestration may be ordered if

a) a proceeding is conducted because of a criminal offence with regard to which the forfeiture of assets may be ordered, or

b) its purpose is to secure a civil claim,

and it is reasonable to assume that enforcing the forfeiture of assets, or satisfying the civil claim, would be frustrated.

(4) If a real estate is to be confiscated, sequestration shall be ordered.

Section 325 (1) Sequestration may be ordered to secure a civil claim upon a motion by the civil party concerned regarding specified assets owned by, or due to, the defendant or the person reasonably suspected of having committed the criminal offence. Sequestration may also be ordered if a civil claim specified in section 557 is sent by the proceeding court to a court with subject-matter and territorial jurisdiction under the Act on the Code of Civil Procedure.

(2) Before the indictment, sequestration may be ordered to secure a civil claim upon a motion from an aggrieved party if the aggrieved party submitted a notice of his intent to enforce a civil claim, and his notice contains all data required under section 556 (2). If a notice is incomplete, the proceeding court, prosecution office, or investigating authority shall inform the aggrieved party accordingly when a motion for sequestration is submitted.

(3) If the court, in its conclusive decision that is not final and binding, ordered forfeiture of assets or granted a civil claim, it may order sequestration as security, upon a motion from the civil party regarding a civil claim, or otherwise also *ex officio*, until the proceeding is concluded with final and binding effect.

Section 326 (1) Sequestration ordered to secure a forfeiture of assets may also affect assets that may not be subject to forfeiture of assets, provided that the purpose of sequestration is to safeguard such assets and the separation of assets gained from committing a criminal offence would require considerable time.

(2) A sequestration ordered under paragraph (1) may last until the separation of assets, but no longer than three months.

Section 327 (1) Sequestration may be ordered by the court, the prosecution service, or the investigating authority.

(2) Before the indictment, sequestration shall be ordered by a court if

a) its purpose is to secure a civil claim,

b) it affects assets specified in section 326, or

c) the value of the sequestrated assets exceeds one hundred million forints.

(3) In a situation specified in paragraph (2) *a)*, an aggrieved party may submit a motion for sequestration to the proceeding prosecution office before the indictment. The prosecution office shall forward the motion by the aggrieved party, together with all case documents, to the court without delay.

(4) In a situation specified in paragraph (2) *b)* or *c)*, the motion for sequestration shall be filed by the prosecution service.

(5) If sequestration may be ordered by a court and adopting a court decision required for ordering the sequestration would cause any delay that would significantly jeopardise the purpose of sequestration, the prosecution service or an investigating authority may order the sequestration until the court decision is adopted. In such a situation, the investigating authority shall request the prosecution service to obtain the decision by the court within eight days after sequestration is ordered; the prosecution service shall submit a motion to this effect within one month after sequestration is ordered. If the court does not order sequestration, it shall order the sequestration to be lifted and make arrangements for the enforcement of such order without delay.

(6) If the purpose of sequestration is applied to secure the forfeiture of assets under section 75 (1) of the Criminal Code, or a civil claim for damages or for the payment of money, the operative part of the decision shall include a reference to this fact, and also the amount to be secured by sequestration. If parts of the assets are sequestered for various reasons, these data shall be indicated in the decision for each part of the sequestered assets.

(7) If sequestration is applied to secure the forfeiture of assets under section 75 (1) of the Criminal Code, or a civil claim for damages or for the payment of money, and the decision on sequestration does not include the elements set out in section (6),

a) applying section 366 accordingly, the prosecution service or investigation authority, or

b) before the indictment at a motion by the prosecution service, the defendant, the aggrieved party if he moved for sequestration, or the party with a pecuniary interest, the other interested party entitled to present a creditor claim under criminal law; or after the indictment *ex officio*, the court

authorised to order sequestration shall decide on amending the decision on sequestration in accordance with paragraph (6).

(8) The decisions referred to in paragraphs (6) and (7) shall be served without delay on the party with a pecuniary interest as well as the other interested party entitled to present a creditor claim under criminal law.

Enforcing sequestration

Section 328 (1) If there is a publicly certified register of the sequestered assets, sequestration shall be carried out by entering the sequestration into the publicly certified register concerned. If there is no publicly certified register of the sequestered assets, an economic operator capable of enforcing the suspension of the right of disposal over the sequestered assets shall be designated to carry out the sequestration. Measures for the enforcement of sequestration shall be taken without delay.

(2) On the basis of paragraph (1), the organ keeping the publicly certified register, or the designated economic operator, shall enforce the sequestration without delay and shall inform the court, prosecution office, or investigating authority that ordered the sequestration about the completion of its enforcement.

(3) If the thing to be sequestered to secure a civil claim is a movable thing and doing so is necessary to preserve the thing, the court, prosecution office, or investigating authority that ordered sequestration may, in addition to the measure specified in paragraph (1), take the thing into possession. The provisions on enforcing seizure shall apply as appropriate to taking into possession a thing sequestered in such a manner.

(4) Sequestration of a thing under special protection granted by the Act on the special protection of borrowed cultural goods may be enforced after the period of special protection expires.

(5) If the subject of sequestration is a claim registered at the value of electronic data used for payment and no result can be expected from sending a request to the economic operator that is capable of enforcing the suspension of the right of disposal over the assets subject to sequestration or sending such a request would involve disproportional difficulty, sequestration can also be implemented by means of an operation carried out in an information system that excludes the possibility of disposal of the person concerned over the claim.

(6) If sequestration is implemented by means of an operation referred to in paragraph (5), the operator of the information system shall be informed of its implementation even if the sequestration does not affect any attribute of ownership right held by him.

Redeeming sequestered assets

Section 329 (1) If sequestration was ordered to secure a forfeiture of assets, and no well-grounded claim for making the sequestered assets available was submitted, the person who was entitled to dispose of such assets when the sequestration was ordered may move for a accepting the redemption of the sequestered assets.

(2) The prosecution service, before the indictment, or the court, after the indictment, shall decide on accepting the redemption of any sequestered asset.

(3) The redemption amount shall be determined by the prosecution service or the court. The redemption amount shall be set at the estimated value of the assets concerned.

(4) The motion to accept the redemption of an asset shall be dismissed if

a) the person concerned disputes the amount determined,

b) determining the redemption amount would protract the proceeding, or

c) determining the redemption amount would involve disproportional costs.

(5) No legal remedy shall lie against the dismissal of a motion to accept the redemption of a sequestered asset.

(6) An amount paid as redemption shall take the place of the sequestered assets and shall be subject to sequestration without a separate decision to that effect; upon such a redemption, the sequestration of the originally sequestered assets shall cease. In such an event, the forfeiture of assets shall be ordered with regard to the consideration replacing the assets concerned.

(7) If the sequestration was ordered to secure a civil claim, the provisions laid down in paragraphs (1) to (6) shall apply to the redemption of sequestered assets, with the proviso that

a) the redemption of sequestered assets may not be accepted without the consent of the civil party or, before the indictment, the aggrieved party concerned,

b) the redemption amount may not exceed the amount of the claim specified by the civil party or, before the indictment, the aggrieved party, and

c) the court shall decide on accepting the redemption of sequestered assets.

Lifting sequestration

Section 330 (1) The aggrieved party or the civil party may initiate making the sequestrated assets available before the court with subject-matter and territorial jurisdiction pursuant to the Act on the Code of Civil Procedure.

(2) Sequestration shall be lifted if the court orders the sequestered assets to be placed at the disposal of an aggrieved party or civil party in the course of a civil procedure instituted under paragraph (1).

Section 331 (1) Sequestration shall be lifted if

a) the grounds for ordering sequestration have ceased,

b) the criminal proceeding is terminated, or the time limit for the investigation has expired,

c) the proceeding is completed without ordering the forfeiture of assets, or the civil claim is dismissed

d) the court adjudicated on the merits the existence of the right enforced by civil claim and the amount of the claim,

e) it was ordered to secure a civil claim, and the court orders the enforcement by other legal means of the civil claim, or

f) the aggrieved party abandons his civil claim or the civil party withdrew his civil claim.

(2) The lifting of a sequestration that was ordered to secure a civil claim shall be suspended for three months if

a) in a situation under paragraph (1) *a)*, *b)* and *e)*, the person claiming the right of disposal over the sequestered assets wishes to launch a civil procedure to enforce his claim and wishes to apply for a protective measure as regards the sequestered assets, or

b) in a situation under paragraph (1) *d)*, voluntary performance or the initiation of an enforcement proceeding is expected.

(3) Sequestration shall be lifted without a separate decision if

a) the time limit set out in paragraph (2) has passed,

b) in a situation under paragraph (1) *a)*, *b)* and *e)*, the civil proceeding was launched and a protective measure was ordered as regards the sequestered asset, or

c) in a situation under paragraph (1) *d)*, the sequestered asset was seized in the enforcement proceeding and the civil party or the defendant verified the performance of the civil claim awarded.

(3a) In a situation under paragraph (1) *a)*, *b)* and *e)*, if enforcement is suspended, the aggrieved party shall be informed in the course of the civil proceeding of the possibility and consequences of moving for a protective measure and the possibility and consequences of registering a right of enforcement in the rank of the sequestration.

(4) If a civil claim specified in section 557 is sent to a court with subject-matter and territorial jurisdiction under the Act on the Code of Civil Procedure, the sequestration need not be lifted.

Section 332 (1) Sequestration may be lifted by the ordering organ before the indictment, or the court after the indictment. Sequestration ordered by an investigating authority may be lifted also by the prosecution service or the court before the indictment. Sequestration ordered by a court may be lifted also by the prosecution service before the indictment.

(2) If a sequestered real estate is sold pursuant to the Act on enforcement procedures applied by the tax authority, or the Act on judicial enforcement, part of the sale revenue, as specified in the relevant Act, shall replace the real estate sold, and it shall be subject to sequestration without a specific decision to that effect. The sequestration of the real estate shall terminate upon its sale.

(3) If the sequestered assets are the assets of an economic operator in liquidation, and the sequestration is to be considered a creditor claim in the liquidation proceeding pursuant to the Act on bankruptcy procedure and liquidation procedure, then this creditor claim shall replace the sequestered assets upon registration by the liquidator and shall be subject to sequestration without any separate decision; sequestration shall terminate as regards the original assets.

(4) If the assets of the debtor economic operator are distributed in a liquidation proceeding, the creditor claim referred to in paragraph (3) shall be replaced by the relevant part of the distributed assets which shall be subject to sequestration without any separate decision; sequestration shall terminate as regards the creditor claim. If when the assets are distributed, the creditor claim cannot be replaced by the distributed assets, the sequestration shall terminate.

(5) If a creditor's receivable notified against a debtor economic operator pursuant to the Act on bankruptcy procedure and liquidation procedure is sequestered, the provisions of paragraph (4) shall apply accordingly to the part of the assets relevant to the creditor's receivable sequestered in the course of the distribution of assets.

Chapter LII

ASSET MANAGEMENT DURING SEIZURE AND SEQUESTRATION

Section 333 (1) Any thing, electronic data, or assets seized or sequestration for the purpose of confiscation or forfeiture of assets shall be managed during the period of seizure or sequestration according to the rules of normal operation.

(2) In the course of the seizure or sequestration, it shall be ensured that the value of criminal assets is not reduced in any way beyond normal depreciation.

(3) In the course of managing criminal assets, disposing of such assets in any way shall be aimed at preserving the value of the criminal assets.

(4) Any asset transformed by a measure taken during asset management shall replace the original asset, and it shall be subject to seizure or sequestration without any specific decision.

Section 334 (1) The organ responsible for handling exhibits and criminal assets shall participate, as provided for by the applicable legislation, in the management of criminal assets and seized means of evidence.

(2) The organ responsible for handling exhibits and criminal assets shall carry out, as provided for by applicable legislation, tasks concerning criminal assets and seized means of evidence, including, in particular, their

a) registration,

b) storage, safekeeping, and

c) management.

(3) The organ responsible for handling exhibits and criminal assets shall, in situations specified in an Act, take any and all measures, and initiate any and all criminal procedural decisions at the competent court, prosecution office, or investigating authority that is necessary to preserve the value of criminal assets and seized means of evidence.

Chapter LIII

RENDERING ELECTRONIC DATA TEMPORARILY INACCESSIBLE

Section 335 (1) Rendering electronic data temporarily inaccessible means that the right of disposal over data published on an electronic communications network is restricted, and access to such data is prevented, with temporary effect.

(2) Rendering electronic data temporarily inaccessible may be ordered where a proceeding is conducted regarding a criminal offence subject to public prosecution, with regard to which rendering electronic data permanently inaccessible may be ordered, and doing so is necessary to interrupt the criminal offence.

(3) Rendering electronic data temporarily inaccessible may be ordered by a court.

(4) Rendering electronic data temporarily inaccessible may be ordered in the form of

a) temporarily removing the electronic data concerned, or

b) temporarily preventing access to the electronic data concerned.

(5) The entity obliged to render electronic data temporarily inaccessible shall inform its users about the legal basis of removing, or preventing access to, a piece of content. The information to be provided shall be set out in a separate law.

(6) An order to remove electronic data temporarily and an order to preserve electronic data may be issued simultaneously.

Removing electronic data temporarily

Section 336 (1) The hosting service provider or the intermediary service provider providing hosting services, as defined in the Act on certain issues of electronic commerce services and information society services, that processes the electronic data concerned shall be ordered to temporarily remove the electronic data (hereinafter jointly "removing entity"). A removing entity shall remove the electronic data temporarily within one working day after the corresponding decision is communicated to it.

(2) An order to remove electronic data temporarily shall be lifted and an order to restore the electronic data concerned shall be issued by a court if

a) the grounds for the order have ceased, or

b) the proceeding has been terminated, unless rendering electronic data permanently inaccessible may be ordered under section 77 (2) of the Criminal Code.

(3) The temporary removal of electronic data shall terminate when a criminal proceeding is terminated with final and binding effect.

(4) If the court did not order electronic data to be rendered permanently inaccessible in a situation specified in paragraph (2) *b)* or (3), it shall order the removing entity to restore such electronic data.

(5) The decision removing electronic data temporarily and restoring electronic data shall be communicated to the removing entity, and the removing entity shall restore the electronic data within one working day after the corresponding decision was communicated to it.

(6) The decision referred to in paragraph (5) shall be served on the person entitled to dispose of the electronic data concerned if his identity and contact details are known from the available data of the proceeding.

(7) The court may, *ex officio* or upon a motion from the prosecution service, impose a disciplinary fine on a removing entity if it fails to perform an obligation to temporarily remove or restore electronic data.

Preventing access to electronic data temporarily

Section 337 (1) In a criminal proceeding instituted on the ground of drug trafficking, inciting substance abuse, facilitating drug production, abuse of drug precursors, abuse of psychoactive substances, child pornography, criminal offence against the State, terrorist act, terrorism financing, or incitement to war, the court shall issue an order to temporarily prevent access to all electronic data relating to any of the criminal offences referred to in this paragraph, provided that

a) the removing entity failed to perform its obligation to temporarily remove the electronic data concerned,

b) a request to a foreign authority for legal assistance concerning the temporary removal of electronic data did not bring any result within thirty days after the corresponding request was issued by the court,

c) identifying the removing entity is impossible or would involve disproportional difficulty, or

d) no result can be expected from sending a request to a foreign authority for legal assistance concerning the temporary removal of electronic data, or sending such a request would involve disproportional difficulty.

(2) In its decision, the court may order an electronic communications service provider to prevent access to electronic data temporarily. Such a decision shall be served on the person entitled to dispose of the electronic data concerned if his identity and contact details are known from the data of the proceeding.

(3) The court shall communicate the order to temporarily prevent access to electronic data also to the National Media and Infocommunications Authority (hereinafter the "NMHH") for the purpose of organising the enforcement of, and verifying compliance with, the coercive measure.

(4) The NMHH shall enter the order to temporarily prevent access to electronic data into the central database of decisions to render electronic data inaccessible and, at the same time, it shall notify the electronic communications service providers concerned about the court decision by electronic means without delay; the service providers concerned shall temporarily prevent access to the electronic data within one working day after receipt of the notice. If an electronic communications service provider fails to perform this obligation, the NMHH shall inform the court accordingly without delay.

(5) A person entitled to dispose of the electronic data concerned may submit an appeal against such a decision within eight days of service.

(6) The court shall lift a temporary prevention of access to electronic data if

a) the hosting service provider concerned performs its obligation to remove electronic data temporarily,

b) the grounds for the order have otherwise ceased, or

c) the proceeding has been terminated, unless rendering electronic data permanently inaccessible may be ordered under section 77 (2) of the Criminal Code.

(7) The temporary prevention of access to electronic data shall terminate when a criminal proceeding is terminated with final and binding effect.

(8) If the court did not order electronic data to be rendered inaccessible permanently in a situation specified in paragraph (6) *c)* or (7), it shall inform the NMHH about lifting or terminating the temporary prevention of access to electronic data by electronic means and without delay; the NMHH shall delete the order to temporarily prevent access to the electronic data concerned from the central database of decisions to render electronic data inaccessible and, at the same time, it shall notify the electronic communications service providers concerned about the termination of their obligation by electronic means without delay; the service providers concerned shall ensure access to the electronic data within one working day after receipt of the notice.

(9) The court decision lifting, or on the termination of, a temporary prevention of access to electronic data shall be served on the person entitled to dispose of the electronic data concerned if his identity and contact details are known from the data of the proceeding. An appeal against such a court decision may be filed by the prosecution service only.

(10) If an electronic communications service provider fails to perform its obligation to restore access, the NMHH shall inform the court accordingly without delay.

(11) The court may, *ex officio* or upon a motion from the prosecution service, impose a disciplinary fine on an electronic communications service provider if it fails to comply with its obligation to temporarily prevent, or to restore, access to electronic data.

Call for the voluntary removal of electronic data

Section 338 Before issuing an order to render electronic data temporarily inaccessible, the prosecution service or the investigating authority may issue a call to a media content provider, as defined in the Act on the freedom of the press and the fundamental rules on media contents, or a hosting service provider or an intermediary service provider providing hosting services, which is capable of preventing access to the electronic data concerned, to remove electronic data voluntarily, unless doing so would harm the interests of a criminal proceeding. Compliance with such a call shall not be mandatory; such a call shall be aimed at accelerating the prevention of access to the electronic data concerned.

Chapter LIII/A

SUSPENSION OF HOSTING SERVICE PROVISION

Section 338/A (1) The court, the prosecution service or the investigating authority may order the suspension of hosting service provision if the proceeding is conducted due to a criminal offence subject to public prosecution relating to which termination of hosting service provision may be ordered and it is reasonable to assume that a further criminal offence subject to public prosecution would be committed using the hosting service.

(2) The court, the prosecution service or the investigating authority shall oblige, by means of the decision ordering the suspension of the service provision, the natural person, legal person or other organisation providing hosting services (for the purposes of this Chapter, hereinafter jointly the "service provider") to suspend, for the period of the suspension of the service, the rights relating to the service of the party with a pecuniary interest using, or subscribing to, the service, and may oblige the service provider to not to conclude a new contract for service with such a party during the period of the suspension of service provision.

(3) A service provider shall comply with the decision within one working day following the communication of the decision to it. In case of a failure to fulfil this obligation, a disciplinary fine may be imposed on the service provider.

(4) The service provider and the party with a pecuniary interest may seek legal remedy against a decision ordering the suspension of the service.

(5) The court, the prosecution service or the investigating authority shall terminate the suspension of hosting service provision if

a) the grounds for ordering it ceased to exist, or

b) the proceeding was terminated or suspended, except if termination of hosting service provision is in order in accordance with section 78/A of the Criminal Code, and a proceeding under Chapter CVI will be conducted to that end.

PART NINE

PREPARATORY PROCEEDINGS

The purpose and means of preparatory proceedings

Section 339 (1) In situations specified in this Part, a criminal proceeding shall start with a preparatory proceeding.

(2) A preparatory proceeding may be conducted by a prosecution office, or an investigating authority, with subject-matter competence to conduct the criminal proceeding concerned.

(3) Under the Act on the Police, the police organ performing internal crime prevention and crime detection tasks, or the counter-terrorism police organ may also conduct a preparatory proceeding for an act falling within the scope of its subject-matter competence.

(4) A preparatory proceeding shall be concluded by

a) terminating the preparatory proceeding, or

b) ordering an investigation.

Section 340 (1) The purpose of a preparatory proceeding shall be to determine if the suspicion of a criminal offence can be established.

(2) A preparatory proceeding may be conducted if the available data is insufficient for establishing a suspicion of a criminal offence and it is reasonable to assume that it would be possible to establish a suspicion of a criminal offence after the preparatory proceeding is conducted.

(3) A preparatory proceeding may be ordered on the basis of information

a) the organ became aware of *ex officio*,

b) stated in a crime report after the crime report is dismissed, or

c) stated in an initiative of an organ that engaged in secret information gathering under the Act on prosecution service, the Act on the Police, the Act on the National Tax and Customs Administration, or the Act on national security services, after the secret information gathering is finished.

(4) In a situation specified in paragraph (3) *c)*, the organ specified in section 339 shall decide on ordering a preparatory proceeding within three working days after receipt of the initiative of the organ that engaged in secret information gathering.

Section 341 In the course of the preparatory proceeding, the organ conducting the preparatory proceeding may use

a) covert means specified in section 215 (1) to (2),

b) covert surveillance,

c) covert means specified in section 215 (9),

d) covert means specified in sections 216 to 218,

e) simulated purchases under section 221 *a)*,

f) undercover investigators under sections 222 to 225, and

g) covert means subject to permission of a judge

in order to determine if the suspicion of a criminal offence can be established.

Section 342 (1) In the course of a preparatory proceeding, the data acquisition activity specified in Part Seven may be pursued with the restrictions specified in paragraphs (2) and (3).

(2) A wanted notice may not be issued during a preparatory proceeding.

(3) In the course of a preparatory proceeding, as part of a data request, data provision may be requested only from

1. the tax authority,
2. the customs authority,
3. an administrative organ specified in point 8 of section 4 of Act CXXII of 2019 on persons eligible to, and the funding for, social security benefits,
4. an electronic communications service provider,
5. a postal service provider or a person or organisation pursuing the activities of a postal contributor,
6. an organisation processing data constituting bank, payment, securities, fund, or insurance secret, pertaining to such data,
7. an organisation processing health data and personal data as defined in Act XLVII of 1997 on the processing and protection of health data and related personal data, pertaining to such data,
8. the register kept pursuant to sections 28 and 28/A of Act CVII of 1995 on the organisation of the prison service,
9. the register of personal data, home address, and contact address of citizens,
10. the travel documents register,
11. the registers specified in the Act on the criminal records system, the register of judgments adopted by the courts of European Union Member States against Hungarian citizens and the register of criminal and law enforcement biometric data,
12. the infraction records system,
13. the central immigration register,
14. the register of refugees,
15. the wanted notice register,
16. the border police data sets,
17. the road transport register,
18. registers concerning railway vehicles, aircrafts, and motor-driven vessels,
19. the company register,
20. the real estate register,
21. the Register of Declarations of Cohabitation,
22. the security interest register,
23. the national register of matrimonial and cohabitation property contracts,
24. the central register of firearms,
25. the database specified in the Act on the toll on using highways, motorways, and main roads proportionate to the distance travelled,
26. the central register of administrative traffic fines and traffic control fines,
27. a register established by a binding legal act of the European Union, in a situation specified in an Act,
28. an authority operating as a Financial Intelligence Unit under the Act on the prevention and combating of money laundering and terrorism financing.

Section 343 (1) In the course of a preparatory proceeding, to determine if the suspicion of a criminal offence can be established, covert means subject to the permission of a judge may be used against a person who

a) might be the perpetrator of the criminal offence, or

b) with regard to whom it is reasonable to assume that he keeps contact, directly or indirectly, with the person who might be the perpetrator of the criminal offence.

(2) A covert means subject to the permission of a judge may not be used under paragraph (1) *b)*

a) for the purpose of accessing of data subject to the obligation of confidentiality against a person who, due to his occupation, profession, or public mandate, is subject to a duty of confidentiality and cannot be interrogated as a witness under section 170 (1) *b)* or has the right to refuse to give witness testimony under section 173,

b) for the purpose of accessing classified data against a person who processes the classified data and cannot be interrogated as a witness under section 170 (1) *d)*,

c) for the purpose of identifying a person disclosing information in connection with media content provision, against a person who has the right to refuse giving witness testimony under section 174.

(3) Under paragraph (1) *b)*, covert means may be used against a relative of a person specified in paragraph (1) *a)* for the sole purpose of discovering the location and contact details of a person who might be the perpetrator.

(4) The fact that the use of a covert means subject to the permission of a judge inevitably affects an outside person shall not pose an obstacle to its use.

Conducting preparatory proceedings

Section 344 (1) A preparatory proceeding may last for a period of up to six months or, if it is conducted to determine if the suspicion of a criminal offence specified in section 234 can be established, for a period of up to nine months.

(2) The organ conducting a preparatory proceeding shall conduct the preparatory proceeding independently.

(3) An investigating authority, the police organ performing internal crime prevention and crime detection tasks, or the counter-terrorism police organ shall notify the prosecution service about the data prompting the need for the preparatory proceeding, the covert means to be used, and the foreseen procedural acts within three working days after ordering the preparatory proceeding.

(4) The investigating authority, the police organ performing internal crime prevention and crime detection tasks, or the counter-terrorism police organ shall inform the prosecution service about the data acquired during the preparatory proceeding after every two months, and, upon request by the prosecution service, it shall present the case documents produced during the preparatory proceeding.

(5) If the data acquired during a preparatory proceeding indicate that the suspicion of a criminal offence can be established, an investigation shall be ordered. The investigation may also be ordered by the prosecution service.

(6) If a covert means subject to permission of a judge or a prosecutor is used in the course of a preparatory proceeding conducted against a member of the professional personnel of a national security service for committing a criminal offence, the director-general of the service to which the person concerned belongs shall be notified accordingly.

(7) The provisions pertaining to investigations shall apply accordingly to preparatory proceedings.

Section 345 (1) If an investigation is ordered in the case, the case documents and data produced so far shall be transferred, if necessary, to the investigating authority or the prosecution office with subject-matter and territorial competence without delay.

(2) If an investigation is ordered in the case, any covert means already used in the preparatory proceeding with the permission of a judge or a prosecutor may remain in use without moving for a new permission. In such a situation, the period of using a covert means subject to the permission of a judge or a prosecutor shall be determined on the basis of the date of ordering the use of such covert means in the course of the preparatory proceeding.

(3) If an investigation is ordered in the case, the organ implementing the use of a covert means shall be informed, as necessary, about the fact and date of ordering an investigation, as well as about the organ authorised to use the covert means in the course of the investigation.

Section 346 (1) A preparatory proceeding shall be terminated by the prosecution service or the organ conducting the preparatory proceeding if

a) the data acquired during the preparatory proceeding indicate that the suspicion of a criminal offence cannot be established,

b) the continuation of the preparatory proceeding in unlikely to yield any result, or

c) the time limit for conducting the preparatory proceeding expired.

(2) If a preparatory proceeding is terminated, the data acquired during the proceeding may not be used as evidence in a criminal proceeding.

Section 347 (1) In the course of a preparatory proceeding, the prosecution office that would have subject-matter competence to supervise and control the investigation, if an investigation were ordered, shall have subject-matter competence to carry out the permission-related and other prosecutorial tasks specified in this Chapter (hereinafter "supervision of preparatory proceedings").

(2) If a preparatory proceeding is conducted

a) by an investigating authority, the prosecution office of the seat of the proceeding organ of the investigating authority,

b) by the counter-terrorism police organ, the prosecution office of the seat of that organ or the local office thereof,

c) by the police organ performing internal crime prevention and crime detection tasks, the prosecution office of the seat of that organ or the local office thereof

shall have territorial competence to supervise the preparatory proceeding.

(3) If the preparatory proceeding is conducted by the prosecution service,

a) the prosecution service may order any investigating authority to carry out a procedural act within the territory of the investigating authority concerned, and members of an investigating authority, upon an initiative by the Prosecutor General and with the agreement of the national commander of the investigating authority, may be used for a fixed period in the course of the preparatory proceeding,

b) the performance of a procedural act shall be assisted, upon request, by

ba) the police organ performing internal crime prevention and crime detection tasks, or

bb) the counter-terrorism police organ in a proceeding conducted for a criminal offence falling within the scope of its subject-matter competence pursuant to the Act on the Police.

PART TEN

INVESTIGATIONS

Chapter LIV

GENERAL PROVISIONS

Fundamental provisions

Section 348 (1) Unless otherwise provided in this Act, a criminal proceeding shall begin with an investigation.

(2) An investigation shall consist of detection and examination.

(3) In the course of the detection, the criminal offence and the identity of the perpetrator shall be detected, to an extent necessary to establish a reasonable suspicion, and the means of evidence shall be located and secured.

(4) In the course of the examination and after obtaining and examining the relevant means of evidence if necessary, the prosecution service shall decide on the matter of concluding a pending investigation against the suspect.

(5) The investigation shall be concluded by

a) terminating the proceeding, or

b) bringing an indictment.

Prosecutorial investigation

Section 349 (1) In the course of a prosecutorial investigation, the provisions on the investigating authorities shall apply to the proceeding of the prosecution service accordingly.

(2) If an investigation is conducted by the prosecution service,

a) the prosecution service may order any investigating authority to carry out a procedural act within the territory of the investigating authority concerned, and members of an investigating authority, upon an initiative by the Prosecutor General and with the agreement of the national commander of the investigating authority, may be used for a fixed period in the course of the investigation,

b) the performance of a procedural act shall be assisted, upon request, by

ba) the police organ performing internal crime prevention and crime detection tasks, or

bb) the counter-terrorism police organ in a proceeding conducted for a criminal offence falling within the scope of its subject-matter competence pursuant to the Act on the Police.

(3) In the course of a prosecutorial investigation, the terms of cooperation between the prosecution service and the national security services shall be established in an agreement by and between the Prosecutor General and the directors-general of the national security services.

Transferring a case

Section 350 (1) If a prosecution office or an investigating authority does not have subject-matter or territorial competence regarding a case, the case concerned shall be transferred to the prosecution office or investigating authority with subject-matter and territorial competence over the case.

(2) A decision transferring a case shall be served by the prosecution service or the investigating authority concerned on any suspect, person reasonably suspected of having committed a criminal offence, defence counsel, aggrieved party, party reporting a crime, person who filed a private motion, and party with a pecuniary interest. No complaint shall lie against such a decision.

The period of investigation

Section 351 (1) An investigation shall be completed within the shortest possible period.

(2) If the detection period exceeds six months calculated from the date of ordering an investigation, the investigating authority shall present the case documents to the prosecution service and report on the status of the investigation. Subsequently, the investigating authority shall submit a report to the prosecution service after every six months during the detection period.

(3) The time limit for an investigation shall be two years after the interrogation of the suspect.

(4) The time limit specified in paragraph (3) may be extended by the prosecution service once for an additional period of up to six months. No complaint shall lie against this decision.

Inspection of case documents

Section 352 (1) In the course of an investigation, the provisions laid down in section 100 shall be applied continuously and in a manner ensuring that the suspect and his defence counsel may inspect all case documents relating to the proceeding in full at least one month before the indictment, and may file motions and observations.

(2) The period specified in paragraph (1) may be shortened, or not applied at all, subject to the consent of the defendant and his defence counsel.

Recovering assets originating from a criminal offence

Section 353 (1) In the course of the proceeding, the prosecution service and the investigating authorities shall take all the necessary measures to detect and secure all things and assets that may be subject to confiscation or forfeiture of assets.

(2) Before the indictment, upon a request for assistance from the prosecution service or the investigating authority, the asset recovery organ of the investigating authority may participate in the performance of tasks specified in paragraph (1) subject to the conditions laid down in this Act.

Section 354 (1) The asset recovery organ of the investigating authority shall conduct its procedure pursuant to the instructions of the requesting prosecution office or the investigating authority. In a situation specified by law, a joint investigation team may be set up.

(2) A proceeding member of the asset recovery organ of the investigating authority may carry out procedural acts for the purpose of detecting and securing things and assets that may be subject to confiscation or forfeiture of assets; when doing so, he shall act with due regard to the interests of the investigation, and he may initiate procedural acts he considers expedient at the requesting entity.

(3) The asset recovery organ of an investigating authority shall transfer all means of evidence seized, and case documents produced, in the course of its proceeding to the requesting entity pursuant to applicable legislation.

(4) The asset recovery organ of an investigating authority may access any data necessary to detect and secure things and assets that may be subject to confiscation or forfeiture of assets.

(5) If section 75 (1) of the Criminal Code may be applicable, the sequestration shall be ordered primarily concerning the assets at the disposal of the defendant.

Organ of the investigating authority specified by law

Section 354/A (1) If it seems practical due to the number of procedural acts to be performed simultaneously or for any other reason, the investigating authority may request, with a view to the performance of a procedural act specified by it, the organ specified by law within its organisational structure (for the purposes of this section, hereinafter the "designated investigating authority organ").

(2) The prosecution service may request any designated investigating authority organ with a view to complying with the provisions of paragraph (1).

(3) A designated investigating authority organ may access all data required for compliance with the request.

(4) A designated investigating authority organ may perform the procedural act indicated in the request autonomously, in accordance with the provision of the requesting entity. In a situation of extreme urgency occurring during the performance of the procedural act, a designated investigating authority organ shall also perform autonomously any other procedural act relating to the request.

(5) The requesting entity shall provide for passing the decision required for the performance of the procedural act.

(6) After the performance of the procedural act, the designated investigating authority organ shall send the case documents relating to the procedural act to the requesting entity and provide for the transportation of the person in custody and the handling of the object of the coercive measure affecting assets in accordance with the law.

(7) The requesting entity shall provide for assessing a complaint challenging the decision on which a procedural act is based or that was adopted in the course of the procedural act.

Enforcing a civil claim in the course of an investigation

Section 355 (1) An aggrieved party may submit, as provided for by law, a notice of his intent to enforce a civil claim even before the indictment. If the prosecution service brings an indictment, the aggrieved party shall forward this notice, together with the indictment document, to the court.

(2) The notice forwarded pursuant to paragraph (1) shall be considered as if the civil claim was submitted to the proceeding court.

(3) An aggrieved party may submit a notice of his intent not to enforce his civil claim at any time before the indictment.

(4) Before the indictment, an aggrieved party may file a motion for a provisional measure specified in section 557, provided that he submitted a notice of his intent to enforce a civil claim, and his notice contains all data required under section 556 (2). If a motion is incomplete, the proceeding court, prosecution office, or investigating authority shall inform the aggrieved party accordingly when the motion for a provisional measure is submitted.

Chapter LV

USING COVERT MEANS IN THE COURSE OF THE INVESTIGATION

Section 356 (1) In the course of the investigation, covert means may be used by the prosecution service or the investigating authority.

(2) Covert means may be used in the course of an investigation for the purpose of

a) detecting or proving a criminal offence,

b) interrupting the commission of a criminal offence,

c) identifying, locating, discovering, or apprehending a perpetrator, or

d) detecting or recovering assets originating from a criminal offence.

(3) Any covert means specified in Part Six may be used in the course of an investigation.

Section 357 (1) A covert means subject to the permission of a judge may be used in the course of an investigation against a person who

a) can be suspected of having committed a criminal offence based on the data of a criminal proceeding, or

b) is a suspect in the case concerned.

(2) Covert means subject to the permission of a judge may be used against a person other than those specified in paragraph (1) if it is reasonable to assume that the person concerned maintains a criminal connection, directly or indirectly, with a person specified in paragraph (1).

(3) A concealed means subject to the permission of a judge may not be used under paragraph (2)

a) against a defence counsel,

b) for the purpose of accessing data subject to the obligation of confidentiality against a person who, due to his occupation, profession, or public mandate, is subject to a duty of confidentiality and may not be interrogated as a witness under section 170 (1) *b)* or may refuse to give witness testimony under section 173,

c) for the purpose of accessing classified data against a person who processes the classified data and may not be interrogated as a witness under section 170 (1) *d)*,

d) for the purpose of identifying a person disclosing information in connection with any media content provision, against a person who may refuse to give witness testimony under section 174.

(4) A covert means may be used under paragraph (2) against a relative of a person specified in paragraph (1) only for a purpose specified in section 356 (2) *c)* or *d)*.

(5) The use of a covert means subject to the permission of a judge shall not be prohibited for the sole reason that it affects an outsider person inevitably.

(6) If a covert means subject to the permission of a judge or a prosecutor is used in the course of an investigation conducted against a member of the professional personnel of a national security service for committing a criminal offence, the director-general of the service to which the person concerned belongs shall be notified accordingly, provided that doing so does not harm the interests of the proceeding.

Chapter LVI

MINUTES AND MEMORANDUMS

Methods of taking minutes, and recording procedural acts

Section 358 (1) Unless otherwise provided in this Act, the prosecution service or the investigating authority shall prepare written minutes of a procedural act.

(2) Notwithstanding the provisions of section 360/A, a law may require that, in addition to simultaneously taking minutes, a procedural act is to be recorded also by producing

a) a continuous sound recording, or

b) an audio-visual recording.

(3) Notwithstanding the provisions of section 360/A, in situations other than those specified by law, the prosecution service or the investigating authority may order, upon a motion or also *ex officio*, that a procedural act is to be recorded by producing a continuous sound recording or an audio-visual recording, in addition to simultaneously taking minutes.

(4) Notwithstanding the provisions of section 360/A, a procedural act shall be recorded by producing a continuous sound recording or an audio-visual recording, in addition to simultaneously taking minutes, if a motion to that effect is submitted, and, at the same time, the resulting costs are paid in advance, by the suspect, the defence counsel, or the aggrieved party.

(5) A continuous sound recording or an audio-visual recording shall record all events taking place in the course of a given procedural act without interruption, with the exceptions specified in paragraph (6).

(6) If the prosecution service or the investigating authority interrupts a procedural act for an important reason, the continuous sound recording or an audio-visual recording may also be interrupted for the same period.

Requirements concerning the form and content of the minutes

Section 359 (1) The following shall be recorded in the minutes:

a) proceeding prosecution office or investigating authority, and number of the case,

b) designation of the criminal offence underlying the proceeding and the name of the suspect and, if required, a description of the suspect that is suitable for identification,

c) place and time of the procedural act,

d) name of the prosecutor, the member of the investigating authority, the keeper of minutes, and the interpreter,

e) name of the suspect interrogated, and his description that is suitable for his identification,

f) name of the witness interrogated or expert interviewed,

g) other personal data specified in this Act,

h) name of other persons attending the procedural act, and the capacity in which they are attending.

(2) The minutes shall contain the following:

a) description of the course of the procedural act, the events taking place, and other circumstances that are relevant for the purpose of taking evidence, in a way that allows also for the verification of compliance with applicable procedural rules on the basis of the minutes,

b) testimony of the suspect or witness, and the opinion of the expert,

c) reference to the fact that a means of evidence is presented, and the content of the means of evidence that is relevant to the proceeding,

d) motions filed, and observations made, in the course of the procedural act,

e) measures taken with regard to maintain the order of the proceeding, and decisions taken by the prosecution service or the investigating authority in the course of the procedural act.

(3) The data specified in paragraph (2) shall be recorded in the minutes in a succinct but sufficiently detailed manner. If the exact wording of a question, expression, or statement is important, then it shall be recorded in the minutes verbatim.

(4) If a means of evidence is presented or a means of physical evidence is attached, the fact of doing so shall be referred to in the minutes.

(5) If a person attending a procedural act moves for recording in the minutes a circumstance that occurred, or a statement that was made, in the course of the proceeding, the recording may not be dispensed with, unless the proceeding prosecutor or member of an investigating authority does not have any knowledge about the occurrence of the respective circumstance occurred or the respective statement.

Preparation, supplementation, rectification of the minutes

Section 360 (1) Notwithstanding the provisions of section 360/A, the minutes of a procedural act shall be prepared simultaneously with the procedural act concerned.

(2) The prosecution service and the investigating authority shall ensure that the person specified in a law who attends the procedural act and participates in the criminal proceeding (hereinafter "person obliged to assist in authentication") is allowed to inspect the content of the minutes before authenticating them. If the person obliged to assist in authentication refuses to inspect the content of the minutes, he shall be deemed to have refused to assist in authenticating the minutes.

(3) Minutes that are closed in a way that prevents unnoticeable modification shall be authenticated by the prosecutor or a member of the investigating authority conducting the procedural act, together with the person obliged to assist in authentication, in a manner specified by law.

(4) If a person obliged to assist in authentication refuses to assist in authenticating the minutes, the fact of, and the stated or known reason for, doing so shall also be recorded in a manner specified by law.

(5) If a continuous sound recording or an audio-visual recording is made, it shall be kept among the case documents.

(6) The prosecution service or the investigating authority may order that a copy of a continuous sound recording or audio-visual recording is to be made where identifying characteristics of a person requiring special treatment, in particular his figure, face, and voice, are distorted by technical means. In that event, the copy with distorted identifying characteristics shall be handled among the case documents, and the continuous sound recording or audio-visual recording shall be handled in a confidentially.

(7) If a continuous sound recording or audio-visual recording is made, all persons attending the given procedural act shall be informed about the place, date, and time where and when the recording may be listened to, or viewed, within eight days after completing the procedural act.

(8) If there is any difference between the content of the minutes and a continuous sound recording or audio-visual recording, the reason for such difference shall be clarified.

(9) The minutes may be rectified or supplemented by the prosecution service or investigating authority, if necessary; all persons concerned shall be informed accordingly.

(10) A person who attended a given procedural act may file a motion to rectify or supplement the minutes within eight days following the procedural act or the inspection of the continuous sound recording or audio-visual recording, whichever happens later.

(11) Any rectification shall be made by recording it in the minutes concerned, indicating the date of the rectification, and producing a new minutes; otherwise, dismissing the motion to rectify shall be indicated among the case documents. Any rectification or supplement shall be signed by the prosecutor or a member of the investigating authority conducting the procedural act.

Section 360/A (1) If a continuous audio-visual recording is made of the procedural act, and doing so is justified by the circumstances of the performance of the procedural act, and in particular by the careful treatment of a person requiring special treatment, then the minutes shall be prepared within three working days following the procedural act. The persons present shall be notified of this fact at the beginning of the procedural act.

(2) In a situation under paragraph (1), the notifications specified in this Act shall be recorded in the continuous audio-visual recording. If this Act requires a certain circumstance, fact or act to be recorded in minutes, then it shall be recorded in the continuous audio-visual recording.

(3) In the situation under paragraph (1), the provisions of section 360 (2) to (11) shall apply to the minutes subject to the following derogations:

a) before authentication, the inspection of minutes need not be ensured for the person assisting in the authentication,

b) minutes that are closed in a way that prevents unnoticeable modification shall be authenticated exclusively by the prosecutor or member of the investigating authority performing the procedural act,

c) authenticated minutes, after they are prepared, shall be served, together with the information under section 360 (7), immediately on persons who attended the procedural act,

d) rectification or supplementation of minutes may be requested within eight days following the service of the minutes or the inspection of the continuous audio-visual recording, whichever happens latter,

e) if the rectification or supplementation of minutes was moved for, and the motion is supported by the continuous audio-visual recording, the minutes shall be rectified or supplemented in accordance with the motion,

f) a motion for taking verbatim minutes shall be allowed only during the procedural act in accordance with the provisions of this Act.

(4) If the recording of the procedural act is not available or the elements specified in paragraph (2) are not included in the recording, then a case document prepared in accordance with paragraph (1) shall not be taken into account as minutes.

Memorandums

Section 361 (1) A prosecutor or a member of an investigating authority may prepare a memorandum of a measure it has taken.

(2) The memorandum shall specify the following:

a) proceeding prosecution office or investigating authority, and number of the case,

b) name of the prosecutor or member of an investigating authority who is present at taking the measure,

c) place and time of taking the measure;

d) names of the persons affected by the measure,

e) name of other persons present at taking the measure, and the capacity in which they were present,

f) short description of the course of the measure, in a way that allows also for the verification of compliance with the applicable procedural rules on the basis of the memorandum,

g) indication whether the memorandum was prepared at the time of taking the measure, and time and circumstances of producing the memorandum, if not prepared simultaneously.

(3) A measure may be recorded by producing a continuous sound recording or audio-visual recording; in that event, it is sufficient to indicate the information specified in paragraph (2) *a)* to *e)* in the memorandum.

(4) The memorandum shall be signed by the person preparing it.

(5) The memorandum may be rectified or supplemented by the prosecutor or the member of an investigating authority who prepared it, if necessary. Any rectification or supplement shall be indicated on the memorandum, or it shall be recorded in a new memorandum.

(6) The prosecutor or the member of an investigating authority may prepare a memorandum of a procedural act pursuant to paragraphs (1) to (5) in place of producing minutes if the procedural act concerned was not attended by any defendant, defence counsel, witness, or party with a pecuniary interest.

Chapter LVII

DECISIONS IN THE COURSE OF THE INVESTIGATION

Subject matter of the decision

Section 362 (1) The prosecution service or the investigating authority shall decide on the following matters by means of a decision:

1. designating the proceeding prosecution office or investigating authority,
2. disqualifying a prosecutor or a member of an investigating authority,
3. joining, separating, or transferring cases,
4. dismissing a crime report,
5. suspending a proceeding, or resuming a suspended proceeding,
6. terminating a proceeding, or resuming a terminated proceeding,
7. dismissing a motion for conditional suspension by the prosecutor with regard to any other reason for terminating liability to punishment,
8. denying a mediation procedure,
9. officially appointing a defence counsel, discharging a defence counsel from his official appointment, determining the fee of an officially appointed defence counsel,
10. any coercive measure,
11. ordering compulsory attendance or forced attendance,
12. issuing, withdrawing, or modifying a wanted notice or an arrest warrant,
13. assessing a complaint,
14. rectifying a decision,
15. assessing an application for excuse, and maintaining or setting aside, in whole or in part, a decision having regard to the result of a repeated procedural act after granting an application for excuse,
16. determining and bearing of criminal costs, and obliging a person to bear any criminal costs caused,
17. refusing an exemption invoked by a witness or expert,
18. appointing officially, disqualifying, discharging, or determining the fee of an expert,
19. obtaining the opinion by a probation officer,
20. ordering a person to assist in the course of an expert examination, inspection, reconstruction of a criminal offence, or presentation for identification,
21. disqualifying a supporter or a statutory representative,
22. dismissing a motion for special treatment submitted by an aggrieved party, and terminating the special treatment of an aggrieved party,
23. dismissing a motion for personal protection,
24. restricting the right to inspect case documents, and dismissing a motion to enable a specific method of inspection,
25. dismissing service objections or objections to the protraction of the proceedings,
26. suspending the performance of a procedural act or the implementation of a decision,
27. setting aside or amending a decision,
28. dismissing a motion for permission to switch to paper-based communication,
29. deciding on a disciplinary fine,
30. appointing a guardian *ad litem*, discharging, disqualifying, or determining the fee of, an appointed guardian *ad litem*,

(2) The prosecution service or the investigating authority may draw up any other decision or measure as a formal decision.

(3) The prosecution service and the investigating authority shall determine the fee (work fee and compensation for expenses) of a defence counsel officially appointed in a decision referred to in point 9 of paragraph (1) pursuant to, and in accordance with the fees set out in, the regulation, published on the website of the Hungarian Bar Association (hereinafter the "Bar Association"), of the Bar Association on the fees per hour of officially appointed defence counsel and the fees for acting as officially appointed defence counsel. Absent an agreement under section 194/B of Act LXXVIII of 2017 on the professional activities of attorneys-at-law, the prosecution service and the investigating authority shall determine the fees per hour of officially appointed defence counsel and the fees for acting as officially appointed defence counsel in accordance with the ministerial decree on the fees advanced by the State of officially appointed defence counsel.

Content of a decision

Section 363 (1) The decision shall consist of an introductory part, an operative part, a statement of reasons, and a closing part.

(2) The introductory part shall specify the following:

a) name of the prosecution office or investigating authority,

b) case number,

c) designation of the criminal offence underlying the proceeding,

d) person subject to the provisions, including all data required for his identification.

(3) The operative part shall specify the decision of the prosecution service or investigating authority, whether or not a complaint or a motion for revision may be filed against the decision, the participants who may file such a complaint or motion, as well as the place of and time limit for doing so.

(4) The statement of reasons shall specify the relevant facts established by the prosecution service or investigating authority, the laws underlying the decision, including their interpretation as necessary, and an explanation for the provisions on the merits in light of the above.

(5) The closing part shall specify the place and date of passing the decision, as well as the name and signature of the proceeding prosecutor or member of an investigating authority.

(6) The decision adopted by the prosecution service or the investigating authority shall be put in writing.

(7) The decision adopted by the prosecution service or the investigating authority may also be recorded in the minutes, with the exception of a decision ordering or lifting a coercive measure affecting personal freedom. A decision recorded in the minutes shall consist of an operative part and a statement of reasons only.

Communicating a decision

Section 364 (1) Unless otherwise provided in this Act, the decision shall be communicated to the person who is directly affected by any provision of the decision.

(2) With the exception specified in paragraph (3), a decision adopted by the prosecution service or the investigating authority shall be communicated by means of service.

(3) A decision adopted by the prosecution service or the investigating authority by recording the decision in the minutes shall be communicated to those present by way of announcement.

Rectifying a decision

Section 365 (1) If a decision contains any clerical or calculation error, the prosecution service and the investigating authority may rectify its decision at any time upon a motion or *ex officio*.

(2) The merits of a decision may not be changed by a rectification. Rectification shall not be available on the ground of a factual error made by the prosecution service or the investigating authority.

(3) The rectification shall be recorded on the decision concerned, or a new decision shall be prepared. The rectifying decision shall be served together with the rectified decision concerned.

(4) No complaint shall lie against a decision on rectification, unless the prosecution service or the investigating authority

a) rectifies the operative part of a decision that may be challenged by a complaint, or

b) dismisses a motion to rectify the operative part of a decision.

(5) A motion for rectification shall not have suspensory effect regarding the submission of a complaint against, or a motion for the revision of, the decision concerned, or the implementation or enforcement, of the decision concerned.

Amending or setting aside a decision

Section 366 (1) The prosecution service or the investigating authority may also review *ex officio* a decision it passed, provided that

a) no complaint or motion for revision was submitted against the decision, or

b) any complaint or motion for revision submitted against the decision was adjudicated.

(2) The prosecution service or the investigating authority may amend its decision in the course of an *ex officio* review if it applied a law incorrectly when making its decision.

(3) The prosecution service or the investigating authority may set aside its decision in the course of an *ex officio* review if it was made despite a ground for disqualification specified in this Act existing.

(4) An amending, or setting aside, decision shall be communicated to all persons the decision amended or set aside was communicated to, as well as any person directly affected by the amended provision of the decision concerned.

Enforceability of a decision

Section 367 (1) Unless an exception is made in this Act, a complaint or motion for revision shall not have suspensory effect on the implementation or enforcement of a decision.

(2) In an exceptionally justified situation, an entity that passed a decision on, or is to adjudicate a complaint or motion for revision may suspend the implementation or enforcement of the decision concerned until the complaint or motion for revision is adjudicated.

Performing a procedural act without a decision

Section 368 (1) In a situation of extreme urgency, the prosecution service or the investigating authority may, without passing a decision,

a) immediately carry out a coercive measure or perform an evidentiary act it is generally entitled to order, or

b) immediately order the compulsory attendance of a defendant or a person reasonably suspected of having committed a criminal offence, or the forced attendance of a defendant, a person reasonably suspected of having committed a criminal offence, or another person, and issue an arrest warrant.

(2) The fact of acting in extreme urgency and the underlying circumstances shall be recorded in the minutes taken of the procedural act concerned.

(3) In a situation described in paragraph (1), issuing an arrest warrant or ordering a coercive measure or the compulsory attendance, or forced attendance, of a person shall be drawn up as a decision by the prosecution service or the investigating authority within three working days.

Chapter LVIII

LEGAL REMEDIES AVAILABLE DURING THE INVESTIGATION

Complaint against a decision

Section 369 (1) Unless an exception is made in this Act, the suspect, the person reasonably suspected of having committed a criminal offence, the defence counsel, the aggrieved party, the party with a pecuniary interest, or the other interested party may file a complaint against a decision communicated to him that was passed by a prosecution office or an investigating authority, with the prosecution office or investigating authority that passed the decision, within eight days of its communication.

(2) A party reporting a crime may file a complaint only if his crime report is dismissed; a party with a pecuniary interest or an other interested party may file a complaint only with regard to a provision of a decision that affects him directly.

(3) A complaint may be withdrawn by the person who filed it until it is assessed on its merits. A withdrawn complaint may not be submitted again.

(4) No complaint shall lie against a decision passed by the Office of the Prosecutor General.

Section 370 (1) The prosecution office or the investigating authority that passed the decision shall examine the submitted complaint within eight days upon receipt, and if it finds the complaint well-grounded, it shall set aside or amend the decision.

(2) If the prosecution office or the investigating authority that passed the decision considers the complaint groundless, it shall refer the case documents and its statement on the complaint to the prosecution office assessing the complaint within the time limit specified in paragraph (1).

(3) A complaint against a decision passed by the prosecution office shall be assessed by the superior prosecution office, and a complaint against a decision passed by the investigating authority shall be assessed by the prosecution service, within fifteen days after the receipt of the case documents; a complaint against a decision terminating a proceeding shall be assessed within one month.

(4) The prosecution office assessing the complaint shall set aside or amend the challenged decision if it finds the complaint well-grounded; otherwise, the complaint shall be dismissed. The prosecution office assessing the complaint may, *ex officio*, amend or set aside an unlawful provision of the decision even if it dismisses the complaint.

(5) In a situation specified in section 80 (1) *a)* to *d)*, the prosecution office assessing the complaint shall dismiss the complaint without stating any reason as to its merits.

(6) The decision assessing a complaint shall be communicated to the person who filed the complaint; if the decision concerned is set aside or amended, the decision concerning the complaint shall also be communicated to all persons to whom the decision was communicated.

(7) No further complaint shall lie against a decision assessing a complaint.

(8) A complaint filed against a decision of an investigating authority ordering custody shall not be assessed if the prosecution service files a motion with a court to order a coercive measure subject to judicial permission that affects the personal freedom of the defendant.

(9) The prosecution service may refrain from assessing a complaint if the situation challenged in the complaint has ceased regardless of the complaint filed. The prosecution service shall notify the person who filed the complaint accordingly. The prosecution service shall assess the complaint if the person who filed the complaint submits a motion to that effect within eight days after receipt of the notification.

Section 371 (1) If the prosecution office assessing a complaint dismisses a complaint filed by the aggrieved party because his crime report was dismissed or the proceeding was terminated, it shall inform the aggrieved party in its decision about the possibility and conditions of acting as a substitute private prosecuting party, including the rights and obligations of a substitute private prosecuting party.

(2) If a decision was terminated under section 398 (2) *e)*, the information provided shall also include that acting as a substitute private prosecuting party is possible concerning the criminal offence with regard to which the proceeding was terminated by the prosecution service.

(3) If a crime report was dismissed or a proceeding was terminated because the act does not constitute a criminal offence subject to public prosecution, the information provided by the prosecution service to the aggrieved party in its decision shall also include, in addition to the information required under paragraph (1), that the aggrieved party may represent the prosecution as a private prosecuting party, in place of acting as a substitute private prosecuting party, regarding a criminal offence subject to private prosecution.

(4) An aggrieved party may take action as a private prosecuting party within one month after a decision dismissing his complaint is served; if a private motion is missing, the corresponding statement may be made within the same time limit. If an aggrieved party acts as a private prosecuting party, he may not act as a substitute private prosecuting party.

(5) If an aggrieved party acts as a private prosecuting party, and the prosecution service does not take over the representation of the prosecution, the prosecution service shall send the crime report, the statement of the aggrieved party, and the case documents to the court within eight days.

Complaint against casting suspicion

Section 372 (1) The suspect or the defence counsel may file a complaint with the prosecution office or investigating authority interrogating the suspect against casting or changing suspicion at the time of the communication of such a suspicion. If a defence counsel is not present when the suspicion, or any change to such suspicion, is communicated, a complaint may be filed within eight days following the interrogation of the suspect.

(2) If the prosecution office or the investigating authority interrogating a suspect, or the prosecution office assessing the complaint, finds the complaint well-grounded, it shall take the necessary measures to eliminate the situation challenged in the complaint, including, in particular, to change the suspicion.

(3) If no reasonable suspicion of a criminal offence can be established against the suspect at the time of communicating the suspicion, the prosecution service shall establish, in its decision on the complaint, that the statutory conditions for casting suspicion were not met.

(4) In the situation specified in paragraph (3), the capacity of the person concerned as suspect shall cease to exist when his complaint is assessed.

(5) The complaint filed against casting suspicion by the investigating authority shall not be assessed if the prosecution service files a motion with a court to order a coercive measure subject to judicial permission that affects the personal freedom of the defendant in custody and the motion is based on facts, and their classification under the Criminal Code, corresponding to the suspicion cast.

(6) In other respects, the provisions concerning complaints against decisions shall be applied to a complaint filed against casting suspicion.

(7) In its decision, the prosecution service may establish *ex officio* that the statutory conditions for casting suspicion are not met. Upon the adoption of this decision, the capacity of the person concerned as a suspect ceases.

Complaints filed in the mediation procedure

Section 373 A complaint filed under sections 5 (2) or 10 (4) of Act CXXIII of 2006 on mediation in criminal cases shall be assessed by the prosecution service by applying section 370 accordingly.

Revision

Section 374 (1) A motion for revision may be filed

a) against ordering supervision for the purpose of crime prevention, and the dismissal of a motion to partially lift the rules of behaviour of a restraining order or criminal supervision,

b) against ordering seizure for the purpose of securing confiscation or forfeiture of assets,

c) against ordering sequestration, provided that it was ordered by the prosecution service or an investigating authority, except if section 327 (5) applies,

d) against ordering the sale of a seized thing, provided that it was ordered by the prosecution service or an investigating authority,

e) if the prosecution office or the superior prosecution office dismissed the complaint filed against ordering

ea) a search,

eb) a body search,

ec) the seizure of a postal item yet to be delivered to the addressee,

ed) the seizure of any communication or consignment not yet delivered to the addressee that is set to be transmitted through an electronic communications service, or

ee) the seizure of any means of evidence kept in the editorial offices, and relating to the activities, of a media content provider as defined in the Act on the freedom of the press and the fundamental rules on media contents,

f) if the prosecution office or the superior prosecution office dismissed the complaint by the suspect or a defence counsel against the decision restricting the right to inspect case documents or dismissing a motion to enable a specific method of inspection,

g) against a provision, passed under section 402 (2), of the decision terminating the proceeding pursuant to section 402 (3) or (4),

h) against a provision by the prosecution service or the investigating authority on the suspension of hosting service provision.

(2) A motion for revision may be filed with a court within eight days of service of a decision specified in paragraph (1). The motion for revision shall specify the decision the motion for revision is filed against, as well as the reason for and purpose of filing the motion.

(2a) If a motion for revision against a decision under paragraph (1) *a)* to *d)* is filed with the prosecution office or the investigating authority and the motion is well-grounded, the prosecution service or the superior prosecution office shall set aside or amend the decision adopted by the investigating authority or the decision adopted by a prosecution office, respectively. If the prosecution office or the superior prosecution office does not find the motion for revision well-grounded, it shall send the motion and the case documents to the court.

(3) The motion for revision filed against a decision specified in paragraph (1) *d)* shall have suspensory effect on the enforcement of the decision concerned.

(4) The court may adjudicate the motion for revision without obtaining any case document, or the observations of the prosecution service, if doing so is possible based on the content of the motion for revision.

(5) If the motion for revision could not be decided on the basis of paragraph (4), the court shall, together with serving the motion for revision, obtain the case documents from the prosecution service.

(6) The prosecution service shall send the case documents to the court within five working days, and it may make observations or file motions regarding the motion for revision within the same time limit. The prosecution service or the superior prosecution office may set aside or amend the decision adopted by the investigating authority under paragraph (1) *a)* to *d)* or the decision adopted by the prosecution office, respectively, and shall notify the court accordingly.

Chapter LIX

INSTITUTING AN INVESTIGATION

The basis for instituting an investigation

Section 375 (1) An investigation may be instituted on the basis of a crime report or of data that become known to the prosecution service or the investigating authority in its official competence, or to a prosecutor or a member of an investigating authority in his official capacity.

(2) An investigation may be ordered by the prosecution service or the investigating authority.

(3) The prosecution service or the investigating authority shall inform the aggrieved party about instituting an investigation, provided that the identity and contact details of the aggrieved party are known. If the investigating authority orders an investigation, it shall notify the prosecution service within twenty-four hours accordingly.

(4) In a situation of extreme urgency, any investigating authority may carry out any procedural act; however, the investigating authority concerned shall notify the investigating authority with subject-matter and territorial competence accordingly and without delay.

Crime reports

Section 376 (1) Any person may file a crime report regarding a criminal offence subject to public prosecution.

(2) A member of an authority, a public officer, and, if required by law, a statutory professional body shall file a crime report regarding a criminal offence subject to public prosecution it becomes aware of in its official competence or in his official capacity, respectively.

(3) The crime report referred to in paragraph (2) shall indicate the means of evidence; at the same time, arrangements shall be made to preserve all traces of the criminal offence, as well as all means of evidence and things and assets that may be subject to confiscation or forfeiture of assets.

Section 377 (1) A crime report may be filed with the prosecution service or the investigating authority. Other authorities and courts shall also accept crime reports that they shall forward to the investigating authority or, in a situation specified in section 30, the prosecution service.

(2) The prosecution office or the investigating authority shall enter the crime report into its register without delay, even if it does not fall within its subject-matter or territorial competence.

(3) If a crime report is filed in person, the prosecution service or the investigating authority shall advise the party reporting the crime of the consequences of making false accusations or misleading an authority. When a crime report is filed in person, an adult person designated by the party reporting the crime may also be present at filing the crime report, unless that would prejudice the interests of the proceeding.

Private motion

Section 378 (1) If a criminal offence is to be prosecuted upon private motion, the criminal proceeding may not be instituted or conducted unless a private motion is filed by a person entitled to do so.

(2) A crime report filed or any statement made by a person entitled to file a private motion expressing his wish to have the criminal liability of the perpetrator established under criminal law shall be considered a private motion.

(3) A private motion shall be filed within one month after the day when the person entitled to file it becomes aware of the criminal offence.

(4) If, after an investigation is instituted, it turns out that the act is to be prosecuted upon private motion, a statement shall be obtained from the person entitled to file the private motion. In such an event, the time limit specified in paragraph (3) shall be calculated from the day when the person entitled to file a private motion becomes aware of the call to make such statement.

(5) The relative of a deceased aggrieved party may file a private motion during the remainder of the time limit.

(6) Failing to meet the time limit open for filing a private motion may be excused if the criminal offence concerned is subject to public prosecution.

Administering a crime report

Section 379 (1) The prosecution service or the investigating authority shall examine, within three working days after receipt of the crime report, if an investigation is to be ordered in the case, if the crime report is to be supplemented or dismissed, or if the case is to be transferred.

(2) In the course of administering a crime report, the prosecution service or the investigating authority may take into consideration facts that are public knowledge or officially known to it.

(3) If the private prosecuting party filed a crime report aimed at instituting a private prosecution proceeding with an investigating authority, the investigating authority shall transmit the crime report to the prosecution service without delay.

(4) In the case under paragraph (3) and also if the private prosecution party filed the crime report aimed at instituting a private prosecution proceeding with the prosecution service, the prosecution service shall, within three working days after receipt, examine the crime report and decide whether it takes over the representation of the prosecution of the criminal offence subject to private prosecution. If the prosecution service takes over the representation of the prosecution, it shall notify the aggrieved party accordingly. If the prosecution service does not take over the representation of the prosecution, it shall send the crime report to a court without delay and notify the party reporting the crime accordingly.

Supplementing a crime report

Section 380 (1) The prosecution service or the investigating authority shall order a crime report to be supplemented if, on the basis of available data, it is not possible to decide whether to order an investigation or to dismiss the crime report.

(2) In the course of supplementing the crime report, the prosecution service or the investigating authority may collect data under section 267, request the party reporting the crime to provide information, make documents or data available, or disclose the value of damage, pecuniary loss, tax revenue lost, customs revenue lost, or the value affected by the criminal offence. In the course of doing so, the prosecution service or the investigating authority shall advise the party reporting the crime, if it has not done so yet, of the consequences of making false accusations or misleading an authority.

(3) If a criminal proceeding may be ordered by the Prosecutor General under section 4 (9), or under section 3 (3) of the Criminal Code, the prosecution service or the investigating authority shall provide for obtaining the decision of the Prosecutor General in the course of supplementing the crime report.

(4) The time limit for supplementing a crime report shall be one month.

Dismissing the crime report

Section 381 (1) The prosecution service or the investigating authority shall dismiss the crime report if it is clear from the available data that

a) the act reported does not constitute a criminal offence,

b) there is no suspicion of a criminal offence,

c) a ground excluding the liability to punishment of the perpetrator or the punishability of the act reported can be established,

d) liability to punishment is terminated due to death, statute of limitations, or a pardon,

e) the act reported has already been adjudicated with final and binding effect,

f) a private motion, crime report, or an act by the Prosecutor General as specified in section 4 (9), or in section 3 (3) of the Criminal Code, is missing,

g) the act reported does not constitute a criminal offence subject to public prosecution,

h) the case does not fall within Hungarian criminal jurisdiction.

(2) The decision dismissing a crime report shall be served on the party reporting the crime by the prosecution service or the investigating authority. The decision dismissing a crime report shall also be sent by an investigating authority to the prosecution service within twenty-four hours.

(3) If the prosecution service or the investigating authority dismissed the crime report on the basis of paragraph (1) *g)*, it shall inform the aggrieved party in its decision that he may represent the prosecution as a private prosecuting party with respect to the criminal offence subject to private prosecution. The information provided shall present the conditions for acting as a private prosecuting party, the rights and obligations of a private prosecuting party, as well as an invitation to submit a private motion, if missing.

(4) The aggrieved party may take action as a private prosecuting party within one month after a decision dismissing his crime report is served; if a private motion is missing, the corresponding statement may be made within the same time limit.

(5) If the aggrieved party acts as a private prosecuting party, and the prosecution service does not take over the representation of the prosecution, the crime report, the statement of the aggrieved party, and the case documents shall be sent to the court within eight days.

Section 382 (1) The prosecution service may dismiss the crime report if the person reasonably suspected of having committed the criminal offence cooperates and contributes to detecting and proving the given or any other criminal case to such an extent that the national security or law enforcement interest in his cooperation exceeds the interest in establishing the criminal liability of the person reasonably suspected of having committed a criminal offence.

(2) The crime report may not be dismissed under paragraph (1) if the cooperating person is be reasonably suspected of having committed a criminal offence involving the killing of another person intentionally, or causing a permanent disability or serious degradation of health intentionally.

(3) If the prosecution service dismisses the crime report against a cooperating person under paragraph (1), the State shall pay any damages or grievance award the perpetrator is liable to pay under civil law, provided that compensation is not provided in any other way. If the matter of paying damages or grievance award is to be decided in a civil action, the legal basis for a corresponding claim shall be presumed.

(4) In a civil proceeding, the State shall be represented by the Minister responsible for justice. Before adjudicating the claim, the civil court shall obtain a statement from the prosecution office that decided to dismiss the crime report regarding the act committed against the plaintiff, the damage caused, and the violation of any personality right. Such a statement by the prosecution office may not include any information that could serve as basis for making any conclusion regarding the identity of the perpetrator or the reason for dismissing the crime report.

Chapter LX

DETECTION

Attendance at procedural acts during detection

Section 383 (1) In the course of detection, a procedural act may be attended by the prosecutor, a member of the investigating authority, the keeper of minutes, and other persons permitted to attend by an Act or government decree.

(2) The aggrieved party may attend, in relation to a criminal offence committed against him, the interview of an expert, an inspection, the reconstruction of the criminal offence or the presentation for identification. The notification of the aggrieved party may be omitted as an exception if doing so is necessary due to the urgency of the procedural act. The notification of the aggrieved party may be omitted as an exception, or he may be removed from the location of a procedural act as an exception, if protection could not be afforded to a person requiring special treatment by any other means.

(3) If the attendance of an aggrieved party at a procedural act is mandatory or permitted, an adult person specified by the aggrieved party may also attend the procedural act, provided that the attendance of such person does not interfere with the interests of the proceeding.

(4) Upon a motion by a defendant or a person reasonably suspected of having committed a criminal offence who is a foreign national or their defence counsel or an aggrieved party or a witness who is a foreign national, a consular officer of the state of the foreign national may attend his interrogation or any other procedural act in which he participates.

(5) If a person, other than a supporter or a consular officer, is permitted by this Act to attend a procedural act, he may ask questions from a suspect, expert, or witness, and he may make observations and file motions. The provisions on interrogating a witness or a defendant, as well as the provisions on appointing an expert, shall apply accordingly to the prohibition of asking or answering questions.

(6) An aide performing interpretation tasks may attend a procedural act to ensure the language use of an aggrieved party, a party with a pecuniary interest or other interested party who was notified of the procedural act.

Section 384 (1) The prosecution service or the investigating authority may remove a person from the place of a procedural act if his attendance hinders the proceeding or he is not permitted to attend the procedural act; with a view to facilitating the investigation, the prosecution service or the investigating authority may also oblige a person participating in a criminal proceeding to be present at the place of a procedural act.

(2) With a view to enforcing the provisions of paragraph (1), physical force may be used and a disciplinary fine may be imposed.

(3) A disciplinary fine may also be imposed regarding a person interfering with the order of a proceeding.

Interrogating the suspect

Section 385 (1) If a specified person is reasonably suspected of having committed a criminal offence on the basis of available data and means of evidence, he shall be interrogated by the investigating authority or the prosecution service as a suspect pursuant to Chapter XXX.

(2) A person in custody shall be interrogated within twenty-four hours after the beginning of his detention.

Section 386 (1) If a person reasonably suspected of having committed a criminal offence is apprehended, summoned, his compulsory attendance is ordered, or a wanted notice or arrest warrant is issued against him, he shall be entitled to

a) receive information on his rights regarding the interrogation as a suspect in the criminal proceeding,

b) authorise a defence counsel, or move for the official appointment of a defence counsel, and

c) consult his defence counsel without supervision

before the communication of the suspicion.

(2) Before the communication of the suspicion, the defence counsel shall be entitled to contact the person he defends and confer with him without supervision.

Section 387 (1) If the suspect, or the person reasonably suspected of having committed a criminal offence, does not have a defence counsel, he shall be advised before his interrogation, and if he is subjected to compulsory attendance or is in custody, without delay, that he may authorise, or move for the official appointment of, a defence counsel. The investigating authority or the prosecution service shall assess such a motion immediately.

(2) If the participation of a defence counsel is mandatory in a proceeding, the suspect, or the person reasonably suspected of having committed a criminal offence, shall also be advised that if he does not authorise a defence counsel, the investigating authority or prosecution service will appoint one for him. If the suspect, or the person reasonably suspected of having committed a criminal offence, declares that he does not wish to authorise a defence counsel, the investigating authority or the prosecution service shall appoint one immediately.

(3) If the suspect, or the person reasonably suspected of having committed a criminal offence, wishes to authorise a defence counsel, or the investigating authority or prosecution service appoints a defence counsel, the investigating authority or prosecution service shall notify the defence counsel immediately, and the suspect interrogation shall be postponed until the arrival of the defence counsel, but for no less than two hours. If, within the time limit set,

a) the defence counsel fails to appear, or

b) the suspect, or the person reasonably suspected of having committed a criminal offence, after consulting his defence counsel, agrees to the commencement of interrogation,

the investigating authority or prosecution service shall commence the interrogation.

(4) The investigating authority or the prosecution service shall record in the minutes of the interrogation of the suspect any measure taken under paragraphs (1) to (3) or, in the case under section 47 (1) *c)*, any measure taken for contacting the defence counsel designated by the regional bar association as well as any known reason for the absence of the defence counsel.

(5) The investigating authority or the prosecution service shall enable the suspect, or the person reasonably suspected of having committed a criminal offence, to consult his defence counsel prior to, and during, his interrogation without disturbing the interrogation.

Section 387/A If a defence counsel does not appear at a procedural act despite having been notified or despite any measure having been taken under section 387, the suspect or the person reasonably suspected of having committed the criminal offence shall be informed that the absence of the defence counsel shall not constitute an obstacle to the commencement of the procedural act; however, giving testimony may be refused in accordance with section 185 (1) *a)* having regard to the fact that the defence counsel did not appear at the procedural act. A defendant who does not intend to give testimony having regard to the absence of the defence counsel shall be informed that he may decide, at any subsequent time, to give testimony both with and without the defence counsel being present.

Section 388 (1) During the interrogation, after being provided defendant advice, the suspect shall be informed about the facts pertaining to the act that is the subject of suspicion, as well as the classification of that act under the Criminal Code.

(2) After the communication of the suspicion, the investigating authority or the prosecution service shall advise the suspect and his defence counsel that a complaint may be filed against casting suspicion.

Section 389 In the course of an investigation,

a) data concerning the criminal record of a suspect shall be acquired, and

b) the recognition of a foreign judgment or, a judgment delivered in a Member State, concerning the suspect, which may be taken into account during the proceeding, shall be ensured.

Sending the case documents of investigations

Section 390 (1) Within eight days after interrogating the suspect, the investigating authority shall send the case documents of the investigation to the prosecution service and, at the same time, it shall report on the state of the investigation and make recommendations regarding any procedural act that is considered necessary during examination or regarding the conclusion of the investigation.

(2) If the suspect confessed to the commission of a criminal offence, or he initiated that a measure or decision by a prosecutor be offered, or a plea agreement be concluded, the investigating authority shall report it to the prosecution service without delay.

Chapter LXI

EXAMINATION

Proceedings by the prosecution service during the examination

Section 391 (1) After a suspect is interrogated, the prosecution service shall examine, based on the investigation case documents, if any of the following would be applicable in the given case:

a) offering a measure or a decision by a prosecutor,

b) initiating a plea agreement,

c) suspending the proceeding for the purpose of conducting a mediation procedure,

d) applying conditional suspension by the prosecutor,

e) terminating the proceeding for any other reason,

f) bringing an indictment,

g) performing a procedural act in the course of the examination,

h) separating, joining, or transferring the case.

(2) In the course of the examination, the prosecution service shall decide on the matters specified in paragraph (1) within the time limit open for the investigation.

Relationship between the prosecution service and the investigating authorities during the examination

Section 392 (1) The investigating authority shall carry out the examination in line with measures taken by the prosecution service within its power to exercise direction.

(2) Unless instructed otherwise by the prosecution service, after interrogating the suspect, the proceeding investigating authority shall carry out independently any procedural act that it considered necessary in its recommendation under section 390 (1).

(3) In the course of the examination, the proceeding investigating authority shall carry out independently a procedural act concerning the subject of the suspicion if

a) doing so is justified by a reason of pressing urgency, or

b) it is necessarily related to a procedural act ordered by the prosecution service.

(4) In the course of an examination, the proceeding investigating authority shall carry out independently a procedural act if

a) it does not concern the subject of the suspicion, or

b) its purpose is to detect another perpetrator of the criminal offence that is the subject of suspicion.

(5) An investigating authority shall report to the prosecution service any procedural act carried out independently in the course of the examination within eight days, in a situation specified in paragraphs (2) to (3), or as instructed by the prosecution service, but within three months at the latest, in a situation specified in paragraph (4).

Attendance at procedural acts during the examination

Section 393 (1) In the course of the examination, the suspect and his defence counsel may attend the interviews of experts, inspections, reconstructions of the criminal offence, and presentations for identification, provided that the given procedural act concerns the subject of the suspicion.

(2) The defence counsel may attend the interrogation of a witness requested by him or by the suspect he defends, as well as any procedural act involving such a witness.

(3) The notification of the suspect or the defence counsel may be omitted as an exception if doing so is necessary due to the urgency of the procedural act.

(4) Notification of the suspect or the defence counsel may be omitted as an exception, and the suspect or the defence counsel may be removed from the location of a procedural act as an exception, if doing so is necessitated by the interests of the investigation or the protection could not be afforded to a person requiring special treatment by any other means.

(5) In a situation specified in paragraph (3) or (4), the prosecution service or the proceeding investigating authority shall notify the suspect and his defence counsel about the procedural act retrospectively, but within eight days at the latest, unless the notification of the defendant or the defence counsel is prohibited by this Act. Upon a motion by the suspect or defence counsel filed within three days of receipt of the notification, the prosecution service or the proceeding investigating authority shall pass an *ex-post* decision on refraining from the notification, and that decision shall be communicated to the person who filed the motion.

(6) The prosecution service or the proceeding investigating authority shall enable the suspect to consult his defence counsel prior to, and, without disturbing the procedural act, during the procedural act.

(7) In other respects, the provisions on detection shall apply accordingly to the matter of attendance at procedural acts in the course of an examination.

Chapter LXII

SUSPENSION OF THE PROCEEDINGS

Grounds for suspending the proceeding

Section 394 (1) The prosecution service or the investigating authority shall suspend the proceeding if

a) the identity of the perpetrator could not be established during the investigation, or

b) the perpetrator cannot participate in the proceeding due to his permanent and serious illness or a mental disorder that occurred after the commission of the criminal offence.

(2) The prosecution service shall suspend the proceeding for the purpose of conducting a mediation procedure if the applicable conditions are met.

(3) The prosecution service and the investigating authority may suspend the proceeding if

a) the whereabouts of the perpetrator are unknown or he is staying in another country,

b) an authority of another country needs to execute a request for legal assistance,

c) a decision on a preliminary question needs to be obtained to conduct the proceeding, or

d) a criminal proceeding against the perpetrator is pending in court regarding the act that is the subject of the suspicion.

(4) The prosecution service may suspend the proceeding if

a) doing so is necessary for the performance of a settlement concluded in a mediation procedure,

b) the conditions for conditional suspension by the prosecutor are met,

c) a consultation procedure, as defined in the Act on cooperation with the Member States of the European Union in criminal matters, is instituted,

d) an authority of another country postponed the surrender or extradition of the perpetrator on the basis of an international arrest warrant or a European arrest warrant,

e) an international criminal court, in a case falling within its jurisdiction, requests the Hungarian authority to transfer the criminal proceeding,

f) it initiated the recognition of a foreign judgment or a judgment delivered in a Member State, and there is no further procedural act to be carried out in Hungary, and the proceeding may not be continued without the recognition of the foreign judgment, or the judgment delivered in a Member State, or

g) it is necessary for the performance of an obligation undertaken by the defendant in a concluded agreement.

(5) In the course of an investigation, the proceeding may be suspended once on the basis of paragraph (2) or paragraph (4) *a)*, *b)* or *g)*, with the exception specified in this Act.

(6) The proceeding may not be suspended

a) on the basis of paragraph (2) if the prosecution service applied conditional suspension by the prosecutor,

b) on the basis of paragraph (4) *b)* if a mediation procedure was conducted in the case, or

c) on the basis of paragraph (2) or paragraph (4) *b)* if the prosecution service suspended the proceeding on the basis of paragraph (4) *g)*.

(7) With the exception of paragraph (3) *a)*, no procedural act affecting the suspect directly may be carried out after the proceeding is suspended.

(8) If the ground for suspension changes during the period of suspension, the prosecution service or the investigating authority shall pass a new decision on suspending the proceeding without ordering the proceedings to be continued.

(9) If the prosecution service or the investigating authority suspends a proceeding because the identity of the perpetrator could not be established during the investigation, it shall inform the party reporting the crime, the aggrieved party, and the person who filed a private motion, at the time of communicating its decision, that in case the proceeding is terminated due to any statute of limitations without ordering the proceeding to be continued, the decision terminating the proceeding will be served on him only if a motion for service is filed within one month after the decision suspending the proceeding is received.

The duration of the suspension

Section 395 (1) The prosecution service or the investigating authority may suspend the proceeding for a period of up to

a) six months if the suspect or the person reasonably suspected of having committed the criminal offence is abroad,

b) two months if a decision on a preliminary question needs to be obtained to conduct the proceeding, and the proceeding on deciding the preliminary question is yet to be instituted,

c) twelve months if an authority of another country is to execute a request for legal assistance, or

d) six months if it is necessary for the performance of an obligation undertaken by the defendant in a concluded agreement.

(2) At the time of suspending a proceeding, the prosecution service or the investigating authority shall set the time-limit, corresponding to the period of suspension, for

a) the suspect or the person reasonably suspected of having committed the criminal offence staying abroad to return,

b) the interested party to institute a proceeding on deciding the preliminary question.

(3) The prosecution service may extend the period of suspension and the time limit specified in paragraph (2) exceptionally once for an additional period of up to

a) two months in a situation specified in paragraph (1) *a)*,

b) one month in a situation specified in paragraph (1) *b)*,

c) six months in a situation specified in paragraph (1) *c)*.

(4) If a proceeding for deciding the preliminary question is instituted during the period of suspension, section 394 (8) shall apply accordingly.

Continuing a suspended proceeding

Section 396 (1) Unless an exception is made in this Act, the prosecution service or the investigating authority shall order the proceeding to be continued if

a) the grounds for suspension have ceased,

b) in a situation specified in section 394 (4) *e)*, the proceeding is required to be continued under the Act promulgating the statute of the International Criminal Court and implementing the obligations arising from its statute, or

c) continuing the suspended proceeding is considered necessary on a ground specified in section 394 (3) or (4) *c)* to *d)*.

(2) If a proceeding was suspended by the prosecution service, only the prosecution service may order it to be continued.

(3) No complaint shall lie against a decision ordering a proceeding to be continued.

(4) A proceeding shall be continued without passing a decision on the day when the period of suspension, as determined by the prosecution service or the investigating authority or as extended by the prosecution service, expires.

Miscellaneous provisions

Section 397 (1) The duration of suspension shall not be included in the time limit open for investigation.

(2) The decision suspending or continuing a proceeding shall be served simultaneously on the suspect, the person reasonably suspected of having committed the criminal offence, the defence counsel, the party reporting the crime, the aggrieved party, and the person who filed a private motion.

(3) If a proceeding is ordered to be suspended or continued by the investigating authority, its decision shall also be communicated to the prosecution service pursuant to paragraph (2).

Chapter LXIII

TERMINATING A PROCEEDING

Grounds for terminating a proceeding

Section 398 (1) The prosecution service or the investigating authority may terminate the proceeding if

a) the act does not constitute a criminal offence,

b) the criminal offence was not committed by the suspect,

c) the commission of a criminal offence may not be established on the basis of available data and means of evidence,

d) a ground excluding the perpetrator's liability to punishment or the punishability of the act can be established,

e) liability to punishment is terminated due to death, statute of limitations, or a pardon,

f) the act has already been adjudicated with final and binding effect,

g) no crime report is filed, or in the absence of an act by the Prosecutor General as specified in section 4 (9) or section 3 (3) of the Criminal Code,

h) a private motion is missing and this may not be rectified any longer pursuant to section 378 (4),

i) the act does not constitute a criminal offence subject to public prosecution, or

j) the case does not fall within Hungarian criminal jurisdiction.

(2) The prosecution service shall terminate the proceeding if

a) it cannot be established on the basis of available data and means of evidence that the criminal offence was committed by the suspect,

b) the criminal proceeding is conducted by an authority of another state as a result of transferring the criminal proceeding or conducting a consultation procedure as defined in the Act on cooperation with the Member States of the European Union in criminal matters,

c) liability to punishment is terminated due to active repentance, demonstrating the behaviour required under a conditional suspension by the prosecutor, passing the period of conditional suspension by the prosecutor successfully, or for any other reason specified by an Act,

d) reprimand is applied, or

e) it is conducted regarding a criminal offence that is, in comparison to another criminal offence of greater material gravity also subject to the indictment, not significant for establishing criminal liability.

(3) A proceeding shall be continued if, in a complaint filed against a decision terminating the proceeding, the defendant or, in agreement with the defendant, his defence counsel challenges the application of a reprimand, and there is no other reason for terminating the proceeding.

(4) If a proceeding is terminated by the prosecution service or the investigating authority under paragraph (1) *i)*, section 381 (3) to (5) shall apply accordingly.

(5) The statement of reasons in the decision terminating a proceeding shall specify only the ground for terminating the proceeding and a reference to the laws applied, provided that

a) the proceeding was suspended because the identity of the perpetrator could not be established during the investigation, and

b) the suspended proceeding is terminated by the prosecution service or the investigating authority due to statute of limitations.

(6) A decision specified in paragraph (5) may also be supplemented to a decision suspending the proceeding if the party reporting the crime, the aggrieved party, or the person who filed a private motion did not move for the service of the decision terminating the proceeding.

Section 399 (1) The prosecution service may terminate the proceeding if the suspect, or the person reasonably suspected of having committed the criminal offence, cooperates and contributes to detecting and proving the given, or any other, criminal case to such an extent that the national security or law enforcement interest in his cooperation exceeds the interest in establishing the criminal liability of the person reasonably suspected of having committed a criminal offence or of the suspect.

(2) A proceeding may not be terminated under paragraph (1), if the cooperating person is reasonably suspected of having committed a criminal offence involving the killing of another person intentionally, or causing a permanent disability or serious degradation of health intentionally.

(3) If the proceeding is terminated by the prosecution service under paragraph (1), section 382 (3) and (4) shall apply accordingly.

Continuing a terminated proceeding

Section 400 (1) Unless an exception is made in this Act, the termination of a proceeding shall not prevent the proceeding from being continued in the same case subsequently.

(2) Ordering the continuation of a proceeding terminated by the investigating authority shall fall within the responsibility of the prosecution service; however, during detection, the investigating authority may also order the continuation of the proceeding.

(3) With the exception specified in paragraph (5), the continuation of a proceeding terminated by the prosecution office may be ordered by the prosecution office or the superior prosecution office *ex officio* or upon complaint.

(4) No complaint shall lie against a decision ordering a proceeding to be continued.

(5) The continuation of the proceeding may be ordered by a court, upon a motion by the prosecution service, if

a) if the prosecution service terminated the proceeding against the defendant under section 398 (1) *a)* to *f)* or section 398 (2) *a), c), d)* or *e),* and

b) the proceeding was not continued, *ex officio* or upon complaint, within six months after the termination of the proceeding.

(6) The court may order the continuation of the proceeding if

a) new evidence or circumstance is brought up in the case,

b) false or falsified means of evidence was used in the case,

c) a member the prosecution service or the investigating authority violated his duties in the case in a manner contrary to criminal law.

(7) The proceedings may be continued under paragraph (6) *b)* or *c)* if a final and binding decision established the commission of the criminal offence or passing such a conclusive decision was not prevented by the lack of evidence, and this had a material impact on the termination of the proceeding.

(8) In order to clarify the cases under paragraph (6) *a)*, the prosecution service may collect data before ordering the continuation of the proceeding.

(9) If a motion to order the resumption of a proceeding was dismissed by the court, no motion to order the resumption of the proceeding may be filed repeatedly on the same grounds.

Communicating the decision when the proceeding is terminated

Section 401 (1) With the exception under paragraph (2), the decision terminating, or ordering the continuation of the proceeding shall be served simultaneously on the suspect, the defence counsel, the aggrieved party, the party reporting the crime, and the person who filed a private motion.

(2) In a situation specified in section 398 (5), a decision terminating a proceeding need not be served on the aggrieved party, the party reporting the crime, or the person who filed a private motion if he did not move for doing so within one month after receipt of the decision suspending the proceeding.

(3) If the termination or the continuation of the proceeding is ordered by the investigating authority, its decision shall also be served on the prosecution service pursuant to paragraph (1).

(4) At the time of serving the decision terminating the proceeding, the defendant shall also be informed about the legal basis of any recompense he may claim, the fact that he may decide to enforce his claim in a simplified recompense procedure or a property dispute for recompense (hereinafter "recompense action"), the time limit for enforcing such a claim, the day the time limit is calculated from, and that the time limit is a term of preclusion.

Criminal costs upon the termination of the proceeding

Section 402 (1) If the proceeding is terminated, the criminal costs shall be borne by the State, with the exception specified in paragraph (2).

(1a) Where a proceeding is terminated in accordance with section 398 (1) *a)* because the act does not constitute a criminal offence, but an infraction, the criminal costs shall be borne by the State if the infraction proceeding is not instituted. The decision terminating the proceeding shall include a provision to this effect.

(2) Where the proceeding is terminated, the prosecution service may oblige the suspect to pay the criminal costs, in whole or in part, if the proceeding is terminated

a) due to active repentance,

b) on the ground that the period of conditional suspension by the prosecutor passed successfully,

c) applying reprimand, or

d) based on a reason for terminating liability to punishment that depends on the conduct of the defendant under the Special Part of the Criminal Code.

(2a) If paragraph (2) applies, the suspect may be obliged to bear only the criminal costs that relate to that act or to those elements of the facts of the case in respect of which the proceeding is terminated for a reason specified in paragraph (2). The obligations of the suspect shall be determined on the basis of the material gravity on the criminal offence and the financial, income and personal situation and lifestyle of the suspect.

(3) If the suspect or the defence counsel, in a complaint submitted against the decision terminating the proceeding, challenges also the provisions on the obligation to bear the criminal costs, and the superior prosecution office does not grant the complaint, the suspect and the defence counsel may file a motion for revision against the provisions imposing the obligation to bear the criminal costs.

(4) If the suspect or the defence counsel challenges only the provisions imposing the obligation to bear the criminal costs, laid down in the decision terminating the proceeding, the application for remedy shall be considered a motion for revision. In that event, the prosecution service shall forward the motion for revision, the case documents, and its observations and motion to the investigating judge within three working days.

Section 403 (1) Upon an application, a payment moratorium or payment in instalments may be granted for the payment of the criminal costs, under the conditions and within the limits specified in section 42 (1) of the Sentence Enforcement Act.

(2) An application for a payment moratorium or for payment in instalments shall not have suspensory effect.

(3) The application shall be decided on by the prosecution office that imposed the obligation to bear criminal costs. No complaint shall lie against this decision.

Chapter LXIV

OFFERING BY A PROSECUTOR A MEASURE OR A DECISION

Section 404 (1) In the course of the investigation, the prosecution service may inform at any time the suspect and the defence counsel about the possibility of taking a measure or passing a decision specified in paragraph (2), should the suspect confess to the commission of the criminal offence.

(2) The prosecution service may offer

a) suspending the proceeding to conduct a mediation procedure, or terminating the proceeding depending on the outcome of the mediation procedure,

b) applying conditional suspension by the prosecutor, and terminating the proceeding depending on the outcome of such suspension,

c) terminating the proceeding on a ground specified in section 399 (1) or dismissing the crime report on a ground specified in section 382 (1), in light of the cooperation of the suspect, or

d) taking, in the event of indictment, measures as necessary to conduct a specific proceeding specified in Chapters XCVIII and C,

provided that the conditions laid down in this Act concerning the above measures and decisions, in addition to confessing to the commission of the criminal offence and cooperating, are met.

(3) The prosecution service may also make taking a measure or passing a decision conditional upon

a) the cooperation in detecting and proving the given or another criminal case, in a situation specified in paragraph (2) *a)* to *b)* or *d)*,

b) the satisfaction of any civil claim the aggrieved party intends to enforce pursuant to a notice by him, in a situation specified in paragraph (2) *c)* or *d)*, or

c) the performance of any other obligation that may be imposed in the framework of a conditional suspension by the prosecutor, in a situation other than that specified in paragraph (2) *b)*.

Section 405 (1) The information provided under section 404 (1) shall specify the material content and conditions, in addition to confessing to the criminal offence, of the measure or decision as planned by the prosecution service.

(2) The information shall be provided to the suspect or the defence counsel by the prosecution service in writing. The information may also be recorded in the minutes taken during the interrogation of the suspect.

(3) In order to comply with the provisions laid down in paragraphs (1) to (2), the prosecution service may also make use of the investigating authority.

Section 406 (1) During his interrogation, the suspect shall state whether or not he accepts the measure or the decision, including its conditions, offered by the prosecution service. If moved for by the suspect before making such a statement, the prosecution service or the investigating authority shall appoint a defence counsel for him. The suspect shall be advised of this right of his.

(2) The testimony given by the suspect having regard to the provisions of paragraph (1), or any means of evidence acquired on the basis of such a testimony, may not be used as evidence if

a) the suspect performs all agreed conditions in full, but the measure taken or decision passed by the prosecution service deviates from the measure or decision offered, or

b) the prosecution service offered a measure or a decision unlawfully.

(3) The prosecution service shall not be obliged to take the measure or pass the decision offered if the suspect fails to perform any of the agreed conditions or gives a false testimony. It that event, the testimony given by the suspect with regard to paragraph (1) may be used as means of evidence.

(4) In the course of an investigation, the suspect or defence counsel may inform the prosecution service or the investigating authority at any time that the suspect confesses to the commission of the criminal offence, so that a measure or decision specified in section 404 (2) be taken. If the prosecution service does not agree with such an initiative, it shall inform the suspect and his defence counsel accordingly; otherwise, the proceeding of the prosecution service shall be governed by sections 404 to 405 accordingly.

(5) An initiative by a suspect or his defence counsel pursuant to paragraph (4) may not be used as evidence. If the prosecution service does not agree to an initiative under paragraph (4), it may not inform the court about the proposal or file with the court the case documents produced in that regard.

Chapter LXV

PLEA AGREEMENT

Entering into a plea agreement

Section 407 (1) With a view to conducting a plea agreement proceeding pursuant to Chapter XCIX, the prosecution service and the defendant, before the indictment, may enter into an agreement on the confession and consequences of guilt regarding the criminal offence committed by the defendant (hereinafter “plea agreement”). It does not constitute an obstacle to the conclusion of the plea agreement if the suspect confessed to the commission of the criminal offence.

(2) The conclusion of a plea agreement may be initiated by the defendant, his defence counsel, or the prosecution service. The prosecution service may also present its initiative while the defendant is being interrogated under section 385.

(3) If the prosecution service does not agree with the initiative by the defendant or his defence counsel, it shall inform the defendant and his defence counsel accordingly.

(4) If upon an initiative by the defendant, the prosecution service or, upon the initiative by the prosecution service, the defendant does not exclude the possibility of a plea agreement, the involvement of a defence counsel in the proceeding aimed at concluding a plea agreement shall be mandatory. If the defendant does not wish to authorise a defence counsel, the prosecution service shall appoint a defence counsel without delay and shall ensure that the defence counsel has access to the case documents of the investigation.

(5) If no plea agreement is reached, the appointment of a defence counsel under paragraph (4) shall be effective until the completion of negotiation.

(6) In order to comply with the provisions laid down in paragraphs (2) to (4), the prosecution service may also make use of the investigating authority.

Section 408 (1) With a view to entering into a plea agreement, the prosecution service, the defendant, and his defence counsel may engage in negotiation regarding the confession of guilt and the content of a plea agreement, with the exception of the facts of the case and classification under the Criminal Code of the criminal offence with regard to which the plea agreement is concluded. The prosecution service may negotiate separately with the defence counsel regarding such matters, subject to the consent of the defendant.

(2) Upon the commencement of negotiation, the prosecution service shall inform the defendant and his defence counsel about the possible content and consequences of a plea agreement.

Section 409 (1) If the prosecution service and the defendant agree on the content of a plea agreement, the prosecution service shall advise the defendant during his interrogation as a suspect of the consequences of the plea agreement planned.

(2) The prosecution service shall record the plea agreement reached in the course of the negotiation in the minutes of the suspect interrogation, in a way that it contains also the advice specified in paragraph (1) and the statement made by the defendant in that regard. The minutes shall be authenticated by the prosecutor, the defendant, and the defence counsel together pursuant to the provisions of section 360.

(3) The plea agreement recorded in the minutes shall have no legal effect apart from serving as basis for conducting a corresponding proceeding.

(4) If the prosecution service and the defendant do not enter into a plea agreement, the initiative and the case documents produced in that regard may not be used as evidence or a means of evidence and do not constitute a part of the case documents of the proceeding. In such a situation, the prosecution service shall not inform the court about the initiative to enter into a plea agreement.

The content of the plea agreement

Section 410 (1) In a plea agreement, the defendant may confess his guilt of all or any of the criminal offences underlying the criminal proceeding.

(2) The plea agreement shall contain the following:

a) description of the facts of the case and classification of the criminal offence under the Criminal Code,

b) statement made by the defendant confessing his guilt and expressing his willingness to give a testimony concerning the criminal offence,

c) the penalty, or measure that may be applied on its own

regarding which the plea agreement is entered into.

(3) The facts of the case and the classification of the criminal offence under the Criminal Code specified in the plea agreement shall be established by the prosecution service.

(4) If the plea agreement is aimed at imposing a penalty, the plea agreement shall specify, with due regard to section 83 of the Criminal Code, the type, value, or period of the penalty accepted by the prosecution service, the defendant, and the defence counsel. If permitted by the Criminal Code, the plea agreement may also take into account provisions on the reduction of punishment or on the suspension of enforcement.

(5) If the conditions specified in the Criminal Code are met, the plea agreement may also be aimed at applying a measure that may be applied on its own; in that event, the plea agreement shall specify the type, value, or period of the measure accepted by the prosecution service, the defendant, and the defence counsel.

Section 411 (1) The plea agreement may include provisions on the following:

a) secondary penalty, or measure that may be applied in addition to a penalty or measure,

b) any other provision that may be passed under the Criminal Code when sentencing,

c) termination of the proceeding or dismissal of any crime report regarding certain criminal offences,

d) bearing of criminal costs, and

e) any other obligation undertaken by the defendant.

(2) If the conditions specified in the Criminal Code are met, the plea agreement may also be aimed at imposing or applying a secondary penalty, or a measure that can be applied in addition to a penalty or another measure; in such a situation, the plea agreement shall specify the type, value, or period of the secondary penalty or measure accepted by the prosecution service, the defendant, and the defence counsel.

(3) The prosecution service may settle with the defendant

a) to terminate the proceeding regarding a criminal offence that is, in comparison to another criminal offence of greater material gravity also subject to the indictment, not significant for establishing criminal liability, or

b) taking into account the cooperation of the suspect, to terminate the proceeding regarding certain criminal offences on a ground specified in section 399 (1), or to dismiss a crime report on a ground specified in section 382 (1).

(4) The plea agreement may also relieve the defendant from bearing the criminal costs in whole or in part; in such a situation, the criminal costs specified in the plea agreement shall be borne by the State.

(5) In a plea agreement, the defendant may agree to

a) facilitate proving the given, or another, criminal case by cooperating extensively with the prosecution service or the investigating authority,

b) satisfy a civil claim of a civil party, or a civil claim the aggrieved party intends to enforce pursuant to a prior notice by him, before the preparatory session on the approval of the plea agreement,

c) participate in a mediation procedure, or

d) perform, within the time limit specified by the prosecution service, another obligation that may be imposed under the framework of conditional suspension by the prosecutor.

(6) A plea agreement may not be entered into regarding compulsory psychiatric treatment, confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, any other question other than bearing the cost of the criminal proceeding subject to a simplified review proceeding, a civil claim and the termination of parental custody rights.

Chapter LXVI

MEDIATION PROCEDURES

Conditions for conducting a mediation procedure

Section 412 (1) A mediation procedure may be conducted upon the motion by the suspect or the aggrieved party, or with their voluntary consent, with a view to facilitating the conclusion of an agreement between the suspect and the aggrieved party, the reparation of the consequences of the criminal offence, and the future law abiding conduct of the suspect. The suspect may submit his consent or motion serving as a ground for the mediation procedure through also his defence counsel.

(2) With a view to conducting a mediation procedure, the prosecution service shall suspend the proceeding if

a) the suspect or the aggrieved party initiates, or consents to, a mediation procedure,

b) the suspect confessed to having committed the criminal offence before the indictment, and

c) having regard to the nature of the criminal offence, the manner of its commission, and the personal circumstances of the suspect,

ca) reparation of the consequences of the criminal offence can be expected, and

cb) conducting a criminal proceeding may be dispensed with, or conducting a mediation procedure is not inconsistent with the principles of sentencing.

(3) Suspending the proceeding for the purpose of conducting a mediation procedure shall not be prevented by the fact that the suspect has already voluntarily paid for, in whole or in part, the damage or pecuniary loss caused by his criminal offence or the value affected by the criminal offence, or he provided reparation for the injury caused by his criminal offence, in a manner and to an extent accepted by the aggrieved party.

(4) If the conditions set out in paragraph (2) are met, the prosecution service may order that a mediation procedure is conducted, even without the suspension of the criminal proceeding. This provision shall not apply if, in a mediation procedure, reparation was made for the harm caused by the criminal offence and section 29 (1) or (1a) of the Criminal Code applies.

Proceedings prior to a mediation procedure

Section 413 (1) If the suspect or the aggrieved party initiates, or consents to, a mediation procedure without the conditions of conducting a mediation procedure, as specified in this Act, being met, the prosecution service shall pass a decision refusing to order the mediation procedure.

(1a) The prosecution service may refuse to order the mediation procedure also if the conditions of conducting the mediation procedure, as specified in this Act, are met, but it applies conditional suspension by the prosecutor.

(2) If the suspect or the aggrieved party initiates a mediation procedure, the prosecution service shall make the necessary arrangements to obtain a statement of consent from the suspect or the aggrieved party, provided that the conditions for mediation procedure under this Act are otherwise met. After obtaining such a statement, the prosecution service shall decide whether to order or refuse to order the mediation procedure.

(3) If the aggrieved party initiates a mediation procedure before the suspect is interrogated, the prosecution service, after interrogating the suspect, shall make the necessary arrangements to obtain a statement of consent from the suspect and decide whether to order or refuse to order the mediation procedure.

(4) The prosecution service shall communicate its decision as to whether to order or refuse to order the mediation procedure to the suspect and the aggrieved party who initiated, or consented to, the mediation procedure.

Section 414 (1) The prosecution service may suspend a proceeding once for a period of six months for the purpose of conducting a mediation procedure.

(2) The prosecution service shall communicate the decision ordering the mediation procedure also to the probation service with subject-matter and territorial competence to conduct the mediation procedure.

(3) A statement made by the suspect or the aggrieved party in the course of a mediation procedure may not be used as evidence in the case. The result of a mediation procedure may not be taken into account to the detriment of the suspect.

(4) The detailed rules of conducting a mediation procedure shall be laid down by an Act.

Proceedings after an agreement is reached in a mediation procedure

Section 415 (1) If the prosecution service suspended the proceeding and an agreement, as defined in the Act on mediation procedures, is concluded by and between the aggrieved party and the suspect in the course of a mediation procedure, the mediator shall submit the agreement to the prosecution service.

(2) The prosecution service shall set aside the agreement if it is in conflict with the Act on mediation procedures. The prosecution service shall communicate the decision to the mediator and to all parties to the agreement set aside.

(3) If the prosecution service does not set aside the agreement within five working days after receiving the agreement, it shall be deemed that the prosecution service did not raise any objection regarding the legality of the agreement.

(4) If an obligation set out in the agreement may not be performed while the proceeding is suspended, the prosecution service may extend the period of suspension for an additional period of up to eighteen months.

(5) If the prosecution service establishes after the expiry of the suspension period specified in section 414 (1) that the conditions laid down in paragraph (4) are met, it may suspend the proceeding once again for a period of up to two years, calculated from the first day of suspension, with the aim of performing the agreement concluded in the mediation procedure.

(6) If the mediation procedure is concluded while the proceeding is suspended, and the proceeding may not be terminated or suspended for any other reason, the prosecution service shall order the proceeding to be resumed.

(7) If the suspect is not at fault for a lack of agreement in the mediation procedure, the prosecution service may order conditional suspension by a prosecutor.

Section 415/A Where a prosecution office ordered a mediation procedure without suspending the criminal proceeding, the mediator shall send the agreement referred to in section 415 (1) to the prosecution office that ordered the mediation procedure. If an agreement is received after indictment, the prosecution office shall send it to the court.

Chapter LXVII

CONDITIONAL SUSPENSION BY THE PROSECUTOR

Conditions for conditional suspension by the prosecutor

Section 416 (1) The prosecution service may suspend the proceeding by a decision if the proceeding is expected to be terminated in light of the future behaviour of the suspect.

(2) Conditional suspension by the prosecutor shall be permitted if

a) the proceeding is conducted for a criminal offence punishable under an Act by up to three or, in cases deserving special consideration, five years of imprisonment, and

b) the behaviour of the suspect is expected to change in a favourable manner as a result of conditional suspension by the prosecutor, having regard to the nature of the criminal offence, the manner of its commission, and the personal circumstances of the suspect.

(3) Conditional suspension by the prosecutor under paragraph (2) shall not be permitted if the suspect

a) is a multiple recidivist,

b) committed the criminal offence in a criminal organisation,

c) committed a criminal offence causing death, or

d) committed an intentional criminal offence during the probation period of a suspended imprisonment or after being sentenced to imprisonment to be served for committing an intentional criminal offence, but before enforcement of the sentence was completed, or during the period of release on probation or conditional suspension by the prosecutor.

(4) If conditional suspension by the prosecutor is permitted, the prosecution service may suspend the proceeding once, determined in years or years and months, for a period within the penalty range specified in the Special Part of the Criminal Code, but for at least one year.

Conditional suspension by the prosecutor with regard to other reasons for terminating liability to punishment

Section 417 (1) The prosecution service shall suspend the proceeding, *ex officio* or upon request by the defendant or his defence counsel for a period of one year with a view to meeting a condition specified by an Act if, after the start of the proceeding, the defendant behaves in a manner that constitutes a reason for terminating his liability to punishment under the Special Part of the Criminal Code, and the defendant can be expected to behave in a manner that would result in the termination of his liability to punishment.

(2) The proceeding may not be suspended under paragraph (1) if the defendant committed the criminal offence during a period of conditional suspension by the prosecutor for a criminal offence of the same kind, or while the proceeding was suspended under section 488 (2).

(3) If the behaviour of a defendant following the start of the proceeding constitutes a reason for terminating his liability to punishment under the Special Part of the Criminal Code, conditional suspension by the prosecutor may not be applied under section 416 (2).

Setting rules of behaviour when applying conditional suspension by the prosecutor

Section 418 (1) If the prosecution service intends to impose rules of behaviour in addition to applying conditional suspension by the prosecutor, it shall make arrangements to clarify whether

a) the suspect is capable of complying with the rule of behaviour or the obligation planned,

b) the suspect consents to the planned psychiatric treatment or to the planned treatment of his alcohol dependence, and

c) the aggrieved party consents to reparation, if it is possible,

d) the suspect and the aggrieved party consent to participate in a restorative procedure, with the proviso that obtaining a statement of consent may be dispensed with if the mediation procedure is initiated by the suspect or the aggrieved party.

(2) With a view to clarifying the factors specified in paragraph (1), the prosecution service may order an opinion to be obtained from a probation officer.

Section 419 (1) In a situation specified in section 416 (2), the prosecution service may oblige the suspect to comply with certain rules of behaviour or obligations.

(2) The prosecution service may require the suspect, by way of imposing a rule of behaviour or an obligation,

a) to pay for the damage, pecuniary loss, tax revenue loss, or customs revenue loss caused by his criminal offence, or the value affected by the criminal offence,

b) to provide reparation to the aggrieved party in another way,

c) to provide material means to a specific cause, or perform work to the benefit of the public,

d) to undergo psychiatric treatment or treatment for alcohol dependence, subject to his prior consent,

e) to participate in a restorative procedure as provided for by law, that is conducted by the probation service, to comply with the restorative plan established as a result of that procedure, and to provide evidence of such compliance to the probation service.

(2a) If an obligation under paragraph (2) *e)* is prescribed, the aggrieved party may be involved in the procedure only with his consent; however, the absence of consent from the aggrieved party or the absence of an aggrieved party in relation to the criminal offence shall not preclude the prescription of the obligation.

(3) A prosecution service may impose one or more rules of behaviour or obligations from among, or other than, those specified in paragraph (2).

(4) At the time of ordering conditional suspension by the prosecutor, a prosecution service may also order the supervision by a probation officer of the suspect.

(5) In case conditional suspension by the prosecutor is applied, if the amount of damage, pecuniary loss, tax revenue loss, or customs revenue loss caused by the criminal offence, or the value affected by the criminal offence, can be quantified and was not recovered during the proceeding, the prosecution service shall oblige a suspect to pay that amount or restore the original situation, provided that the suspect is able to do so and the aggrieved party consents to this option. The prosecution service may order also the performance of the obligation under paragraph (2) *e)*.

(6) The prosecution service may deviate from the provisions laid down in paragraph (5) only in cases deserving special consideration.

Proceedings after applying conditional suspension by the prosecutor

Section 420 (1) The defendant may not be punished for a criminal offence serving as ground for conditional suspension by the prosecutor, provided that he observed the rules of behaviour prescribed under conditional suspension by the prosecutor pursuant to section 416, or the period of suspension expired successfully, unless

a) the conditional suspension by the prosecutor was ordered in an unlawful manner, or

b) the resumption of the proceeding is to be ordered under paragraph (2).

(2) If the proceeding may not be terminated or suspended for any other reason, the prosecution service shall order the proceeding to be resumed if

a) the suspect, or with consent from the suspect, his defence counsel, files a complaint against the conditional suspension by the prosecutor,

b) during the period of conditional suspension by the prosecutor, the suspect is interrogated as a suspect for an intentional criminal offence committed during the period of conditional suspension by the prosecutor, including any situation where the reasonable suspicion may not be communicated because the whereabouts of the suspect are unknown or he is staying abroad,

c) the suspect violates seriously the rules of supervision by a probation officer or a rule of behaviour imposed in the decision applying conditional suspension by the prosecutor, or fails, and is unlikely, to perform his obligations.

(3) A complaint may be filed against an order, under paragraph (2) *c)*, to resume a proceeding.

(4) In a case where conditional suspension by the prosecutor is applied under section 417, the prosecution service shall order the proceeding to be resumed if

a) the suspect fails to behave in a manner that would terminate his liability to punishment, and he is not likely to behave in such manner, or

b) the suspect is interrogated as a suspect for a criminal offence of the same kind committed during the period of conditional suspension by the prosecutor or, if the proceeding against the suspect was suspended by the prosecution service taking into account section 180 (1) of the Criminal Code, for drug trafficking, or such interrogation is not possible because the whereabouts of the suspect are unknown or he is staying in another country.

Chapter LXVIII

INDICTMENT

Section 421 (1) The prosecution service shall bring an indictment by filing an indictment document with the court.

(2) No legal remedy shall lie against the indictment.

Content of the indictment document

Section 422 (1) The statutory elements of an indictment document shall include the following:

a) specification of the accused allowing for his identification,

b) accurate description of the act serving as ground for the indictment,

c) classification of the act serving as ground for the indictment under the Criminal Code,

d) a motion by the prosecution service for a penalty or measure, or for the acquittal of a defendant who may not be punished due to a mental disorder.

(2) In addition to the statutory elements specified in paragraph (1), the indictment document shall also include

a) the identification of available means of evidence regarding the acts or partial acts serving as ground for the indictment,

b) motions by the prosecution service for evidence regarding certain acts, partial acts, or sentencing factors,

c) reference to the laws establishing the subject-matter and territorial jurisdiction of the court, and reference to the provisions establishing the subject-matter and territorial competence of the prosecution office filing the indictment document,

d) communications from the prosecution service,

e) other motions by the prosecution service.

(3) In the indictment document, the prosecution service may also include motions regarding the value or period of a penalty or measure to be applied if the defendant confesses to the commission of the criminal offence during the preparatory session.

(4) If the suspect is subject to a coercive measure affecting personal freedom subject to judicial permission, and maintaining that measure is considered necessary by the prosecution service, the indictment document, also including a motion to that effect, shall be filed with a court fifteen days before the coercive measure expires.

Actions by the prosecution service when filing the indictment document

Section 423 (1) When bringing the indictment, the prosecution service shall ensure that the case documents of the investigation and the means of evidence are available to the court.

(2) If an accused uses his mother tongue that is not the Hungarian language, a national minority mother tongue, or another mother tongue specified in an international treaty promulgated in an Act, all parts of the indictment document affecting that accused shall be translated into, and filed with the court in, the language used by the accused during the proceeding.

(3) The prosecution service shall inform the defendant, his defence counsel, the aggrieved party, the party reporting the crime, and the person who filed a private motion about bringing the indictment.

Indictment after concluding a plea agreement

Section 424 (1) If the prosecution service and the defendant enter into a plea agreement, the prosecution service shall bring the indictment with the facts of the case and classification specified in the plea agreement that is recorded in the minutes.

(2) The indictment document shall contain a motion by the prosecution service for the court to

a) approve the plea agreement,

b) impose a penalty or apply a measure corresponding to the plea agreement,

c) pass any other provision according to the plea agreement.

(3) The minutes containing the plea agreement shall be filed with the court by the prosecution service together with the indictment document.

PART ELEVEN

THE GENERAL RULES OF COURT PROCEEDINGS

Chapter LXIX

THE FORMS OF COURT PROCEEDINGS, AND THE PROCEEDINGS OF JUNIOR JUDGES

The forms of court proceedings

Section 425 (1) A court shall hold a trial if evidence is taken for the purpose of establishing the criminal liability of an accused.

(2) In situations specified in this Act, the court shall hold a public session, a session, or a panel session.

(3) The provisions on trials shall apply to public sessions subject to the derogations laid down in this Act.

Proceedings of junior judges

Section 426 A junior judge may proceed in a criminal proceeding regarding the following matters:

a) appointing a defence counsel and discharging a defence counsel from his appointment,

b) data requests,

c) determining the amount of criminal costs,

d) measures concerning legal aid,

e) appointing an expert,

f) rectifying or supplementing a decision that may be passed by a junior judge,

g) performing request for administrative assistance from other courts, and

h) in matters permitted in this Act.

Chapter LXX

ATTENDANCE AT COURT PROCEEDINGS

Section 427 (1) The single judge, the members of a panel, and, unless otherwise provided in this Act, a keeper of minutes, shall be present for the entire duration of a trial, a court session, or a panel session.

(2) If a member of a panel is inevitably prevented from attending a trial, a conclusive decision may be announced in a trial by a panel consisting of other members.

(3) Unless otherwise provided in this Act, a court session may not be held in the absence of a defendant, a prosecutor, or, if participation of a defence counsel in the criminal proceeding is mandatory, a defence counsel.

(4) Upon a motion by a defendant who is a foreign national, his defence counsel or an aggrieved party or witness who is a foreign national, a consular officer of the state of the foreign national may attend the trial or court session.

(5) In addition to the provisions laid down in section 44, the participation of a defence counsel in a court proceeding shall be mandatory

a) before a regional court proceeding as a court of first instance, or

b) if the accused waived his right to attend the trial.

Attendance of an accused at a trial

Section 428 (1) The attendance of an accused at a trial shall be mandatory if

a) he has not waived his right to attend the trial pursuant to section 430 (1),

b) he is obliged by the court to attend the trial.

(2) A court may oblige an accused, who has waived his right to attend the trial, to attend a trial if

a) it is necessary for the purpose of conducting an evidentiary act or interviewing an expert, or

b) the agent for service of process for the accused submitted a notice pursuant to section 430 (5) that he cannot perform his duty provided for under section 136 (5) due to an unavertable reason and through no fault of his own.

(3) No appeal shall lie against an order specified in paragraph (1) *b)*.

Section 429 (1) If a proceeding is conducted against more than one accused, parts of a trial that do not affect an absent accused may be held in his absence. In that event, such parts of the trial may be held in the absence of the defence counsel of an absent accused, even if the participation of a defence counsel in the criminal proceeding is mandatory.

(2) A trial may be held in the absence of an accused if it might become necessary to commit the accused to compulsory psychiatric treatment during the proceeding, and he cannot appear at the trial, or is unable to exercise his rights, because of his condition.

(3) A trial may be held in the absence of an accused who is at liberty and was duly summoned, but the evidentiary procedure may not be concluded, with the exception specified in paragraph (4).

(4) A court may acquit or terminate the criminal proceeding against an accused in his absence; a decision to that effect, including information about available legal remedies, shall be communicated to the accused and his defence counsel by way of service.

Section 430 (1) An accused may waive his right to attend the trial at any time after the indictment, provided that

a) he is represented by a defence counsel, and

b) he mandates his defence counsel to act as an agent for service of process.

(2) An accused may make a statement under paragraph (1) orally before a court, or in a deed countersigned by his defence counsel in his capacity as an attorney-at-law.

(3) If an accused waives his right to attend the trial, the minutes or the document addressed to the court shall indicate clearly that the accused made his statement to that effect being aware of the provisions laid down in paragraphs (4) to (7).

(4) If an accused waives his right to attend the trial, the court, after a statement to that effect is made or received by the court, shall serve all case documents addressed to the accused, other than orders obliging the accused to attend a trial, or a summons, on his agent for service of process.

(5) If an agent for service of process cannot perform his duty provided for under section 136 (5) due to an unavertable reason and through no fault of his own, the agent for service of process shall notify the court about the obstacle within eight days after it occurs.

(6) A disciplinary fine may be imposed on an agent for service of process if he violates his obligation specified in paragraph (5).

(7) If an accused waived his right to attend a trial and he was not obliged by the court to attend the trial, the trial shall be held even in the absence of the accused. In that event, the court may conclude the proceeding conducted against the absent accused.

Section 431 (1) An accused may submit a notice of his intent to attend the trial until the announcement of a conclusive decision; the statement under section 430 (1) shall cease to have effect when the notice is received by the court.

(2) Any statement by an accused expressing his intent to directly observe or actively participate in the trial, the taking of evidence, or the examination of individual means of evidence, and in particular to give a testimony or make an observation, as well as any testimony given or observation made by the accused shall be deemed as a notice under paragraph (1).

(3) If an accused submitted a notice of his intent to attend the trial, he may not subsequently waive his right to attend the trial without the permission of the court. No appeal shall lie against an order concerning the matter of permission.

(4) If an accused submitted a notice of his intent to attend the trial, the court may present a summary of the minutes of the trial held in the absence of the accused, and it may order the taking of evidence to be carried out again in whole or in part.

Ensuring the attendance of an accused

Section 432 (1) If the attendance of an accused at a trial is mandatory, but he fails to appear despite being duly summoned, the court shall take measures to ensure the attendance of the accused by way of

a) forced attendance, or

b) issuing an arrest warrant.

(2) If it is reasonable to assume that forced attendance would not be successful on the set trial date within a reasonable time, the proceeding single judge, or the chair of the panel, shall order the forced attendance of an absent accused on the next trial date.

(3) If the forced attendance of an absent accused has already been ordered during the court proceeding, an arrest warrant shall be issued, provided that the criminal offence is punishable by imprisonment.

(4) If the forced attendance of an accused could not be enforced on the new trial date set because he moved from his home address or place of actual residence to an unknown location, or the forced attendance of an accused on the basis of an arrest warrant could not be successfully enforced by the new trial date, the court shall establish that the whereabouts of the accused are unknown, and it shall proceed pursuant to Chapter CI.

Section 433 (1) A court shall issue an arrest warrant, and initiate a proceeding for the extradition or surrender of an accused pursuant to a European arrest warrant if

a) the attendance of the accused at a trial is mandatory,

b) the accused fails to appear despite a summons being duly issued to his place of residence abroad, and

c) the court does not consider it justified to apply section 488 (1) *a)*.

(2) If the extradition, or transfer under a European arrest warrant, of an accused was refused, or such extradition or transfer is not possible, the court may initiate the transfer of the criminal proceeding, provided that the applicable conditions are met.

(3) An arrest warrant may not be issued against an accused staying at a known location in another country if the prosecution service did not move for a sentence of imprisonment in its indictment document

Attendance of a defence counsel at a trial

Section 434 Unless otherwise provided in this Act, the attendance of a defence counsel at a trial shall be mandatory if the participation of a defence counsel in the criminal proceeding is mandatory.

Attendance of a prosecutor at a trial

Section 435 (1) The attendance of a prosecutor at a trial shall be mandatory.

(2) In a district court, a junior prosecutor may also represent the prosecution.

(3) In a district court, a trainee prosecutor may also represent the prosecution, unless

a) the criminal offence is punishable, under an Act, by imprisonment for up to five years or more,

b) the accused is detained,

c) the accused has a mental disorder, regardless of his capacity to be held liable for his acts.

Chapter LXXI

THE PUBLICITY OF TRIALS

Section 436 (1) Trials shall be open to the public.

(2) With a view to duly conducting a trial, maintaining its dignity and security, or meeting space-related constraints, the proceeding single judge, or the chair of the panel, may limit the number of audience members.

(3) A person who has not attained the age of fourteen years may not attend a trial as a member of the audience; a person who has not attained the age of eighteen years may be banned from the audience by the proceeding single judge or chair of the panel.

(4) By passing a reasoned decision *ex officio* or upon a motion by the prosecution service, an accused, a defence counsel, an aggrieved party, a party with a pecuniary interest or another interested party, the court may exclude the public from a trial, or any part of a trial, and may order a closed trial for

a) reasons related to morality,

b) protecting a person requiring special treatment, or

c) protecting classified data or other protected data

(hereinafter “closed trial”).

(5) A motion to exclude the public may be submitted at any stage of a proceeding.

Section 437 (1) A decision passed by a court on ordering a closed trial shall be announced at a public trial. No appeal shall lie against a decision on ordering a closed trial.

(2) Even if a closed trial was ordered, the court may permit public officers performing tasks relating to the administration of justice to attend the trial. In a proceeding instituted against a foreign national accused, or for a criminal offence committed against a foreign national aggrieved party, a consular officer of the country of the foreign national or, on the basis of an international treaty promulgated in an Act, a member of an authority of the foreign country shall be permitted to attend the trial.

(3) If a closed trial is ordered, an aggrieved party acting without a representative, or an accused acting without a defence counsel, may move that a person present at the place of the trial, identified by him and other than a person to be interrogated at the trial, be allowed to attend the trial. Such a motion may not be submitted if a closed trial was ordered by the court for the protection of classified data. No appeal shall lie against a decision on such a motion.

(4) If the court orders a closed trial, it shall advise all persons present that they may not disclose any information heard during the trial; the court shall also advise them of the criminal consequences of the misuse of classified data, if required. Such an advice shall be indicated in the minutes.

Section 438 (1) A trial shall be continued in public, if the reason for ordering a closed trial has ceased.

(2) Even if the public was excluded from a trial, the entire operative part and, with the restriction specified in paragraph (3), the statement of reasons of a decision adopted by a court in a trial shall be announced in public.

(3) The court shall not announce in public any data contained in the statement of reasons of a decision that, if published, would harm the interest for the protection of which the closed trial was ordered by the court.

Chapter LXXII

CONDUCTING, AND MAINTAINING THE DIGNITY AND ORDER OF, A TRIAL

Conducting, and maintaining the dignity of, a trial

Section 439 (1) A trial shall be conducted by the proceeding single judge or the chair of the panel, who shall determine the order of acts to be carried out under the framework of this Act.

(2) A single judge or the chair of a panel shall ensure that the provisions of the Act are observed, and that the persons participating in the criminal proceeding can exercise their rights.

(3) A single judge or chair of a panel shall ensure that the dignity of the trial is maintained; to this end, he shall have a person disrespecting the trial removed from the courtroom.

(4) A single judge or the chair of a panel shall call to order and may impose a disciplinary fine on a person who violates the human dignity of a person attending the trial in a manner that results in disrespecting also the trial.

Maintaining the order of a trial

Section 440 (1) A single judge or the chair of a panel shall call to order and may impose a disciplinary fine on a person who disturbs the order or due course of a trial.

(2) In case of repeated or grave disturbance, a single judge or the chair of a panel may

a) expel or order the disturber to be removed from the courtroom, or

b) exclude the audience if disturbance was caused by members of the audience.

(3) A single judge or the chair of a panel may also order that a person who, or the audience which, disturbed the order or due course of a trial in a manner specified in paragraph (2) may not return to the courtroom on that given trial day any more.

(4) A court shall continue a trial even in the absence of an accused expelled or removed from the courtroom; the accused shall be called back to the court before the conclusion of the evidentiary procedure, and the summary of the taking of evidence conducted in his absence shall be presented to him.

(5) If the accused does not cease his disturbing conduct and, by his conduct, he makes it impossible to continue the trial in his presence, the trial may be finished in his absence with his defence counsel present.

Disturbance by a prosecutor or defence counsel

Section 441 (1) A prosecutor who disturbs a trial may be called to order. If a trial could not be continued because of the disturbing conduct of a prosecutor, the proceeding single judge or the chair of the panel shall interrupt the trial and request the head of the prosecution office to designate another prosecutor. If it is not possible to designate another prosecutor immediately, the trial shall be adjourned.

(2) A defence counsel who disturbs a trial may be called to order; in case of repeated or grave disturbance, a disciplinary fine may be imposed on him, but he may not be expelled or removed from the trial. If a trial could not be continued because of the disturbing conduct of a defence counsel, the proceeding single judge or the chair of the panel shall interrupt the trial. In that event, the accused may authorise another defence counsel or, if the attendance of a defence counsel at the trial is mandatory, another defence counsel shall be appointed. If this is not possible immediately, the trial shall be adjourned at the expense of the disrupting defence counsel.

Committing a criminal or disciplinary offence in a trial

Section 442 (1) If a disturbing behaviour displayed on a trial may serve as grounds for a criminal or disciplinary proceeding, the proceeding single judge or chair of the panel shall notify the competent authority or the person exercising disciplinary powers.

(2) If the behaviour may serve as a ground for a criminal proceeding, the court may order the disturber to be taken into custody.

Section 443

Chapter LXXIII

MINUTES AND INSPECTION OF CASE DOCUMENTS

Methods of taking minutes, and recordings of procedural acts

Section 444 (1) The proceedings of a court shall be recorded in minutes.

(2) In accordance with the law, a procedural act may be recorded by

a) keeping minutes simultaneously,

b) preparing a continuous sound or audio-visual recording, in addition to keeping minutes simultaneously, or

c) preparing a continuous sound recording or an audio-visual recording, in place of keeping minutes simultaneously.

(3) In addition to situations specified by law, a court may also order, *ex officio* or upon a motion submitted at least five days before a given procedural act by the prosecution service, accused, defence counsel, or aggrieved party summoned to, or notified about, a procedural act, recording the given procedural act by preparing a continuous sound recording or an audio-visual recording.

(4) A continuous sound recording or an audio-visual recording shall record all events taking place in the course of the given procedural act without interruption, with the exceptions specified in paragraph (5).

(5) The making of a continuous sound recording or audio-visual recording shall be interrupted for the period when the court adopts its conclusive decision, and may be interrupted for the period of making any other decision. If the court interrupts a procedural act for an important reason for a short period, the continuous sound recording or audio-visual recording may also be interrupted for the same period.

(6) If prepared in accordance with paragraph (2) *c)*,

a) a continuous sound recording shall not qualify as minutes,

b) an audio-visual recording shall qualify as minutes if certified by the court as set out by law.

Requirements concerning the form and content of minutes

Section 445 (1) The following shall be recorded in minutes:

a) proceeding court, and case number,

b) subject matter of the indictment, indicating the criminal offence and the name or other description suitable for the identification of the accused,

c) venue of the court proceeding, set and actual date and time of opening the trial, the reason for the difference, if any, and date and time of closing the minutes,

d) form of the court proceeding, and whether the proceeding is open to the public,

e) names of the proceeding members of the court, the keeper of minutes, and any present prosecutor, defence counsel, interpreter, expert, and witness,

f) name or other description suitable for the identification of the accused present,

g) other personal data specified in this Act,

h) name of other persons attending the procedural act, and the capacity in which they are attending,

i) whether there is any audience.

(2) The minutes shall contain the following:

a) description of the course of the procedural act and the events taking place, in a way that allows also for the verification of compliance with applicable procedural rules on the basis of the minutes,

b) testimony of the accused or witness, and opinion of the expert,

c) reference to the fact that a means of evidence is presented, and the content of the means of evidence that is relevant to the proceeding,

d) motions filed and observations made in the course of the procedural act,

e) closing argument, address, and anything said by way of exercising the right to the last word,

f) any measure taken to maintain the order of the proceeding, the fact that a previous proceeding is presented, and the fact that any conclusive decision is announced,

g) any statement of reasons of a conclusive decision made orally.

(3) The minutes may also record orders passed in the course of a proceeding.

(4) If written minutes are taken, the data specified in paragraph (2) shall be recorded in a succinct but sufficiently detailed manner. If the exact wording of a question, expression, or statement is important then it shall be recorded in the written minutes verbatim.

(5) If written minutes are taken, and a means of evidence is presented or a means of physical evidence is attached, only the fact of doing so shall be referred to in the minutes.

(6) If written minutes are taken and a person attending the procedural act moves for recording in the minutes a circumstance occurred or a statement made during the proceedings, the motion shall be complied with, unless the court does not have any knowledge of the respective circumstance occurring or statement being made.

(7) If written minutes are taken, the minutes need not include any part of a testimony or expert opinion that is identical to the content of the minutes taken earlier during the court proceeding; instead, a reference shall be made to the previous minutes.

(8) If the conclusive decision of a court of first or second instance becomes final and binding, abbreviated minutes may be prepared. The abbreviated minutes shall contain only the data specified in paragraph (1), and a description of the court proceeding pursuant to paragraph (2) *a)*.

(9) If an audio-visual recording qualifying as minutes is made of a procedural act, a written extract shall be produced of the minutes; the extract shall contain the following:

a) data specified in paragraph (1),

b) date and time of beginning to interrogate the accused or a witness, interview an expert, perform an evidentiary act, or deliver a closing argument, and

c) any non-conclusive order passed by the court in the course of the procedural act.

(10) In a situation specified in paragraph (9), the written extract of the minutes may contain the data specified in paragraph (2) in a manner specified in paragraph (4).

The preparation, supplementation, and rectification of the minutes

Section 446 (1) If in place of keeping minutes simultaneously, a continuous sound recording or an audio-visual recording is made of a procedural act, the attendance of a keeper of minutes at the procedural act shall not be mandatory.

(2) A written minutes shall be prepared by a keeper of minutes normally at the same time when the given procedural act is performed, but not later than eight days after its performance.

(2a) A written minutes prepared on the basis of a continuous sound recording recorded simultaneously in place of keeping minutes, or an audio-visual recording not qualifying as minutes, shall be prepared within eight days of the day of the procedural act.

(3) If an audio-visual recording qualifying as minutes is made of a procedural act without engaging a keeper of minutes, a written extract of the minutes shall be produced on the basis of that recording within the time limit specified in paragraph (2).

(4) If the minutes are not prepared within eight days, the proceeding single judge or the chair of the panel shall inform the prosecution service, the accused, and the defence counsel about the time by when the minutes are prepared.

(5) If a continuous sound recording or audio-visual recording is made, all persons attending the given procedural act shall be informed, within eight days after completing the procedural act, of where, when and how they may listen to or view the recording. The provisions on inspecting and copying case documents shall apply to continuous sound recordings and audio-visual recordings. When this Act requires a fact or statement to be recorded or indicated in minutes, it shall also mean its recording on a continuous sound recording or an audio-visual recording.

(6) If there is any difference between the content of a continuous sound recording or audio-visual recording and the written minutes, or a written extract of the minutes, the reason for such difference shall be clarified.

(7) If the written minutes or a written extract of the minutes are produced at the same time when the given procedural act is performed, they may be supplemented or rectified *ex officio* or upon a motion, on the basis of a comment made by the prosecutor, accused, defence counsel, aggrieved party, party with a pecuniary interest, or other interested party at the time of performing the procedural act. A motion to that effect, if dismissed, shall be recorded in the written minutes or written extract of the minutes. Any wording that becomes unnecessary due to a modification shall be deleted in a manner that ensures the legibility of the deleted wording.

(8) A person participating in the criminal proceeding who attended the given procedural act may file a motion to rectify or supplement the written minutes or the written extract of the minutes within eight days after inspecting the written minutes, written extract of the minutes, or continuous sound recording or audio-visual recording. A motion to rectify or supplement may not be filed over fifteen days after the written minutes or written extract of the minutes are produced.

(9) Any rectification or supplementation shall be recorded on the written minutes or written extract of the minutes concerned, indicating the date of rectification, and preparing a new minutes; otherwise, the dismissal of the motion shall be indicated among the case documents.

(10) The court may order *ex officio* the written minutes or written extract of the minutes to be rectified.

(11) The written minutes, written extract of the minutes, and any modification to such minutes or extract shall be signed by the keeper of minutes and the proceeding single judge or chair of the panel. If the chair of the panel is prevented from signing, the written minutes or written extract of the minutes shall be signed in his place by another member of the panel, indicating his capacity as substitute.

Minutes of panel sessions

Section 447 (1) Minutes shall be taken of the panel session if a decision is not passed unanimously.

(2) The minutes of a panel session, the dissenting opinion of a judge of a minority opinion, and the draft decision of the court shall be handled confidentially.

(3) The minutes of a panel session and the dissenting opinion of a judge of a minority opinion may be inspected only by a court proceeding with regard to an appeal or an extraordinary legal remedy, a disciplinary court proceeding with regard to a disciplinary procedure, or a prosecution office or court proceeding with regard to a criminal proceeding already commenced.

Inspection of case documents in a court proceeding

Section 448 (1) Case documents may be inspected by the prosecution service in the course of a court proceeding pursuant to section 100.

(2) Enabling the inspection of a case document may not jeopardise the continuity of a trial or the work of the court.

Chapter LXXIV

ADOPTING A DECISION IN A COURT PROCEDURE

Court decisions

Section 449 (1) In the course of its proceeding, the court shall decide by way of

a) a conclusive decision,

b) a non-conclusive order, or

c) a court measure that does not require passing a decision.

(2) A conclusive decision shall be a judgment or a conclusive order.

(3) A court shall decide in particular on the matter of

a) disqualifying a judge,

b) appointing or discharging a defence counsel or an expert,

c) ordering forced attendance, or issuing a wanted notice,

d) issuing, withdrawing, or modifying an arrest warrant,

e) obliging an accused to attend a trial,

f) permitting an accused to again waive his right to attend a trial, and

g) ordering a closed trial

by passing a non-conclusive order.

(4) A case administration order means a non-conclusive order on setting the course of the proceeding after the arrival of a case to the court passed for the purpose of preparing or performing a procedural act, including in particular

a) an order on sending a case to a trial,

b) an order on setting, postponing, adjourning, or interrupting a preparatory session or a trial,

c) an order on issuing a summons to, or a notification about, a preparatory session or a trial,

d) an order on joining or separating cases,

e) an order on sending, or refusing to send, a case to a court panel,

f) an order on conducting, and maintaining the order of, a trial, with the exception of imposing a disciplinary fine or an obligation to bear costs, or ordering custody,

g) an order on establishing a classification other than that specified in the indictment,

h) an order on a motion for evidence.

Deliberation and voting

Section 450 (1) A court panel shall adopt a decision by voting after deliberation. If the voting is not unanimous, the decision shall be decided by the majority of votes.

(2) Younger judges shall vote before more senior judges, and the chair of the panel shall cast the last vote. If a vote on imposing a penalty, or applying a measure, is not unanimous, majority shall be determined in a way that a vote in favour of the most severe legal consequence shall support, and be calculated in favour of, the legal consequence closest to it.

(3) To administering and inspecting the written dissenting opinion of a judge of minority opinion, the provisions of section 447 (2) and (3) shall apply, with the proviso that the fact that a dissenting opinion was put into writing shall be recorded in the minutes of the trial at the time of the announcement of the decision at the latest.

(4) Deliberation and voting shall be secret. Only the chair and members of the proceeding panel, and a keeper of minutes may be present during deliberation and voting.

(5) When adopting its judgment, the court shall establish the facts of the case and decide, on the basis of the established facts, whether the accused is guilty, and if so, of what criminal offence; then, the court shall decide on the penalty to be imposed or measure to be applied, as well as on any other provision to be made.

(6) Any non-material issue raised in a trial may be decided by way of quiet deliberation during the trial.

Parts of a decision

Section 451 (1) Unless otherwise provided in this Act, a decision shall consist of an introductory part, an operative part, a legal remedies part, a statement of reasons, and a closing part.

(2) The introductory part shall specify

a) the name of the court,

b) the court case number,

c) the place and form of the court proceeding, and whether the proceeding was open to the public if the decision was passed in a trial,

d) the place and date of passing the decision.

(3) The operative part shall specify the decision of the court and the person subject to the provisions, including all data required for his identification.

(4) If the decision is communicated by means of service, the legal remedies part shall specify if any legal remedy is available against the decision, the participants of the proceeding who may seek such legal remedy, as well as the place of and time limit for doing so.

(5) The statement of reasons shall specify all material facts and circumstances the court established and relied on when passing its decision, as well as the laws underlying the decision.

(6) The closing part shall include the place and date of passing the decision, as well as the name and signature of the single judge or the chair of the panel and all members of the panel.

(7) After the indictment, sections 561 (2) *a)* and *b)*, and (3) *a)* and *b)* shall also apply to the content of a decision on a coercive measure affecting personal freedom.

(8) If an appeal against a non-conclusive order has suspensory effect under this Act, information on this matter shall be provided in the legal remedies part of the order.

(9) A statement of reasons need not be provided for a case administration order or a court measure that does not require passing a decision.

(10) A decision recorded in minutes shall not include an introductory or closing part.

Recording a decision in writing

Section 452 (1) Unless otherwise provided in this Act, a decision not recorded in minutes shall be recorded in writing within one month, or within two months if requiring a longer statement of reasons, after it is passed or announced. This time limit may be extended once by the president of the court for up to two months. The date when a decision is recorded in writing in full shall be indicated on the decision.

(2) If the court communicates the operative and legal remedy part of its decision by means of service, the first day of the time limit specified in paragraph (1) shall be

a) the day when the time limit open for seeking legal remedy expired without any application for legal remedy being submitted,

b) the day when a legal remedy statement is received by the court from all persons eligible to file an appeal.

Rectifying a decision

Section 453 (1) If a decision contains any misspelling or miscalculation, the court may order its rectification either *ex officio* or upon a motion. The merit of a decision may not be changed by a rectification.

(2) A rectification shall be recorded on the decision concerned, or a new decision shall be produced concerning the rectification. If a decision had already been served before rectification, the order on rectification shall be served on all persons to whom the rectified decision was sent by the court.

(3) No appeal shall lie against an order on rectification, unless the court

a) rectifies the operative part of a decision that may be challenged by an appeal, or

b) dismisses a motion to rectify the operative part of the decision.

(4) An appeal against an order ordering rectification may be filed by the prosecution service and any person concerning whom the decision or its rectification contains a provision, including a defence counsel acting for the accused concerned.

(5) A motion for rectification shall not have suspensory effect regarding the submission of an appeal against the decision concerned or the implementation or enforcement of the decision concerned.

(6) If the decision of a court of first instance includes an error specified in paragraph (1), the decision may also be rectified by a court of second instance in its decision on the merits of an appeal.

Communicating a decision

Section 454 (1) A decision shall be communicated to all persons concerned by any of its provisions.

(2) A conclusive decision and any decision transferring the case, designating a court, or suspending the proceeding shall also be communicated to the aggrieved party. At the time of communicating a conclusive decision, the aggrieved party or the legal successor of the aggrieved party shall be informed about his right provided for under section 51 (5).

(3) With the exception of a case administration order passed in the context of administering a trial and keeping its order, all decisions shall be communicated to the prosecution service.

Section 455 (1) A decision shall be communicated by way of announcement to any person present and by way of service to any other person.

(2) A decision shall be announced by the proceeding single judge or chair of the panel; during announcement, the operative part shall be read out loud, and a summary of the statement of reasons shall be presented and, if necessary, explained.

(3) If the operative part of a conclusive decision is recorded in writing before its announcement, it shall be served, together with the legal remedy part, on all persons eligible to appeal who are not present.

(4) A conclusive decision containing a statement of reasons shall also be served on the prosecution service, the accused, his defence counsel, and the aggrieved party, even if the operative part of the decision was already communicated to them by way of announcement or service; otherwise, if a person other than those referred to in this paragraph filed an appeal against a decision, a decision also containing a statement of reasons shall be served on the appellant.

(5) The persons, other than those specified in this section, to whom a decision, or information on the content of a decision, is to be sent shall be specified by a law.

(6) If an accused does not understand the Hungarian language, the parts of a judgment or conclusive order that concern him shall be translated after announcement into the language he used previously in the proceeding, and the translation shall be served on the accused.

(7) At the time of communicating a conclusive decision, the defendant shall also be informed about the legal basis of any recompense he may claim, the fact that he may decide to enforce his claim in a simplified recompense procedure or a recompense action, the time limit for enforcing such a claim, the day the time limit is calculated from, and that the time limit is a term of preclusion.

(8) At the time of the communication of the conclusive decision, the defendant shall be informed about the possibility to request legal assistance for enforcement in respect of the penalty imposed or the measure applied, and about the conditions and consequences of transferring enforcement.

The final and binding effect and administrative finality of decisions, and their certification

Section 456 (1) A final and binding conclusive decision of a court shall contain a universally binding decision with administrative finality on the relevant indictment, the criminal liability of the defendant, and the applicable legal consequences under criminal law, or the absence thereof. A conclusive decision that becomes final and binding may be changed only as the result of seeking extraordinary legal remedy or conducting a special procedure.

(2) If a conclusive decision on the indictment becomes final and binding, another criminal proceeding may not be instituted against the defendant for the act adjudicated in that decision.

(3) As soon as a conclusive decision becomes final and binding, the enforcement of any penalty imposed and measure applied by the decision shall be commenced, the provisions of the decision shall be implemented; the legal consequences of convicting or acquitting the defendant or terminating the proceeding shall also become effective as soon as the decision becomes final and binding.

(4) The enforcement of a penalty imposed or a measure applied by, or the implementation of the provisions of, a final and binding conclusive decision may be suspended or interrupted by a court in situations specified in this Act.

Section 457 An appeal filed against a conclusive decision shall prevent the challenged part to be revised by the proceeding court of appeal from becoming final and binding. A conclusive decision shall become final and binding in part, if it contains any provision not to be revised by the proceeding court of appeal.

Section 458 (1) A conclusive decision of a court of first instance shall become final and binding on the day when

a) it is announced, provided that filing an appeal is prohibited under this Act,

b) all persons eligible to appeal declare that they accept the conclusive decision or withdraw all appeals,

c) the time limit open for submitting an appeal expires without any appeal being submitted, or

d) the conclusive decision passed by the court of first instance is upheld by the court of second instance.

(2) A conclusive decision of a court of second instance shall become final and binding on the day when

a) it is passed, provided that no third-instance proceedings can be brought,

b) all persons eligible to appeal declare that they accept the conclusive decision or withdraw all appeals,

c) the time limit open for submitting an appeal expires without any appeal being submitting, or

d) the conclusive decision passed by the court of second instance is upheld by the court of third instance.

(3) A conclusive decision of a court of third instance shall become final and binding on the day when it is passed.

(4) A punishment order shall become final and binding on the day when

a) all persons eligible to file a motion for holding a trial declare that they do not request a trial to be held,

b) any motion for holding a trial is withdrawn, or

c) the time limit open for filing a motion for holding a trial expires without any such motion being filed.

(5) With the exception of provisions ordering confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, terminating hosting service provision and terminating a seizure, or on the merits of a civil claim, a conclusive decision of a court of first instance shall become final and binding pursuant to paragraphs (1) to (3) also in a situation where only the heir of the accused, the civil party or the party with a pecuniary interest submitted an appeal against the conclusive decision or the time limit available for their appeal did not yet expire.

Section 459 (1) After a conclusive decision becomes final and binding, the proceeding single judge or chair of the panel shall confirm that the conclusive decision became final and binding, including the day of becoming final and binding, by placing a corresponding clause on the decision (hereinafter "final and binding effect clause").

(2) If a conclusive decision becomes final and binding only in part, the final and binding effect clause shall specify the date when the decision became final and binding in part, as well as the provisions that became final and binding.

(3) All persons who were eligible to file an appeal against a decision shall be notified of the confirmation of the final and binding effect of that decision.

Section 460 (1) Unless otherwise provided in this Act, a non-conclusive order may not be changed after it reaches administrative finality.

(2) A non-conclusive order shall reach administrative finality on the day when

a) it is passed or announced, provided that challenging it by means of an appeal is prohibited under this Act,

b) all persons eligible to appeal declare that they accept the non-conclusive order or withdraw all appeals,

c) the time limit open for submitting an appeal expires without any appeal being submitted, or

d) all appeals are dismissed, or the non-conclusive order passed by the court of first instance is upheld by the court of second instance.

(3) A non-conclusive order shall be implemented or enforced regardless of whether it reached administrative finality, unless an Act provides otherwise or an appeal against the given non-conclusive order has suspensory effect under this Act.

(4) In exceptionally justified cases, both the court that passed the non-conclusive order and the court proceeding on the basis of the appeal may suspend the implementation or enforcement of a non-conclusive order.

Section 461 (1) After a non-conclusive order specified in paragraph (2) reaches administrative finality, the proceeding single judge or chair of the panel shall confirm that the non-conclusive order reached administrative finality, including the day of reaching administrative finality, by placing a corresponding clause on the order (hereinafter "administrative finality clause").

(2) An administrative finality clause shall be added to

a) an order ordering a coercive measure affecting personal freedom subject to judicial permission,

b) an order dismissing a motion for retrial,

c) an order dismissing a substitute private prosecution indictment,

d) an order setting aside a conclusive decision, and

e) any other order, if an appeal has suspensory effect on the implementation or enforcement of that order under this Act.

Section 462 If necessitated by any subsequent factor, a final and binding effect clause or an administrative finality clause may be rectified or clarified by a court *ex officio* or upon a motion. A decision rectified or clarified this way shall be served on all persons to whom the decision subjected to rectification was sent by the court.

Decisions adopted after the indictment by the prosecution service

Section 462/A To a decision passed by the prosecution service after the indictment, the provisions of Chapter LVII, while to a legal remedy against such a decision, the provisions of sections 369 and 370 shall apply.

PART TWELVE

PROCEEDING OF A COURT BEFORE THE INDICTMENT

General rules of procedure

Section 463 Before the indictment, the tasks of a court shall be carried out, at first instance, by a district court judge designated by the president of the respective regional court as investigating judge.

Section 464 (1) Before the indictment, a court shall decide on

a) motions relating to coercive measures falling within the subject-matter competence of courts, and

b) motions relating to the observation of the mental condition of a person.

(2) Before the indictment, a court shall decide on

a) disqualifying a defence counsel,

b) granting a witness the status of a specially protected witness,

c) obliging a person who refused to give witness testimony under section 174 to reveal the identity of his informant upon a motion by the prosecution service,

d) issuing or withdrawing a European or international arrest warrant,

e) a motion for revision,

f) converting a disciplinary fine into confinement,

g) ordering the resumption of a terminated proceeding under section 400 (5),

h) ordering the resumption of a proceeding against a person if a crime report against that person was dismissed under section 382 (1), or a proceeding against that person was terminated under section 399, and the corresponding motion was filed by the prosecution service on the basis of failure to cooperate, and

i) in any other case specified in an Act.

(3) The court shall perform the tasks specified in Chapter XXXVIII regarding the use of a covert means subject to permission of a judge.

(4) In a situation specified in section 355 (4) and before the indictment, the court shall send any notice of enforcing a civil claim and any motion for a provisional measure to a court with subject-matter and territorial competence under the Act on the Code of Civil Procedure.

Section 465 (1) The rules of court procedure shall apply to the proceedings of a court before the indictment subject to the derogations laid down in this Part.

(2) An investigating judge shall proceed in the course of proceedings conducted by any prosecution office within the territory of the given regional court. If the president of a regional court designates investigating judges at more than one district court, he shall determine the territorial jurisdiction of each investigating judge.

(3) Cases may not be joined or separated during the proceedings of a court before the indictment, but a court may adjudicate motions filed regarding the same subject matter together or may pass more than one decision on a motion seeking multiple decisions.

(4) A proceeding conducted before the indictment may not be terminated or suspended by the court.

The forms of court proceedings

Section 466 (1) A court shall hold a session if a motion is aimed at

a) ordering a coercive measure affecting personal freedom subject to judicial permission,

b) extending the period of pre-trial detention, and the motion invokes a fact as the reason for such an extension that is new in comparison to the previous decision,

c) extending the period of pre-trial detention for over six months from the date when it was ordered,

d) ordering the observation of the mental condition of a person, or

e) ordering the resumption of a proceeding against a person, and the prosecution service filed its corresponding motion on the basis of failure to cooperate against a person a crime report against whom was dismissed under section 382 (1), or a proceeding against whom was terminated under section 399.

(2) The court may refrain from holding a court session and decide on the basis of case documents if

a) a motion for restraining order was filed by the aggrieved party, and it can be established that the conditions of issuing a restraining order are not met,

b) a motion is aimed at ordering the resumption of a proceeding pursuant to paragraph (1) *e)*, and the whereabouts of the cooperating person are unknown,

c) a motion is aimed at ordering a coercive measure that restricts personal freedom to a lesser extent than the one in place at the time of filing the motion,

d) in the course of assessing a motion for extending the period of a coercive measure affecting personal freedom subject to judicial permission, it orders a coercive measure subject to judicial permission that restricts personal freedom to a lesser extent, provided that holding a court session is not mandatory for any other reason, or

e) a motion is prohibited by an Act, late, or filed by an ineligible person.

(3) The court may dispense with holding a court session under paragraph (2) *b)* upon a motion by the prosecution service.

Section 467 The court shall decide on all matters not specified in section 466 (1) on the basis of case documents, but even in such cases it may hold a court session if doing so is considered necessary.

Preparation of a court session

Section 468 (1) If the court holds a session, it shall set a date for the session.

(2) If the defendant is in custody and the prosecution service files a motion for ordering a coercive measure affecting personal freedom subject to judicial permission, the court shall set a date for its session in a manner that allows for the session to be held before the time limit of custody expires.

(3) If a motion is filed for extending the period of pre-trial detention, the court shall set a date in a way that allows for the session to be held at least one day before the time limit of the pre-trial detention expires.

(4) If a motion for restraining order is filed by an aggrieved party, the court shall set a date in a way that allows for the session to be held within five days after the motion is received by the court.

(5) If a motion is filed for ordering the observation of the mental condition of a person or resuming the proceeding under section 464 (2) *h)*, the court shall set a date in a way that allows for the session to be held within fifteen days after the motion is received by the court.

(6) If the court holds a session pursuant to section 467, it shall set a date in a way that allows for the session to be held within the time limit open for passing a decision on the basis of case documents.

(7) If a motion is filed concerning a coercive measure affecting personal freedom subject to judicial permission and the court holds a session pursuant to section 467, it shall set a date by applying paragraph (6) and with due regard to the time limit of the coercive measure concerned.

Section 469 (1) If a motion specified in section 466 (1) is filed by the prosecution service, the prosecution service shall transfer all case documents of the investigation to the court at the time of filing its motion. Such case documents may also be transferred to the court before the motion is filed, if doing so is justified by the volume of the case documents.

(2) At the time of filing its motion, the prosecution service shall also send its motion to the suspect and the defence counsel.

Section 470 (1) If a motion is filed for ordering a pre-trial detention or preliminary compulsory psychiatric treatment, the suspect and the defence counsel shall be enabled to inspect the case documents referred to in the motion after the motion is sent.

(2) If a motion is filed for extending the period of pre-trial detention, the suspect and his defence counsel shall be enabled to inspect, after the motion is sent, the case documents that are referred to in the motion and were produced after the last decision on the matter of pre-trial detention was passed.

(3) The prosecution service shall enable the defendant and his defence counsel to inspect the case documents specified in paragraphs (1) and (2) at a time and in a manner that is suitable for preparing a defence, but at least one hour before the commencement of the court session. In order to comply with the provisions laid down in paragraphs (1) and (2), the prosecution service may also make use of the investigating authority.

Section 471 (1) If a motion was filed by a prosecution service, it shall ensure that the suspect appears at the court session.

(2) The prosecution service shall

a) notify the defence counsel about the place, date, and time of the court session, or

b) summon the defence counsel if his attendance at the court session is mandatory.

(3) If the attendance of an interpreter or another person at a court session is necessary, his appearance shall be ensured by the prosecution service.

Section 472 (1) If a motion for restraining order was filed by an aggrieved party, the court shall notify the prosecution service, the aggrieved party, and the defence counsel about the date and time of its session; it shall also call upon the prosecution service to ensure that the defendant appears. The court shall forward the motion for restraining order to the defendant and the defence counsel.

(2) If the attendance of an interpreter or another person at a court session is necessary, his appearance shall be ensured by the court.

Section 473 (1) If a court holds a session pursuant to section 467, it shall notify the prosecution service, and the person who filed the motion, about the date and time of the session, and it shall summon any person the attendance of whom it considers necessary.

(2) If a court holds a session pursuant to section 467, it shall send the motion

a) to the prosecution service if the motion was not filed by the prosecution service, and

b) to the person the attendance of whom it considers necessary.

(3) At the time of sending out the motion, the court shall also set a time limit for submitting observations regarding the motion and, in a situation described in paragraph (2) *a)*, for the prosecution service to submit the case documents of the investigation.

(4) If the attendance of an interpreter or another person at a court session is necessary, his appearance shall be ensured by the court.

Court sessions

Section 474 (1) The attendance of a prosecutor at a court session shall be mandatory. A junior prosecutor may act in place of a prosecutor in a court session.

(2) The attendance of the defendant at a court session shall be mandatory if the session is held by the court pursuant to section 466 (1). In a situation specified in section 466 (1) *e)*, the court session may be held in the absence of the defendant if the whereabouts of the defendant are unknown.

(3) The attendance of a defence counsel at a court session shall be mandatory if

a) the subject matter of a motion is ordering the observation of the mental condition of a person,

b) the subject matter of a motion is ordering preliminary compulsory psychiatric treatment, or

c) the court session pursuant to section 466 (1) *e)* is being held in the absence of the defendant

(4) A defence counsel may attend a court session also in situations other than those specified in paragraph (3).

Section 475 (1) If a person who filed a motion does not appear at the relevant court session, his motion shall be considered withdrawn.

(2) At the court session, the person who filed the motion shall present his motion orally and specify the supporting evidence. The persons present shall be allowed to inspect, pursuant to the provisions laid down in Chapter XVI, the evidence offered by the person who filed the motion. If a notified person failed to appear, but filed his observations in writing, his observations shall be presented by the court.

(3) The court shall examine if the statutory conditions for filing the motion and holding a court session are met, if there is any obstacle to conducting a criminal proceeding, and if there is any reasonable doubt regarding the grounds for the motion. In a situation described in section 466 (1) *a)* to *c)* or *e)*, the examination shall also extend to the personal circumstances of the suspect.

Proceeding of a court on the basis of case documents

Section 476 (1) If a motion is filed by the prosecution service, it shall transfer all case documents of the investigation to the court at the time of filing the motion. If a motion is filed for extending the period of the pre-trial detention, the suspect and the defence counsel shall, after the motion is sent, be enabled to inspect the case documents that are referred to in the motion and were produced after the last decision on the matter of the pre-trial detention was passed.

(2) If a motion was filed not by the prosecution service and this Act does not provide otherwise, the motion shall be sent by the court to the prosecution service, and it shall set a time limit for the prosecution service to submit its motions and observations and to transfer the case documents of the investigation.

(3) The court shall examine if the statutory conditions for filing the motion are met, if there is any obstacle to conducting a criminal proceeding, and if there is any reasonable doubt regarding the grounds for the motion.

(4) Unless otherwise provided in this Act, the court shall pass a decision on the basis of the case documents within eight days after receipt of the motion.

(5) If a motion is aimed at ordering sequestration or adjudicating a motion for the revision of a sequestration order, and the case documents attached are of considerable volume, the court shall decide on the motion as a matter of priority, but not later than one month after receipt of the motion.

(6) If the court does not hold a session and passes a decision on the basis of case documents pursuant to section 466 (2), its decision shall be passed within the time limit open for holding a court session.

Court decisions

Section 477 (1) If a motion specified in section 466 (1) is filed by the prosecution service, and the court establishes before the commencement of the session that the conditions for holding a court session are not met, the court shall send back all case documents to the prosecution service without passing any decision.

(2) If, by the time of indictment, the court that proceeded before the indictment did not adjudicate a motion filed before the indictment, the court shall transfer all case documents to the court to which the indictment was brought by the prosecution service. The court of first instance shall adjudicate the transferred motion on the basis of its content as if it were a new motion.

(3) An appeal submitted against a decision of a court that proceeded before the indictment shall be adjudicated pursuant to the provisions laid down in this Part, even if an indictment has already been brought in the case. An appeal shall not be adjudicated, and the person who filed the appeal and, if the appeal was filed not by the prosecution service, the prosecution service shall be notified at the same time accordingly if the court of first instance has already passed a decision on maintaining a coercive measure affecting personal freedom subject to judicial permission in the course of the preparation of a trial.

Section 478 (1) If adjudicating a motion is not prevented by any obstacle, the court shall decide by passing a non-conclusive order

a) granting, in full or in part, the motion and passing a provision meeting the legal requirements or, in case of a court review, amending or setting aside the decision, or

b) dismissing the motion.

(2) The statement of reasons for a decision shall include a summary of the motion, a short description and classification, under the Criminal Code, of the facts relating to the act underlying the proceeding, and a reference to whether the statutory conditions for the motion were met.

(3) If a motion was dismissed by a court with a non-conclusive order with administrative finality, no other motion may be filed on the same grounds. The court may refrain from passing a decision on such a motion, but doing so shall not prevent the court from passing another non-conclusive order on the matter.

(4) If a motion for restraining order was filed by the aggrieved party but the conditions of issuing a restraining order are not met, the court shall inform the person who filed the motion that he may initiate issuing a temporary preventive restraining order pursuant to the Act on restraining orders applicable in case of violence between relatives. Subject to consent of the person who filed the motion, the court may send the motion for restraining order, as an application for temporary preventive restraining order, to the police organ established to carry out general policing tasks.

Section 479 (1) With the exception specified in paragraph (2), a decision shall be communicated to the prosecution service, the person who filed the motion, and all persons subjected to any of its provisions.

(2) A decision passed under Chapter XXXVIII concerning the use of a covert means subject to a permission of a judge shall be communicated to the prosecution service only.

(3) In the course of a court session, a decision shall be communicated by announcement. If a decision was passed on the basis of case documents, it shall be communicated by way of service without delay after it is recorded in writing. In a situation specified in paragraph (2), the decision shall be served by a process server.

(4) The court shall serve, through the prosecution service,

a) a decision on granting a witness specially protected status on the witness concerned, and

b) a decision on ordering a search in the offices of an attorney-at-law or notary on the person affected by the search.

(5) At the time of communicating a decision ordering pre-trial detention, the aggrieved party shall be informed about his right provided for under section 51 (5).

Legal remedies

Section 480 (1) An appeal against a court decision may be submitted by

a) the prosecution service,

b) the person who filed the motion,

c) a person subjected to a provision of the decision, or

d) a defence counsel if the decision was communicated to the suspect.

(2) An appeal against a decision communicated during a court session shall be submitted immediately after its announcement. If a person eligible to appeal is not present when the decision is announced, he may submit an appeal within three days after the court session. An eligible person may submit an appeal against a decision passed on the basis of case documents within three days after the decision is served.

(3) If a motion for pre-trial detention is dismissed, including situations where the court orders criminal supervision, or issues a restraining order, in placer of ordering pre-trial detention, the prosecution service, the defendant or the defence counsel may file a motion, together with a legal remedy statement, for the appeal to be adjudicated in a court session. A defendant shall be advised of this provision when legal remedy statements are made.

Section 481 (1) An appeal shall be sent by the proceeding court directly to the regional court with subject-matter and territorial jurisdiction to adjudicate the appeal after the statements are received, or the time limit for appeals expired, without delay.

(2) An appeal filed against a decision of an investigating judge shall be adjudicated by a second instance panel of a regional court.

(3) With the exception specified in paragraph (4), the court shall adjudicate an appeal in a panel session.

(4) In a situation specified in section 480 (3) or if the chair of the panel finds it justified for any other reason, the proceeding second instance panel of the regional court shall hold a court session. A regional court may hold a court session even in the absence of a motion for holding a court session. The provisions laid down in sections 474 to 475 shall apply to such court sessions. The absence of the defendant from the court session shall not prevent the adjudication of the appeal. The court session shall be attended by a prosecutor working at the prosecution office that filed a motion for ordering the pre-trial detention.

S**ection 482** No appeal shall lie against a decision

a) passed on a motion relating to section 303 (2) or (3), 309 (2) or (4), or 314 (2) from among the coercive measures falling within the subject-matter jurisdiction of a court,

b) passed under Chapter XXXVIII regarding the use of a covert means subject to permission of a judge, with the exception of decisions passed under section 253 (4),

c) on the conversion of a disciplinary fine,

d) on granting a witness the status of a specially protected witness,

e) on ordering the resumption of a terminated proceeding under section 400 (5), and

f) on a motion for revision.

Section 483 (1) With the exception specified in paragraph (2), a decision passed under this Part shall be implemented or enforced regardless of any appeal.

(2) An appeal shall have suspensory effect if

a) it is submitted by a prosecutor because of lifting a coercive measure affecting personal freedom subject to judicial permission, provided that the motion for lifting it was filed not by the prosecution service, or

b) it is submitted against obliging a person who refused to give witness testimony under section 174 to reveal the identity of his informant.

(3) The court may refrain from passing a decision on an appeal filed against a non-conclusive order with administrative finality, but doing so shall not prevent the court from passing another non-conclusive order on the matter.

(4) If filing an appeal against a non-conclusive order of a court is permitted under the Act, the court that passed the decision at first instance shall be bound by its challenged non-conclusive order until it reaches administrative finality.

(5) If the court of second instance sets aside the decision passed by the court of first instance and instructs the court to conduct a new proceeding on the basis of an appeal submitted against a decision passed by the court of first instance on ordering, or extending the period of, a coercive measure affecting personal freedom subject to judicial permission, the court of second instance may order the coercive measure from the date of passing the decision that was set aside or extend its period. The time limit for a coercive measure thus ordered or extended shall be not longer than 72 hours from the date when the decision was passed by the court of second instance.

(6) If the court of second instance sets aside the decision passed by the court of first instance and instructs the court to conduct a new proceeding on the basis of an appeal submitted against a decision passed by the court of first instance on terminating a coercive measure affecting personal freedom subject to judicial permission, then the suspensory effect of the appeal pursuant to section (2) *a)* shall last until the date of passing a decision in the repeated proceeding.

PART THIRTEEN

THE PREPARATION OF A TRIAL

Chapter LXXV

MEASURES TAKEN ON THE BASIS OF THE INDICTMENT DOCUMENT

Examination of case documents

Section 484 (1) Within a month of receipt, the court shall examine all case documents with a view to determining if it is necessary or possible to

a) transfer the case,

b) join or separate the cases,

c) suspend the proceeding,

d) terminate the proceeding,

e) request the prosecution service to remedy any deficiencies of the indictment document,

f) pass a decision regarding a coercive measure,

g) establish a classification different from that specified in the indictment document,

h) refer the case to a court panel, or

i) conduct a proceeding for passing a punishment order.

(2) If it appears necessary to interview the prosecutor, the accused, the defence counsel or the aggrieved party for passing a decision on any matter examined under this Chapter, the court may pass its decision, with the exception of a decision specified in section 494, even after the time limit set out in paragraph (1) expires.

(3) The court shall hold a session to interview the prosecutor, the accused, the defence counsel or the aggrieved party.

Transferring a case

Section 485 (1) If adjudicating a case does not fall within the subject-matter or territorial jurisdiction of the proceeding court, it shall transfer the case to a court with subject-matter and territorial jurisdiction over the case.

Joining and separating cases

Section 486 (1) If a new proceeding is instituted against a person released on probation for a criminal offence committed during the probation period, or if a proceeding is instituted against a person released on probation before or during the probation period for a criminal offence committed before the probation period, the cases shall be joined, and the court with subject-matter and territorial jurisdiction over the new case shall conduct the proceeding.

(2) If the court does not find the accused guilty in the new proceeding, or if the criminal offence was committed before release on probation and the probation period expired before the cases are adjudicated jointly, the court shall separate the joined cases.

(3) The court shall proceed pursuant to paragraphs (1) to (2) if the criminal proceeding instituted against the accused earlier was suspended under section 488 (2), but the prosecution service indicts the accused again for committing a criminal offence of the same kind. If the criminal proceeding instituted against the accused earlier was suspended by the court having regard to section 180 (1) of the Criminal Code, drug trafficking shall also be considered a criminal offence of the same kind.

Suspending a proceeding

Section 487 The court shall suspend its proceeding if the accused is unable to exercise his rights and perform his obligations provided for under this Act due to his permanent and serious illness, or a mental disorder that occurred after the commission of the criminal offence.

Section 488 (1) The court may suspend its proceeding if

a) the whereabouts of the accused are unknown or he is staying in another country,

b) a measure was taken to remedy any deficiencies of the indictment document or to perform a procedural act,

c) an authority of another country is to execute a request for legal assistance,

d) a decision on a preliminary matter needs to be obtained to conduct the proceeding,

e) a consultation procedure, as defined in the Act on cooperation with the Member States of the European Union in criminal matters, is instituted,

f) the surrender or extradition of the accused was postponed by an authority of another country pursuant to an international arrest warrant or European arrest warrant,

g) an international criminal court, in a case falling within its jurisdiction, requests the Hungarian authority to transfer the criminal proceeding,

h) the recognition adaptation of a foreign judgment, or a judgment delivered in a Member State, was initiated, or

i) the execution of extradition or surrender of the accused was postponed by a foreign judicial authority having regard to conducting a pending criminal proceeding, or enforcing a sentence of imprisonment imposed, or a custodial measure applied, in the other country.

(2) The court may suspend its proceeding for a period of one year if

a) the behaviour of a defendant following the commencement of the proceeding constitutes a reason for terminating his liability to punishment under the Special Part of the Criminal Code, and

b) his behaviour is expected to serve as a ground for terminating his liability to punishment.

(3) A proceeding may not be suspended under paragraph (2) if

a) the prosecution service applied conditional suspension by the prosecutor, or

b) a ground specified in section 417 (2) exists.

Section 489 (1) A court may initiate, *ex officio* or upon a motion, a proceeding before the Constitutional Court for establishing that a law, provision of law, public law regulatory instrument, or uniformity decision is in conflict with the Fundamental Law or an international treaty pursuant to the Act on the Constitutional Court.

(2) A court may initiate, *ex officio* or upon a motion, a proceeding before the Curia for reviewing a local government decree pursuant to the Act on the organisation and administration of the courts.

(3) If initiating a proceeding before the Constitutional Court or the Curia, the proceeding court shall pass a corresponding order and, at the same time, suspend its proceeding.

Section 490 (1) A court shall initiate, *ex officio* or upon a motion, a preliminary ruling procedure before the Court of Justice of the European Union pursuant to the provisions of the treaties on which the European Union is founded if it establishes that it is necessary in respect of a legal act or law of the European Union.

(2) If initiating a preliminary ruling procedure, the court shall pass a corresponding order and, at the same time, suspend its proceeding. In its order, the court shall determine the question requiring the preliminary ruling of the Court of Justice of the European Union, and it shall present a summary of the facts of the case and the relevant Hungarian laws to the extent required for answering the question asked. The order of the court shall be served on the Court of Justice of the European Union and, for information purposes, it shall be served on the Minister responsible for justice simultaneously.

(3) If dismissing a motion for initiating a preliminary ruling procedure, the court shall pass a corresponding order.

(4) No appeal shall lie against an order on initiating a preliminary ruling procedure or dismissing a motion initiating a preliminary ruling procedure.

Section 491 (1) A court shall resume its proceeding if

a) the reason for suspending the proceeding ceased to exist,

b) in the case of a proceeding suspended under section 488 (1) *g)*, resumption of the proceeding is prescribed by the Act on promulgating the Statute of the International Criminal Court or implementing the obligations arising from the Statute,

c) in the case of a proceeding suspended under section 488 (2),

ca) one year passed,

cb) the accused does not to conduct himself in a manner that would lead to termination of his liability to punishment, and this cannot be expected of him, or

cc) an indictment is brought against the accused for committing a criminal offence of the same kind or, where the criminal proceeding against the accused was suspended by the court pursuant to section 180 (1) of the Criminal Code, drug trafficking committed while the proceeding was suspended.

(2) If the reason for suspension changes during the period of suspension, the court shall pass a new decision suspending the proceeding without ordering the proceedings to be resumed.

(3) In other respects, the provisions laid down in Chapter LXII shall apply to the period of suspension and the resumption of a suspended proceeding accordingly.

Terminating a proceeding

Section 492 (1) A court shall terminate its proceeding with a conclusive order if

a) the act serving as ground for the indictment does not constitute a criminal offence,

b) the accused is not liable to punishment due to infancy,

c) the liability to punishment of the accused was terminated by his death, a statute of limitations, a pardon, or on any other grounds specified in an Act,

d) the act serving as ground for the indictment has already been adjudicated with final and binding effect,

e) the prosecution service abandoned the indictment and neither private prosecution nor substitute private prosecution can be brought, and the aggrieved party did not take action as a private prosecuting party or substitute private prosecuting party,

f)

g)

h) it is conducted regarding a criminal offence that is, in comparison to another criminal offence of greater material gravity also subject to the indictment, not significant for establishing criminal liability,

i) the private motion is missing and this may not be rectified any longer pursuant to section 378 (4).

(2) A court shall terminate its proceeding with a non-conclusive order if

a) a crime report, or an act by the Prosecutor General as specified in section 4 (9), or in section 3 (3) of the Criminal Code, is missing,

b)

c) the indictment was brought by an ineligible person,

d) the indictment document does not contain the statutory elements required under section 422 (1), or contains only some of those, even after a request to remedy its deficiencies was issued and, consequently, it is unsuitable for adjudicating the merits of the indictment,

e) the indictment document does not contain the elements required under section 422 (2) *a)*, or contains only some of those, even after a request to remedy its deficiencies was issued,

f) the criminal proceeding is conducted by an authority of another state as a result of transferring the criminal proceeding or conducting a consultation procedure as defined in the Act on cooperation with the Member States of the European Union in criminal matters, or

g) the case does not fall within Hungarian criminal jurisdiction.

(3) The court shall inform any civil party about terminating the proceeding, also advising any such party that he may enforce his civil claim by other legal means.

Remedying the deficiencies of an indictment document

Section 493 (1) If an indictment document does not contain the statutory elements required under section 422 (1), or contains only some of those, the court, acting *ex officio* or upon a motion, shall pass an order specifying any deficiencies and calling upon the prosecution service to remedy the specified deficiencies of the indictment document.

(2) The prosecution service may remedy the deficiencies of the indictment document within two months after receipt of the order specified in paragraph (1).

(3) In a situation under section 492 (2) *d)*, if the prosecution service does not remedy the deficiencies of the indictment document within the time limit specified in paragraph (2), the court shall terminate the proceeding.

(4) If an indictment document does not contain the statutory elements required under section 422 (2) *a)*, or contains only some of those, the court may call upon the prosecution service, by applying paragraph (1) as appropriate and before commencing a preparatory session, to remedy the deficiencies of the indictment document. If the prosecution service does not remedy any such deficiency of the indictment document within the time limit specified in paragraph (2), the court shall terminate the proceeding pursuant to section 492 (2) *e)*.

Decisions on coercive measures

Section 494 (1) A court shall decide, *ex officio* or upon a motion, on maintaining, ordering, or terminating a coercive measure affecting personal freedom subject to judicial permission.

(2) If a court orders or, where a new circumstance is invoked in a motion as ground for maintaining a measure in comparison to the earlier decision, maintains a coercive measure affecting personal freedom subject to judicial permission, it shall pass its decision in a court session.

(3) The provisions laid down in section 468, section 470 (1) and (2), and sections 472 to 475 shall apply accordingly to a session specified in paragraph (2), with the proviso that the court session may be held even in the absence of the prosecutor or the defence counsel, provided that it is held to order a coercive measure affecting personal freedom subject to judicial permission against an accused

a) taken into custody pursuant to section 293 (3) for violating repeatedly or in a serious manner the rules of behaviour relating to a restraining order or to criminal supervision, or

b) brought before the court as a result of an arrest warrant.

(4) Paragraphs (2) to (3) shall not apply if a decision may also be passed during a preparatory session.

(5) The period of a coercive measure maintained or ordered by the court that orders the transfer of the case concerned shall last until a decision is passed, in the course of the preparation of a trial, by the court to which the case was transferred.

Possibility of an assessment other than that in the indictment

Section 495 (1) If it is reasonable to assume that

a) an act serving as ground for an indictment may constitute a criminal offence that is different than, or additional to, the assessment of the criminal offence in the indictment document, or

b) that the criminal offence may be classified as less or more severe than that specified in the indictment document,

the court shall pass an order establishing how the act serving as ground for the indictment may be classified differently.

(2) If the court establishes that the act serving as ground for the indictment constitutes a criminal offence subject to private prosecution, a statement from the prosecution service need not be obtained regarding taking over the prosecution.

Referring a case to a court panel

Section 496 Before a preparatory session is concluded, a court shall refer a case to a panel of three professional judges if it considers it necessary due to the complexity of the case, the volume of case documents, the number of persons participating in the criminal proceeding, or for any other reason.

Communicating an indictment document

Section 497 The court shall serve the indictment document on the accused and the defence counsel upon the expiry of a period of one month after the receipt of the case documents by the court. The court shall call upon the accused and the defence counsel to file any motion for taking, or excluding, any piece of evidence during the preparatory session at the latest.

Measures for performing procedural acts

Section 498 (1) A court shall, *ex officio* or upon a motion filed by an eligible person, take measures to ensure that all means of evidence specified in a motion for evidence are available at the trial.

(2) With a view to acting in compliance with the provisions laid down in paragraph (1), a court may, setting a time limit of up to two months, request the prosecution service to provide administrative assistance. A request sent to a prosecution service for administrative assistance may also be aimed at locating and securing a means of evidence specified in a motion for evidence filed by another eligible person.

(3) A court shall obtain data regarding the criminal record of an accused, and data relating to the accused from the infraction records system; the court may also obtain, *ex officio*, data relating to the accused or the subject matter of the indictment from any other publicly certified register established by law. The court shall ensure the recognition of a judgment delivered in a Member State, or foreign judgment, concerning the suspect, which may be taken into account during the proceeding.

Chapter LXXVI

PREPARATORY SESSIONS

The concept and date and time of preparatory sessions, and the persons attending

Section 499 (1) A preparatory session is a public court session held for the purpose of preparing a trial after the indictment is brought, where the accused and the defence counsel may, before the trial, present their position on the indictment and may be involved in setting the further course of the criminal proceeding.

(2) A court shall hold a preparatory session within three months after an indictment document is served.

(3) If a corresponding motion is filed by a defence counsel within three working days after receipt of an indictment document, the court shall set the date of the preparatory session to a date more than one month after the service of the indictment document, provided that the defence counsel

a) was not involved in the investigation, or

b) substantiates that he could not inspect the case documents of the proceeding through no fault of his own pursuant to section 352.

(4) The provisions concerning the date and time of a preparatory session shall not apply if a summons to the preparatory session need to be served on an accused in another country, and the time needed for service does not allow for holding the preparatory session within the applicable time limit.

(5) The attendance of a prosecutor and the accused at a preparatory session shall be mandatory. If a defence counsel participates in the proceeding, the preparatory session may not be held in the absence of the defence counsel.

(6) If there is more than one accused in a case, the attendance of the other co-accused and their defence counsels at the preparatory session shall not be mandatory; in other respects, the provisions of section 522 (2) and (3) shall apply to the attendance of the co-accused.

(7) If there is more than one accused in a case, a preparatory session may be held for each accused separately without separating their cases.

Section 500 (1) An accused and a defence counsel shall be summoned to, and the prosecution service shall be notified about the date of, a preparatory session by the court. If there is more than one accused in a case, the court shall notify the co-accused and their defence counsels about the data of the preparatory session.

(2) In its summons, the court shall also advise the accused that

a) he may confess his guilt of the criminal offence he was indicted for, and he may waive his right to a trial within the scope of his confession of guilt,

b) should the court accept his confession of guilt, it shall not examine the validity of the facts presented in the indictment document, or the matter of guilt,

c) should he not confess his guilt in line with the indictment document, he may present the facts and the supporting evidence his defence is based on, and he may move for taking or excluding evidence, at the preparatory session,

d) should a motion for taking or excluding evidence be filed after the preparatory session contrary to the provisions laid down in section 520 (1) to (3), the court may dismiss the motion without stating any reason as to its merits, provided that it is not necessary for clarifying the facts of the case, and may impose a disciplinary fine, provided that a motion necessary for clarifying the facts of the case is filed in a manner suitable for protracting the proceeding.

(3) The court shall notify the aggrieved party about the date of the preparatory session and advise him of the option of filing a civil claim.

(4) The summons or the notification shall be issued at a time that allows for it to be served at least fifteen days before the preparatory session.

Section 501 (1) If an accused fails to appear at a preparatory session, the court shall take measures to ensure the appearance of the accused as provided for under this Act.

(2) If the appearance of an absent accused, defence counsel, or prosecutor may not be ensured within a reasonable time on the due date of a preparatory session, the court shall postpone the preparatory session and schedule a new preparatory session for a date within the following two months.

Proceeding of a preparatory session

Section 502 (1) If holding a preparatory session is not prevented by any obstacle, the proceeding prosecutor shall, upon an invitation from the court after the commencement of the preparatory session, present a summary of the indictment and specify the means of evidence supporting the indictment; he may also file motions regarding the value or period of a penalty or measure, should the defendant confess to the commission of the criminal offence during the preparatory session.

(2) Presenting the summary of the indictment may be omitted upon a motion by the accused or, with the consent of the accused, his defence counsel.

(3) Subsequently, the court shall interrogate the accused taking account of the characteristics of the preparatory session. At the beginning of the interrogation, the court shall advise the accused of the provisions laid down in section 500 (2), in addition to providing him defendant advice.

(4) The court shall appoint a defence counsel and adjourn the preparatory session if the accused does not have an authorised defence counsel and

a) the court has any doubt as to whether the accused understood the indictment or the meaning and consequences of the provisions laid down in section 500 (2), or

b) the accused moves for the appointment of a defence counsel.

(4a) If the indictment document is to be deemed served on the basis of fiction of service, the court shall, upon a motion by the accused or, with consent from the accused, his defence counsel, adjourn the preparatory session, with the exception of a case where the accused refused to accept the indictment document.

(5) After the advice required under paragraph (3), the court shall ask the accused whether he confesses his guilt of the criminal offence specified in the indictment document.

(6) The proceeding members of the court may ask questions from the prosecutor, the accused, and, with regard to any civil claim, any civil party. The prosecutor, the defence counsel, and, with regard to any civil claim, a civil party may ask the accused questions; the accused and the defence counsel may file motions for questions to be asked from the prosecutor.

Section 503 (1) If the accused does not confess his guilt of all criminal offences specified in the indictment document, the court shall decide on the indictment as a whole, on the basis of a trial and, regarding any accepted confessions of guilt, within the limits specified in section 521.

(2) If there is more than one accused in the case and all other conditions of separation are met, the court, with a view to announcing a judgment, may separate, as regards the accused that confessed his guilt, the cases pending before it.

Proceeding following a confession of guilt

Section 504 (1) If an accused confesses his guilt and waives his right to a trial within the scope of his confession, the court shall decide, on the basis of the above fact, the case documents, and the interrogation of the accused, whether it accepts the confession of guilt by the accused. The interrogation of the accused shall be aimed at examining the conditions set out in paragraph (2) taking account of the characteristics of the preparatory session.

(2) Acceptance of a confession of guilt shall be subject to the following conditions:

a) the defendant understands the nature of, and the consequences of accepting, the confession,

b) there is no reasonable doubt regarding the capacity of the defendant to be held liable for his acts, and the voluntary nature of his confession,

c) the defendant's confession of guilt is clear and supported by the case documents.

(3) If the conditions specified in paragraph (2) are met, the court shall pass an order accepting the confession of guilt by the accused. No appeal shall lie against this order.

(4) If the court finds it possible to adjudicate the matter during a preparatory session, it shall also interrogate the accused regarding all sentencing factors.

(5) After interrogating the accused, first the prosecutor and then the defence counsel may address the court.

(6) The court may pass its judgment even during the preparatory session.

Section 505 (1) If it is not possible to administer a case during a preparatory session, the accused and the defence counsel may file, without affecting the grounds supporting the facts presented in the indictment document or the matter of guilt,

a) motions for taking evidence or performing other procedural acts

b) motions for excluding pieces of evidence.

(2) In a motion under paragraph (1), the accused and the defence counsel shall specify the reason for, and purpose of, filing the motion. Accordingly, a motion for excluding a piece of evidence shall describe the reason why the piece of evidence submitted by another person may not be accepted, and a motion for taking evidence shall specify the fact to be confirmed by the proposed evidence.

(3) The proceeding prosecutor may make observations regarding a motion filed by the accused or the defence counsel, and he also may file motions pursuant to paragraph (2).

(4) If holding a trial is not prevented by any obstacle, a trial may be held by the court immediately.

Proceeding without a confession of guilt

Section 506 (1) If an accused does not confess his guilt during a preparatory session, he may still confess his guilt at any later stage of the proceeding.

(2) If a court refuses to accept a confession of guilt by an accused, or an accused refuses to answer regarding the confession of his guilt, it shall be assumed that the accused did not confess his guilt. The same procedure shall be followed if an accused confessed his guilt but did not waive his right to a trial within the scope of his confession.

(3) If an accused did not confess his guilt, he may specify the facts he accepts as true from among those stated in the indictment document during his interrogation.

(4) An accused or a defence counsel may present the facts and the supporting evidence underlying the defence; he may also file motions for taking or excluding evidence or performing other procedural acts.

(5) In a motion under paragraph (4), the accused and his defence counsel shall specify the reason for, and purpose of, filing the motion. Accordingly, a motion for excluding a piece of evidence shall describe the reason why a piece of evidence submitted by another person may not be accepted, and a motion for taking evidence shall specify the fact to be confirmed by the proposed evidence.

(6) The proceeding prosecutor may make observations regarding a motion filed by the accused or the defence counsel, he may file motions pursuant to paragraph (5), and he shall specify, within fifteen days, the facts he accepts as true from among those stated by the accused and the defence counsel.

Section 507 (1) A court shall exclude a piece of evidence, *ex officio* or upon a motion, if it is clear from the case documents that using the given piece of evidence would be in conflict with the provisions of this Act.

(2) If, due to the complexity of the case or on the basis of case documents, it is not possible to decide whether to exclude a piece of evidence, the court may examine the piece of evidence to be excluded before passing a decision on the matter.

(3) Pieces of evidence excluded and documents containing such pieces of evidence shall be handled among the case documents confidentially.

Section 508 On the basis of statements made by the accused and after hearing any observation made by the prosecutor, the court may

a) set a date for a trial immediately and without regard to section 510 (5), and the trial may be held immediately unless doing so is prevented by an obstacle,

b) determine the framework and scope of taking evidence, as well as the order of pieces of evidence to be taken,

c) decide not to take evidence

ca) regarding facts that are accepted as true by the prosecutor, the accused, and the defence counsel,

cb) regarding a criminal offence that is, in comparison to another criminal offence of greater material gravity also subject to the indictment, not significant for establishing criminal liability.

Chapter LXXVII

OTHER RULES ON THE PREPARATION OF A TRIAL

Setting the date of a trial

Section 509 (1) Within one month after closing the preparatory session, the court shall examine all motions for evidence, set a date for the trial, and make the arrangements necessary for holding the trial and issuing summons and notifications.

(2) As a general rule, trials shall be held in the official premises of the court. The court may, if it considers necessary to do so, make different arrangements and set a trial at a venue falling outside its territorial jurisdiction.

(3) If it is clear in light of the volume of the evidence to be taken that the case may not be concluded within one day of trial, the court may set more than one date or a single continuous date.

Summons to, and notification about, a trial

Section 510 (1) The court shall summon to the trial date set all persons whose attendance is mandatory.

(2) The court shall notify the prosecution service and, unless an exception is made in this Act, the experts, and all persons who may attend the trial under this Act. If the prosecution service files a motion to terminate the parental custody rights of the accused, the court shall notify the guardianship authority and the other parent, provided that the other parent also has parental custody rights.

(3) In the summons or notice, the court shall invite the aggrieved party and any party with a pecuniary interest to file their motions for evidence before the trial without delay.

(4) At the time of sending out summons and notices, the court shall also inform the prosecution service, the accused and the defence counsel about the taking of evidence the court intends to carry out on the trial date set.

(5) A summons shall be served on the accused and the defence counsel at least eight days before the trial (hereinafter "summons period")

(6) A notification shall be issued at a time that allows for it to be served at least eight days before the trial.

Passing decisions after a trial date is set

Section 511 (1) The court may pass decisions on any matter regulated under Chapter LXXV even after a trial date is set, if necessary.

(2) For an important reason, the court may postpone a trial set.

Powers of a court

Section 512 (1) If a court sits as a panel, any decision on the termination of the proceeding or any coercive measure affecting personal freedom subject to judicial permission shall be passed by the panel in the course of the preparation of the trial. The court panel may decide on any matter that falls within the powers of the chair of the panel.

(2) Before opening a trial, the chair of the panel shall decide on all matters that do not fall within the powers of the panel under paragraph (1).

(3) In the course of the preparation of a trial, a junior judge may proceed regarding the following matters:

a) transferring a case,

b) joining and separating cases,

c) remedying the deficiencies of an indictment document,

d) suspending a proceeding under sections 487, 488 (1) *a)* to *b)* and *e)* to *g)*, or paragraph (2),

e) communicating an indictment document,

f) taking measures for performing procedural acts,

g) setting or postponing a preparatory session or a trial,

h) issuing summons and notifications.

Exclusion of legal remedy

Section 513 (1) In a proceeding conducted by a court under this Chapter or Chapter LXXV, no appeal shall lie against

a) suspending the proceeding under sections 488 (1) *a)* to *b)* or sections 489 to 490, or dismissing a motion for a proceeding under sections 489 to 490,

b) ordering the resumption of a suspended proceeding,

c) a measure taken for the purpose of remedying the deficiencies of an indictment document, or refusing any such measure,

d)

(2) The court may refrain from passing a decision on an appeal filed against a non-conclusive order with administrative finality, but doing so shall not prevent the court from passing another non-conclusive order on the matter.

PART FOURTEEN

TRIAL BEFORE COURT OF FIRST INSTANCE

Chapter LXXVIII

PROCEEDING OF A TRIAL

Opening a trial

Section 514 (1) The proceeding single judge or chair of the panel shall open a trial by specifying the subject matter of the indictment, and then he shall advise members of the audience of keeping order and the consequences of any disturbance. He shall state the name of the proceeding members of the court, the keeper of minutes, the prosecutor, and the defence counsel.

(2) The proceeding single judge or chair of the panel shall take account of the persons present, and determine if those summoned or notified are present; based on this determination, he shall decide whether it is possible to hold a trial.

(3) If the attendance of an accused at a trial is mandatory, but he fails to appear despite being duly summoned, the court shall take measures to ensure the attendance of the accused.

(4) If it is reasonable to assume that forced attendance could be successfully enforced on the set trial date within a reasonable time, the proceeding single judge or the chair of the panel shall order, as possible, the forced attendance of any witness who is absent despite being duly summoned.

(5) The proceeding single judge or chair of the panel shall call upon the prosecutor or expert, if absent, to appear at the trial. Such a call shall be extended to a prosecutor through the head of his prosecution office.

(6) The provisions laid down in paragraphs (2) to (5) shall apply also to continuous trials.

Section 515 (1) If a person the absence of whom does not prevent the holding of a trial is absent from the trial, the court shall decide on commencing the trial after interviewing the prosecutor, the accused and the defence counsel.

(2) If holding a trial is not prevented by any obstacle, the proceeding single judge or the chair of the panel shall instruct all witnesses, other than the aggrieved party, to leave the courtroom, also advising them of the consequences of leaving without justificationb.

(3) An expert shall be instructed to leave the courtroom only if the court considers it necessary to do so; otherwise, an expert may attend a trial from its beginning.

(4) The trial need not be postponed for a failure to observe the summons period if the accused and the defence counsel concordantly move for, or agree to, the holding of the trial.

(5) If an authorised defence counsel fails to appear at a trial and the participation of a defence counsel is not mandatory in the criminal proceeding, the trial may be postponed, provided that

a) a motion to that effect is filed by the accused, and

b) the authorised defence counsel was not notified, or it is not possible to determine if he was duly notified.

(6) If holding a trial is prevented by any obstacle, the court shall postpone the trial.

Section 516 (1) Before the commencement of a trial, the prosecutor, the accused, the defence counsel and the aggrieved party may

a) file a motion for transferring, joining, or separating the case,

b) file a motion for disqualifying the proceeding single judge or chair, or member, of the panel or the keeper of minutes, or

c) invoke any other circumstance that may prevent the trial from being held or should be taken into account before the commencement of the trial.

(2) Before the commencement of a trial, the accused, the defence counsel, or the aggrieved party may file a motion for disqualifying the proceeding prosecutor.

Commencement of a trial

Section 517 (1) If the proceeding single judge or the chair of the panel establishes that holding a trial is not prevented by any obstacle, and the witness or expert has left the courtroom, the trial shall be commenced by the court.

(2) When instructed by the proceeding single judge or the chair of the panel,

a) the prosecutor shall present a summary of the indictment, provided that it was not presented during a preparatory session or a corresponding motion was filed by the aggrieved party because he did not attend the preparatory session,

b) the aggrieved party, if present, or his representative shall state whether he intends to enforce any civil claim; if the aggrieved party intends to enforce a civil claim, the proceeding single judge or the chair of the panel shall instruct the aggrieved party to present his claim, and then the aggrieved party, if he is to be interrogated as a witness, shall leave the courtroom.

(3) Presenting the summary of the indictment may be omitted upon a motion by the accused or, with the consent of the accused, his defence counsel.

(4) If a statement of confession of guilt was accepted by the court during the preparatory session, the court shall present a summary of its corresponding order in place of the indictment.

The continuity of trials

Section 518 (1) Once commenced, a trial shall not be interrupted by the court until the case is concluded, if possible. If necessitated by the scope of the case or any other reason, the proceeding single judge or the chair of the panel may interrupt a trial commenced for a period of up to eight days, and the court may adjourn the trial for the purpose of taking evidence or other important reason.

(2) In a situation described in paragraph (1), the day of resuming the trial shall be set, unless there is any doubt, considering the reason for adjournment, that the trial may be resumed within six months.

(3) A trial may be resumed without any repetition, provided that the composition of the proceeding panel remained unchanged; in any other situation, the trial shall be repeated. If more than six months passed since the last trial date, the trial shall be repeated if a motion to that effect is filed by the prosecutor, the accused or the defence counsel. A trial shall be repeated by having a summary of earlier trial materials presented by the court.

(4) After presenting the summary of earlier trial materials, the court shall advise the prosecutor, the accused and the defence counsel that they may make observations regarding the presentation and they may file motions for supplementing the presentation or repeating any procedural act.

Motions for evidence

Section 519 (1) In the course of taking evidence, motions may be filed and observations may be made by the prosecution service, the accused, the defence counsel, the aggrieved party and, regarding matters affecting him, any party with a pecuniary interest or any other interested party.

(2) The proceeding single judge or the chair of the panel shall decide on any motion for evidence and the sequence of such motions.

(3) As a general rule, evidence moved for by the prosecution service shall be taken before evidence moved for by the accused or the defence counsel.

(4) A court may refrain from taking evidence regarding

a) facts that are accepted as true by the prosecution service, the accused, and the defence counsel, or

b) a criminal offence that is, in comparison to another criminal offence of greater material gravity also subject to the indictment, not significant for establishing criminal liability.

Section 520 (1) After the preparation of a trial, the prosecution service, the accused, or the defence counsel may file a motion for evidence, without the legal consequences specified in paragraphs (5) to (6), if

a) the fact or means of evidence underlying the motion came into existence after the preparatory session, or the person filing the motion became aware thereof after the preparatory session through no fault of his own, or

b) the motion is filed to refute the probative value of a means of evidence or the outcome of taking evidence, provided that the method or means of doing so became known to the person filing the motion from the evidentiary procedure.

(2) In a situation described in paragraph (1) *a)*, the motion may be filed within fifteen days after becoming aware of the fact or means of evidence underlying the motion; at the same time, the person filing the motion shall substantiate the likely date of becoming aware of such fact or means of evidence and the likelihood of the absence of own fault.

(3) In a situation described in paragraph (1) *b)*, the motion may be filed within fifteen days after the taking of evidence, and the person filing the motion shall substantiate the likelihood that the proposed evidence can be recognised *ex-post* and that it is suitable for refuting the evidence taken.

(4) The court shall examine whether the evidence proposed in the motion for evidence is necessary to clarify the facts of the case, and it shall assess whether the motion was filed in line with the provisions laid down in paragraphs (1) to (3).

(5) If a proposed piece of evidence is not necessary to clarify the facts of the case, the court may dismiss a motion filed in violation of paragraphs (1) to (3) without stating any reason as to its merits.

(6) If the facts of the case may not be clarified without the proposed piece of evidence, the court shall grant the motion even if it was filed in violation of paragraphs (1) to (3). In such a situation and provided that filing the motion is suitable for protracting the proceeding, the court may impose a disciplinary fine on the person filing the motion or, if the motion was filed by the prosecution service, the court may notify the head of the proceeding prosecution office.

(7) The provisions laid down in paragraphs (1) to (6) shall apply accordingly to motions filed for the exclusion of evidence.

(8) The provisions laid down in paragraphs (1) to (7) shall apply accordingly to motions filed by the aggrieved party or a party with a pecuniary interest after the due date of the first trial the aggrieved party or the party with a pecuniary interest attended or was permitted to attend under this Act.

Section 521 (1) If a statement of confession of guilt was accepted by the court, no further evidence may be taken regarding the grounds supporting the facts stated in the indictment document or the matter of guilt.

(2) The prosecution service, the accused, and the defence counsel may file a motion for evidence within the limits specified in paragraph (1).

(3) If the court believes, in light of the outcome of taking evidence within the limits specified in paragraph (1), that a statement of confession of guilt should not have been accepted due to changes to the facts of the case or the classification under the Criminal Code, it may repeal its order on the matter after obtaining a statement from the prosecution service and the accused.

(4) In a situation specified in paragraph (3), the legal consequences, as specified in this Act, of an order on accepting a statement of confession of guilt shall not apply, and the prosecution service, the accused, and the defence counsel may file any motion within fifteen days without the limits specified in section 520 (1) to (3).

Interrogating an accused

Section 522 (1) A procedure for taking evidence shall begin by interrogating the accused. If the accused gave a testimony during the preparatory session, his interrogation may be omitted, with consent from his defence counsel, as regards questions already covered by his testimony given during the preparatory session.

(2) As a general rule, an accused shall be interrogated in the absence of any co-accused not yet interrogated.

(3) Acting *ex officio* or upon a motion from the prosecutor or, for the safety of the accused, from an accused or his defence counsel, the proceeding single judge or the chair of the panel shall have any co-accused already interrogated removed from the courtroom for the period of the interrogation of the accused if the presence of the co-accused would disturb the accused during his interrogation.

(4) An accused may confer with his defence counsel during a trial without disturbing the order of the trial, but he may not do so during his interrogation without permission from the proceeding single judge or the chair of the panel.

(5) If an accused made a statement regarding his personal data during the investigation or the court procedure, the data recorded in the case documents may also be verified by a trainee judge, a junior judge, or an administrative court officer outside the trial, with the proviso that the proceeding single judge or the chair of the panel shall record only the fact that verification was performed and any changes that occurred to such data.

Section 523 (1) The proceeding single judge or the chair of the panel shall also advise the accused, in addition to providing him defendant advice, that he may ask questions from other interrogated persons and he may file motions and observations during the procedure for taking evidence. The advice shall also include that the summary of any testimony made by him earlier as defendant may be presented, or read out loud, if he does not testify.

(2) If the accused intends to give a testimony after being advised pursuant to paragraph (1), the proceeding single judge or the chair of the panel shall ask the accused if he confesses his guilt.

(3) An accused shall be provided with the possibility to give a testimony regarding the indictment, and also presenting his defence, without interruption.

(4) An accused may be asked questions by the proceeding members of the court and then by the prosecutor, the defence counsel, the aggrieved party, and, regarding matters affecting him, any party with a pecuniary interest, in this order.

(5) The proceeding single judge or the chair of the panel shall prohibit an accused from answering a question if asking that particular question is prohibited by this Act; answering a question may be prohibited if the question is asked repeatedly regarding the same subject matter.

(6) The proceeding single judge or the chair of the panel shall ensure that the method of questioning does not violate the human dignity of the accused.

Section 524 (1) If an accused confesses his guilt concerning the criminal offence stated in the indictment document during trial, the provisions laid down in section 504 (1) to (3) shall apply accordingly to the acceptance of the confession of guilt.

(2) If the court finds it possible to conclude the case, the proceeding single judge or the chair of the panel shall also interrogate the accused regarding all sentencing factors, and then he shall declare the proceeding for taking evidence concluded.

Earlier testimony of an accused

Section 525 (1) In a situation described in section 429 (3), or if an accused does not wish to give a testimony during trial, or his whereabouts are unknown, the proceeding single judge or the chair of the panel shall present *ex officio* or may read out loud, or have the keeper of minutes read out loud, upon a motion from the prosecutor, the accused or the defence counsel a summary of the testimony given by the accused during investigation or the preparatory session.

(2) A summary of individual parts of a testimony given by an accused, as a suspect or accused, earlier during the proceeding may be presented or read out loud if the testimony of the accused is inconsistent with his earlier testimony.

(3) The summary of individual parts of an earlier testimony may not be presented, unless the accused is asked a question regarding any fact or circumstance included in the presentation, or the accused testified regarding any such fact or circumstance during the trial. The proceeding single judge or the chair of the panel shall ensure that the scope of the presentation is sufficient for establishing the facts of the case.

(4) If the court decided not to interrogate the accused because he gave a testimony during the preparatory session, the testimony given during the preparatory session shall be presented upon a motion from the prosecutor, the accused, or the defence counsel.

Interrogating witnesses

Section 526 (1) As a general rule, the aggrieved party shall be interrogated first from among all witnesses.

(2) A witness not yet interrogated may not attend the interrogation of another witness.

(3) With a view to protecting a witness requiring special treatment and acting *ex officio* or upon a motion from the prosecutor, the accused, his defence counsel, or the witness, the proceeding single judge or the chair of the panel shall have any accused or audience member removed from the courtroom, provided that the presence of that person would disturb the witness requiring special treatment during his interrogation. A summary of the testimony given by the witness shall be presented by the court to the accused later.

(4) A witness may be asked questions by the proceeding members of the court and then by the prosecutor, the accused, the defence counsel and the aggrieved party, and, regarding matters affecting them, any party with a pecuniary interest and an expert, in this order.

(5) The provisions laid down in section 523 (5) to (6) shall apply to the interrogation of witnesses accordingly.

Earlier testimony of a witness

Section 527 (1) The proceeding single judge or the chair of the panel shall present *ex officio* or may read out loud, or have the keeper of minutes read out loud, upon a motion from the prosecutor, the accused or the defence counsel a summary of the testimony given by a witness earlier during a proceeding if

a) the witness may not be interrogated during the trial, or doing so is not possible due to the witness staying abroad for a prolonged period,

b) the witness refuses to testify at trial without being eligible to do so or in a situation specified in section 177 (4) and (5),

c) the trial is to be repeated under section 518 (3),

d) the witness gave a testimony in writing pursuant to section 181, and the court finds it unnecessary to interrogate the witness at trial.

(2) In a situation not specified in paragraph (1), *ex officio* or upon a motion to that effect, the proceeding single judge or the chair of the panel shall present a summary of the testimony given by a witness earlier, or read out loud, or have the keeper of minutes read out loud, the testimony

a) to clarify whether section 163 (4) *c)* applies, or

b) if the testimony of the witness is necessary for the taking of evidence, but the interrogation of the witness at trial is not justified, the court finds it unnecessary, and no motion to that effect is filed by the proceeding prosecutor, the accused or the defence counsel.

Section 528 (1) The proceeding single judge or the chair of the panel, acting *ex officio* or upon a motion from the prosecutor, the accused, or the defence counsel, may present individual parts of a testimony given by a witness earlier if the witness does not remember the events or there is any inconsistency between his earlier witness testimony and his witness testimony given at trial.

(2) Individual parts of an earlier testimony may not be presented, unless the witness is asked a question regarding any fact or circumstance included in the presentation, or the witness testified regarding any such fact or circumstance during the trial. The proceeding single judge or the chair of the panel shall ensure that the scope of the presentation is sufficient for establishing the facts of the case.

Interviewing an expert

Section 529 (1) After being advised pursuant to section 196 (2), an expert shall be interviewed applying the provisions on interrogating a witness accordingly.

(2) In the course of his interview, an expert may use his expert opinion and notes submitted in writing, and he may use tools for demonstration.

Presenting and reading out loud a summary of an expert opinion

Section 530 (1) The proceeding single judge or the chair of the panel shall present *ex officio* or may read out loud, or have the keeper of minutes read out loud, upon a motion from the prosecutor, the accused or the defence counsel a summary of the expert opinion submitted in writing.

(2) If, after the summary of the expert opinion is presented or read out loud, the expert is to be interviewed in accordance with section 197 (1), the trial shall be adjourned and the expert shall be summoned for the trial date set.

(3) If, after the summary of the expert opinion is presented or read out loud, the prosecutor, the accused, the defence counsel, or the aggrieved party intends to ask questions from the expert, the court may adjourn the trial, and the expert shall be summoned for the trial date set, if his attendance is deemed necessary.

Presenting and reading out loud a summary of a document

Section 531 (1) In the course of a trial, the proceeding single judge or the chair of the panel shall present a summary of documents used as means of evidence.

(2) The single judge or the chair of the panel may order, upon a motion from the prosecutor, the defence counsel, or the accused, individual parts of a document to be read out loud in place of presenting the summary of the given document.

(3) A document attached or filed during a trial shall be enclosed to the minutes of the trial by the proceeding single judge or the chair of the panel.

Using a recording of a procedural act

Section 532 (1) In the course of a trial, the proceeding single judge or the chair of the panel may, acting *ex officio* or upon a motion from the prosecutor, the accused or the defence counsel, present a video recording, sound recording, or audio-visual recording of a procedural act.

(2) If a recording contains a testimony given by a defendant or a witness, the provisions laid down in sections 525 and 527 to 528 shall apply to the presentation of any part containing such testimony as appropriate.

Inspection by a judge

Section 533 (1) In the course of a trial, a means of physical evidence shall be demonstrated by the proceeding single judge or the chair of the panel. If that is not possible, a photograph of the means of physical evidence shall be demonstrated, and a description of the item shall be provided.

(2) The court, acting *ex officio* or upon a motion, shall carry out an inspection during the trial.

(3) An inspection shall be carried out by the court or a delegated member of the panel.

Taking evidence through a delegate judge or a requested court

Section 534 (1) If taking a piece of evidence is not possible, or would involve extraordinary difficulties, at trial, the proceeding single judge or a member of the panel shall act as delegate judge, or another court of identical subject-matter jurisdiction shall be requested, if necessary. The prosecution service, the accused, his defence counsel, and the aggrieved party shall be notified about the taking of evidence.

(2) A requested court shall be informed about the names and contact details of the accused, the defence counsel, and the aggrieved party, the facts to be clarified by the taking of evidence, the names and contact details of the persons to be interrogated, and the circumstances regarding which such persons are to be interrogated. All case documents necessary for carrying out the request for administrative assistance shall be sent, in original or copy, to the requested court.

(3) A requested court shall carry out a request for administrative assistance within one month. If a requested court fails to carry out a request for administrative assistance within one month, it shall inform the requesting court about the reason for its failure. If another court of identical subject-matter jurisdiction has territorial jurisdiction over carrying out parts of a request for administrative assistance, the requested court, after taking the evidence it is tasked with, shall send the case documents to the other court with territorial jurisdiction and shall inform the requesting court accordingly.

(4) The minutes of the proceedings of a delegate judge or a requested court shall be read out loud at trial.

Suspending a proceeding

Section 535 (1) A proceeding may be suspended even after the commencement of a trial for a reason specified in sections 487, 488 (1), 489, or 490.

(2) If the court suspends a proceeding because of a permanent and serious illness or mental disorder, which occurred after committing the criminal offence, of the accused, or because the whereabouts of the accused are unknown or he is staying abroad, the court may apply confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision, or it may decide to take a seized thing into State ownership.

(3) No appeal shall lie against suspending a proceeding pursuant to sections 488 (1) *a)* to *b)* or sections 489 to 490, or dismissing a motion for a proceeding under sections 489 (1) to (2) or 490 (1).

Transferring, joining, or separating cases

Section 536 (1) After the commencement of a trial, a case may not be transferred unless adjudicating the case exceeds the subject-matter jurisdiction of the proceeding court, the case is subject to military criminal proceedings, or another court has exclusive territorial jurisdiction over the case pursuant to section 21 (5) to (6).

(2) If the conditions specified in sections 146 to 147 are met, cases may be joined or separated even after the commencement of a trial.

Decisions passed outside a trial

Section 537 (1) After adjourning a trial, a court sitting as a panel may pass a decision on the following matters even during a panel session, if necessary:

a) transferring the case,

b) joining or separating cases,

c) suspending or terminating the proceeding, or

d) maintaining a coercive measure affecting personal freedom subject to judicial permission.

(2) In any matter other than those specified in paragraph (1), the chair of the panel shall decide outside the trial.

(3) After adjourning the trial, the court shall decide on ordering a coercive measure affecting personal freedom subject to judicial permission in a court session. The provisions laid down in section 494 (3) shall apply to the session accordingly.

Modifying an indictment

Section 538 (1) If the prosecution service finds, in light of the facts specified in the indictment document and other related facts, that the accused

a) is guilty of another criminal offence or the criminal offence assessed in the indictment document constitutes a criminal offence of greater or lesser gravity, it shall change the indictment,

b) is also guilty of any criminal offence other than that specified in the indictment, it shall extend the indictment.

(2) If an indictment is modified, the prosecution service shall either submit a new motion for imposing a penalty or applying a measure, or maintain its corresponding motion included in the indictment document.

(3) In a situation specified in paragraph (1), the prosecution service may also move for adjourning the trial.

(4) The prosecution service may modify the indictment until a conclusive decision is passed at the latest.

(5) If an indictment is changed, the court may adjourn the trial, provided that a corresponding motion is filed by the prosecutor or, with a view to preparing for a defence, the accused or the defence counsel.

(6) If an indictment is extended, the court shall adjourn the trial for a period of at least eight days upon a joint motion from the accused and the defence counsel, or it may do so *ex officio*, or it shall separate the case covered by the extension.

(7) A case shall be transferred, if adjudicating the modified indictment exceeds the subject-matter jurisdiction of the proceeding court, is subject to military criminal proceedings, or another court has exclusive territorial jurisdiction over the case pursuant to section 21 (5) to (6).

Abandoning an indictment

Section 539 (1) The prosecution service shall abandon an indictment if it is convinced by the evidence taken that

a) the act serving as ground for the indictment does not constitute a criminal offence,

b) the criminal offence was not committed by the accused, or

c) the criminal offence is not subject to public prosecution.

(2) The prosecution service may abandon an indictment until a conclusive decision is passed; the reasons for abandoning an indictment shall be stated.

(3) If an aggrieved party may act as a substitute private prosecuting party should the indictment be abandoned, the court shall adjourn the trial, and it shall serve on the aggrieved party the statement of the prosecution service on abandoning the indictment within fifteen days.

(4) At the time of serving such a statement, the court shall inform the aggrieved party about the possibility of, and conditions for, acting as a substitute private prosecuting party, including the rights and obligations of a substitute private prosecuting party.

(5) If an indictment is abandoned by the prosecution service for a reason specified in paragraph (1) *c)*, the court shall also inform the aggrieved party that he may represent the prosecution as a private prosecuting party, in place of a substitute private prosecuting party, regarding a criminal offence subject to private prosecution. The court shall also provide information regarding the conditions for acting as a private prosecuting party, the rights and obligations of a private prosecuting party, and the fact that, in the absence of a private motion, the aggrieved party needs to provide a statement.

(6) An aggrieved party may take action as a private prosecuting party within one month after receipt of the information specified in paragraph (5); if a private motion is missing, the corresponding statement may be made within the same time limit. If an aggrieved party acts as a private prosecuting party, he may not act as a substitute private prosecuting party.

Concluding an evidentiary procedure

Section 540 When the taking of evidence is finished, the proceeding single judge or the chair of the panel shall declare the evidentiary procedure to be concluded, and it shall invite all eligible persons to deliver their closing arguments and addresses, provided that no further motion for evidence was filed or all such motions were dismissed by the court.

Closing arguments, addresses, and the right to the last word

Section 541 (1) Prosecutors and defence counsels shall deliver closing arguments, and accused persons, aggrieved parties, and parties with pecuniary interests may address the court.

(2) If an aggrieved party or a party with a pecuniary interest is represented by more than one representative, the court may be addressed by one representative as agreed among themselves.

(3) If the defence counsel does not attend the trial, the closing argument may be delivered by the accused.

(4) A closing argument may also be filed with the court in writing. In that event, the closing argument shall be served on the prosecution service, the accused, and the defence counsel.

(5) If a closing argument is filed in writing, presenting a summary of the closing argument shall suffice when delivering the closing argument orally.

Section 542 (1) If a prosecutor finds that the accused can be found guilty, he shall submit a motion to the court, as part of his closing argument and invoking specific laws, for

a) finding the accused guilty of the criminal offence stated on the basis of the facts stated,

b) imposing a penalty or applying a measure,

c) passing any other provision.

(2) In his closing argument, a prosecutor may not move for a specific value or period of a penalty or measure.

(3) If a statement of confession of guilt was accepted by the court during the preparatory session, the prosecutor, in his closing argument, may not change his motion for imposing a penalty or applying a measure to the detriment of the accused.

(4) In his closing argument, a prosecutor shall submit a reasoned motion, invoking specific laws, for acquitting the accused if he finds, on the basis of evidence taken, that

a) the commission of the criminal offence, or the fact that is was committed by the accused, is not proven, or

b) infancy or any mental disorder, coercion, threat, error, justifiable defence, or necessity that excludes liability to punishment can be established to the benefit of the accused.

Section 543 (1) After the prosecutor, aggrieved parties and parties with pecuniary interests may also address the court.

(2) An aggrieved party may present his position regarding the subject matter of the indictment, and he may state if he wishes the accused to be found guilty and punished.

(3) A civil party may file, and provide reasons for, motions regarding matters concerning his civil claim; in the absence of a civil party, the civil claim he submitted shall be read out loud from the case documents.

(4) A party with a pecuniary interest may file motions regarding matters directly affecting his rights or legitimate interests.

Section 544 (1) After the addresses, the defence counsel shall deliver his closing argument.

(2) If there is more than one accused, the order of closing arguments shall be determined by the proceeding single judge or the chair of the panel.

(3) After the closing arguments and addresses, a rejoinder may be delivered in their order. A rejoinder may be delivered to a rejoinder; the last word shall be granted to the defence counsel or the accused.

(4) After the closing arguments, addresses, and rejoinders, a hearing-impaired accused shall be allowed to read the minutes upon request.

Section 545 Before a conclusive decision is passed, the accused shall be allowed to exercise his right to the last word.

Section 546 (1) With the exception specified in paragraph (2), a person delivering a closing argument, an aggrieved party addressing the court, or an accused exercising his right to the last word may not be directed to discontinue speaking.

(2) If a closing argument or an argument delivered by exercising the right to the last word seeks to protract the proceeding, the proceeding single judge or the chair of the panel may, after warning him once, direct the speaker to discontinue speaking.

(3) A closing argument, an address by an aggrieved party, or an argument delivered by exercising a right to the last word may not be interrupted, unless it includes any expression that constitutes a criminal offence or incites disturbance.

Reopening an evidentiary procedure

Section 547 A court shall reopen an evidentiary procedure before passing a conclusive decision if it considers necessary to do so in light of any information expressed in the closing arguments, addresses, or arguments delivered by exercising a right to the last word.

Adjourning a trial due to the possibility of an assessment other than that in the indictment

Section 548 If the court establishes, after the closing arguments, addresses, and last words are delivered, that the acts specified in the indictment may be assessed differently that the assessment presented in the indictment document, it may adjourn the trial to facilitate preparations for the defence, and it shall also obtain the opinion of the prosecutor, the accused, and the defence counsel on this matter.

Passing and announcing a decision

Section 549 (1) After the closing arguments, addresses, and last words, the court shall retire for passing a conclusive decision. In passing a decision, the operative part of a decision shall be put in writing and signed by the proceeding members of the court.

(2) Once passed, a conclusive decision shall be announced immediately. The operative part of a decision passed at trial, and signed by the proceeding members of the court, shall be handled together with the minutes of the trial.

(3) The operative part of a conclusive decision shall be read out loud by the proceeding single judge or the chair of the panel, standing, with all persons present standing and listening. The single judge or the chair of the panel may excuse a person present from this obligation in light of his health. After reading out loud the operative part, the single judge or the chair of the panel shall present a summary of the statement of reasons orally; this includes presenting a summary of the facts of the case as established by the court. In this context, the court may fulfil its obligation to provide reasons also by specifying facts of the case that are different than the facts referred to in the indictment document.

(4) After announcement, the proceeding single judge or the chair of the panel shall hand over the operative part of the conclusive decision on all persons who are present and eligible to file an appeal.

Section 550 (1) If necessitated by the complexity of a case, the considerable volume of a decision, or any other important reason, the trial may be adjourned for eight or, exceptionally, fifteen days for the purpose of passing and announcing a decision. The due date of announcing a decision shall be set at the time of adjourning the trial.

(2) If an accused or a defence counsel fails to appear at trial despite being duly summoned, the decision may be announced in the absence of the accused or the defence counsel. No application for excuse shall be accepted for such an omission.

Legal remedy statements

Section 551 (1) After announcing a conclusive decision, the proceeding single judge or the chair of the panel shall ask any person who is present and eligible to appeal if

a) he accepts the conclusive decision,

b) he submits an appeal, or

c) he reserves a time limit of three working days for making a statement.

(2) The statements shall be made in the following order: statement by the prosecutor, the civil party, the party with a pecuniary interest, the accused, and the defence counsel.

(3) Concurrently with applying the provisions laid down in paragraph (1), the proceeding single judge or the chair of the panel shall inform any person eligible to appeal about the provisions laid down in sections 583 (3), 584 (2) and (3), and 590 (3) and (4).

(4) With regard to non-conclusive orders communicated by way of announcement, the provisions laid down in paragraph (2) shall apply to the order of legal remedy statements as appropriate, with the proviso that where an order affects an other interested party, the other interested party concerned may make a statement after the prosecutor.

Decisions on coercive measures

Section 552 (1) If a conclusive decision does not become final and binding upon announcement, the court shall decide on any coercive measure affecting personal freedom subject to judicial permission immediately.

(2) In a situation specified in paragraph (1), a coercive measure affecting personal freedom subject to judicial permission may be ordered and maintained for a reason stated in section 276 (2) *a)* and *c)* and also if the accused is likely to flee and hide in light of the period of imprisonment specified in the judgment.

(2a) If the trial may be held in the absence of the accused, the court may order the custody of the accused for the purpose of taking a decision on ordering a coercive measure affecting personal freedom subject to judicial permission.

(3) The court shall terminate any coercive measure affecting personal freedom subject to judicial permission and, if the accused is subject to pre-trial detention or preliminary compulsory psychiatric treatment, arrange for the accused to be released immediately if the accused is acquitted, released on probation, ordered to perform reparation work, not sentenced to imprisonment to be served, not sentenced to special education in a juvenile correctional institution, or not subject to compulsory psychiatric treatment if acquitted, or the proceeding is terminated.

Closure of a trial

Section 553 After the legal remedy statements are made and the decision on coercive measures, if any, is passed, the proceeding single judge or the chair of the panel shall close the trial.

Tasks of a court after its decision becomes final and binding

Section 554 (1) Even after a conclusive decision becomes final and binding, the proceeding single judge or the chair of the panel may decide on

a) translating a decision to be served,

b) rectifying a decision, or

c) lifting a sequestration.

(2) After a conclusive decision becomes final and binding or a non-conclusive order terminating a proceeding reaches administrative finality, the proceeding single judge or the chair of the panel shall decide on the amount, and bearing, of criminal costs that arose after the adoption of the decision.

(3) A single judge or the chair of a panel may not decide on any matter subject to a simplified review procedure on the basis of paragraph (1) or (2).

Chapter LXXIX

ENFORCING AND ADMINISTERING A CIVIL CLAIM

General provisions

Section 555 (1) The enforcement and administration of civil claims shall be governed by the principles of the Act on the Code of Civil Procedure, with the proviso that

a) the provisions on the prohibition of giving a testimony and any refusal to give a testimony shall apply to any civil party or accused in the context of enforcing and administering a civil claim,

b) no disciplinary fine may be imposed on a civil party if he violates his obligation to tell the truth or fails to act in good faith.

(2) To the enforcement and administration of civil claims the following provisions of the Act on the Code of Civil Procedure shall apply:

a) interpretative provisions,

b) provisions on the value of the subject matter of the action,

c) the provisions on changes in the person of the parties shall apply to a civil party subject to the derogation laid down in section 55 (2), provided that the legal successor of the aggrieved party acts as a civil party in a criminal proceeding,

d) the provisions on legal succession in an action shall apply to a defendant, provided that the newly identified obligor of a civil claim is also a defendant in the criminal proceeding,

e) the provisions on costs shall apply to all costs that arose in causal relationship with the enforcement of the civil claim without qualifying as criminal costs under this Act.

(3) Against a judge or court proceeding in the course of enforcing and administering a civil claim, a notice of a ground for disqualification provided for under the Act on the Code of Civil Procedure but not specified in this Act may also be submitted. In other respects, the provisions of this Act shall apply to the matter of disqualification, with the proviso that

a) a ground for disqualification reported by a civil party shall be ignored if it is provided for under the Act on the Code of Civil Procedure but is not specified in this Act,

b) if a ground for disqualification provided for under the Act on the Code of Civil Procedure but not specified in this Act is reported by another person, the single judge or court administering the disqualification shall not apply disqualification in its decision, but it shall establish the existence of the ground for disqualification.

(4) The defence counsel of a defendant in a criminal proceeding may act as his agent with regard to a civil claim.

(5) The case documents of a proceeding shall be taken into account by the court *ex officio* in the course of enforcing and administering a civil claim.

(6) In the course of enforcing and administering a civil claim, evidence may be taken pursuant to the provisions of this Act. If the civil party submits, as a civil claim, a claim for grievance award, evidence shall not be taken in connection with this claim.

Filing and withdrawing a civil claim

Section 556 (1) In a court of first instance, an aggrieved party may file a civil claim during the first procedural act he is allowed to attend under the provisions of this Act at the latest. No application for excuse may be accepted for failing to meet this time limit.

(2) A civil claim shall include the following:

a) specification of the defendant against whom the aggrieved party intends to enforce a civil claim,

b) explicit claim requesting the court's decision and, in particular, the amount or quantity claimed,

c) specification of the right to be enforced through the civil claim,

d) the facts supporting the right to be enforced and the request for the court's decision,

e) the method and place of performance, should the merits of the civil claim be adjudicated, and

f) statement by the aggrieved party on whether he consents to sending his civil claim to a civil court in accordance with section 560 (3b).

(2a) In his statement, the aggrieved party may declare that the person under paragraph (2) *a)* shall be the person whose criminal liability as the perpetrator of the criminal offence committed against the aggrieved party is established by the court in its final and binding conclusive decision.

(2b) In his statement, the aggrieved party may declare that he wants to enforce as the claim under paragraph (2) *b)* the amount of the damage or pecuniary loss caused by the criminal offence, or the value affected by it, as established by the court in its final and binding conclusive decision.

(2c) A civil party who moved for the confidential processing of his personal data and made a statement in compliance with paragraph (2) *f)* in which he gave consent to sending his civil claim to a civil court under section 560 (3b), shall be advised of the provisions of section 560 (3c).

(3) A civil party may withdraw his civil claim at any time during a proceeding.

(4) If a civil claim is withdrawn, the legal consequences of abandoning an action, as provided for under the Act on the Code of Civil Procedure, shall apply, unless the civil party concerned

a) states at the time of withdrawing his civil claim that he intends to enforce his claim by other legal means, and

b) demonstrates, within two months after withdrawing his civil claim, that he duly enforced his civil claim by other legal means.

(5) A defendant may not file a counter-claim against a civil party, and he may not set off any counter-claim.

(6) Before a conclusive decision is passed by the court of first instance, the defendant may state that he does not wish to submit a statement of defence against the claim to be enforced as a civil claim and wishes to fulfil the claim as submitted by the civil party. The fulfilment of a claim for grievance award payment that the civil party submitted as a civil claim shall require an explicit statement by the defendant. In such a situation, the court shall not take evidence as regards the civil claim.

Provisional measures

Section 557 If extortion, fraud, or usury is committed regarding any real estate used by the defendant for habitation, or by any other person with the permission of the defendant for free, where the aggrieved party used to live before the criminal offence was committed, and if the civil claim affects any right of disposal or possession of the real estate, the civil party may request the real estate to be evacuated and transferred to his possession as a provisional measure in his motion.

Communicating a civil claim

Section 558 (1) If a submitted civil claim is suitable for being administered, it shall be communicated to the defendant.

(2) With the exception specified in paragraph (3), the provisions laid down in the Act on the Code of Civil Procedure concerning the legal effects of submitting a statement of claim, as well as the legal effects of bringing an action shall apply to the enforcement and administration of civil claims.

(3) The legal effects of submitting a statement of claim, or bringing an action, as provided for under the Act on the Code of Civil Procedure, shall not vanish if

a) the court orders the civil claim to be enforced by other legal means, or

b) the civil party withdraws his civil claim,

and the civil party duly enforces his claim by other legal means with reference to the history of the case within one month after the decision prescribing enforcement by other legal means becomes final and binding or reaches administrative finality, or after the statement of withdrawal is received by the court. No application for excuse shall be accepted for failing to meet this time limit.

Amending a civil claim

Section 559 (1) Unless otherwise provided by an Act, a civil claim submitted may be amended until a conclusive decision is passed by the court of first instance, provided that

a) a statement of fact is amended, and the civil party invokes a fact, deviating from or supplementing previously invoked facts, that became known to him through no fault of his own, or occurred, only after the preparatory session, or he became aware only later that invoking that fact would be justified,

b) a right to be enforced, or a request for the court's decision, is amended, and the amendment is justified by a fact that was amended according to point *a)* and is in direct causal relationship with the right to be enforced or the request, or

c) amending the civil claim is justified by, and in causal relationship with, a modification of the indictment or the possibility of an assessment other than that in the indictment,

and the amended civil claim arises from the same legal relationship.

(2) In other respects, the provisions laid down in the Act on the Code of Civil Procedure concerning the amendment of an action during a main hearing stage shall apply to amending a civil claim.

Ordering a civil claim to be enforced by other legal means

Section 560 (1) A court shall order a civil claim to be enforced by other legal means if

a) it terminates a proceeding,

b) it acquits the accused without establishing his liability even for an infraction,

c) enforcing the civil claim concerned is prohibited under this Act,

d) a civil claim is submitted late by a civil party,

e) a civil claim is filed under section 557, together with a motion for a provisional measure,

f) a civil party submits a notice of a ground for disqualification, provided for under the Act on the Code of Civil Procedure but not specified in this Act, against the proceeding judge or court, or the court established the existence of a ground for disqualification, provided for under the Act on the Code of Civil Procedure but not specified in this Act, on the basis of a notice of a ground for disqualification submitted by another person,

g) the legal consequences of filing an action have already arisen in another action between the civil party and the defendant on the enforcement of the same right arising from the same factual basis, or the subject matter thereof has already been adjudicated with final and binding effect,

h) the civil party or the defendant does not have a capacity to be a party to a civil court action,

i) the claim may not be enforced in court for a reason other than statute of limitation under civil law,

j) the civil claim was not filed by the aggrieved party,

k) the civil party and the defendant seek approval for a settlement within the meaning of the Act on the Code of Civil Procedure,

l) adjudicating the merits of the civil claim would delay the conclusion of the proceeding considerably,

m) adjudicating the merits of the civil claim in the criminal proceeding is prevented by any other circumstance,

n) the civil claim does not contain the information required under section 556 (2) *a)* to *c)*, or

o) it is not possible to decide on the merits of the civil claim because the court ordered the personal data of the civil party to be processed confidentially, and the civil claim does not contain the information required under section 556 (2) *e)*.

(2) The court shall order a civil claim to be enforced by other legal means as soon as a reason specified in paragraph (1) *c)* to *e)*, *f)* to *k)* or *n)* to *o)* occurs or in its conclusive decision.

(3) In a situation specified in paragraph (1) *e)*, the court shall send any civil claim or motion for a provisional measure, together with its order to enforce the civil claim by other legal means, to a court that has, under the Act on the Code of Civil Procedure, subject-matter l and territorial jurisdiction over the case.

(3a) Paragraph (1) *l)* shall apply only if the court took a statement from the defendant on whether he wants to make a statement under section 556 (6).

(3b) After the conclusive decision becomes final and after verifying the domicile or place of residence of the civil party, the court of first instance shall send the civil claim and the conclusive decision to the court with subject-matter and territorial jurisdiction under section 3 of Act LXX of 2020 on expedited court procedure for damage caused by a criminal offence or for grievance award, for conducting an expedited court procedure, provided that

a) a person with a domicile or place of residence within the territory of Hungary submitted the civil claim,

b) the court orders the enforcement by other legal means of the civil claim for a reason under paragraph (1) *l)* or *m)*,

c) impounding has not been ordered to secure the civil claim,

d) the civil party explicitly consented to sending his civil claim to the civil court in accordance with this paragraph.

(3c) If the civil party moved for the confidential processing of his personal data in the proceeding, the court shall transfer the personal data of the civil party to the civil court without consent from the person concerned; such data shall not be subject to confidential processing of personal data in the civil proceeding.

(4) A civil claim shall also be ordered to be enforced by other legal means if a ground specified in paragraph (1) affects only a part of the civil claim.

Chapter LXXX

CONCLUSIVE DECISIONS OF A COURT OF FIRST INSTANCE

Content of a conclusive decision

Section 561 (1) The introductory part of a conclusive decision shall specify the trial dates.

(2) The operative part of a conclusive decision shall contain the following:

a) information on any remand detention of the accused,

b) name of the accused, as well as other personal data pursuant to section 184 (2) *a)* to *f)* and, if necessary, section 184 (2) *g)*,

c) designation of the criminal offence under the Criminal Code with reference to the statutory provision applied, including a reference to the statutory provision defining the basic form of the criminal offence where a qualified form of a criminal offence is established; specification of the criminal offence as a felony or a misdemeanour; specification of the criminal offence as being committed on multiple counts or in a continuous manner, as applicable; if the criminal offence was committed by negligence, a reference to this fact; and the type of perpetrator involvement and stage of commission,

d) any other provision, and

e) provisions on bearing the criminal costs.

(3) The statement of reasons for a conclusive decision shall include the following:

a) a reference to the indictment, the classification specified in the indictment, and a summary of the facts stated in the indictment document, if necessary,

b) facts established with regard to the personal circumstances of the accused, and facts relating to any prior conviction of the accused that were relevant at the time of passing the decision,

c) facts established by the court,

d) pieces of evidence the court relied on when passing its decision, and brief reasons as to why each individual piece of evidence was accepted or not accepted for the purpose of establishing the facts of the case,

e) classification of the act based on the facts established by the court,

f) a reasons for any other provisions laid down in the decision and for dismissing any motion, in particular any motion for evidence, with reference to the laws applied,

g) reasons for which, regarding a ground for a review procedure specified in section 649 (1) or (2), the proceeding court deviated from a decision other than a uniformity decision by the Curia published in the collection of court decisions *Bírósági Határozatok Gyűjteménye*.

Section 562 (1) If the prosecution service, the accused and the defence counsel do not submit an appeal against a conclusive decision communicated by announcement or service, the short statement of reasons for the decision may consist of the elements required under section 561 (3) *a)* to *c)* and *e)* and a reference to the laws applied. If, during sentencing, the court took into account the protraction of a criminal proceeding as a mitigating circumstance, a reference to this fact shall be included in the short statement of reasons for the decision.

(2) If an appeal filed is aimed at a penalty or measure only, the statement of reasons for the conclusive decision may consist of the elements required under section 561 (3) *a)* to *c)* and *e)* and section 564 (4).

(3) If a conclusive decision includes provisions regarding more than one criminal offence, the statement of reasons regarding any criminal offence not affected by any appeal may consist of the elements required under section 561 (3) *a)* to *c)* and *e)* and section 564 (4), as well as a reference to the laws applied.

(4) If a court accepted a confession of guilt by a defendant and found the defendant guilty on the basis of his confession, the statement of reasons of the judgment may consist of the elements required under section 561 (3) *a)* to *c)* and *e)*, as well as a reference to the confession of guilt, to the acceptance of the statement of confession of guilt, and to the laws applied. If, during sentencing, the court took into account the protraction of a criminal proceeding as a mitigating circumstance, a reference to this fact shall be included in the statement of reasons for the judgment on the acceptance of the confession of guilt.

(5) If a conclusive decision affects more than one accused, the statement of reasons may also be put into writing

a) on the basis of paragraph (1) regarding an accused with respect to whom the conclusive decision became final and binding at first instance,

b) on the basis of paragraph (4) regarding an accused with respect to whom a confession of guilt was accepted by the court.

(6) If an appeal filed is aimed only at provisions of a judgment that relate to a matter subject to simplified review procedure, to a civil claim, or to the termination of parental custody rights, the statement of reasons for the judgment may consist of the elements required under section 561 (3) *a)* to *c)* and *e)* and, if guilt was established in the judgment under section 564 (4) *b)*, the reasons for any provision challenged in the appeal, and a reference to the laws applied.

Judgments

Section 563 The court shall decide on an indictment by passing a judgment if it acquits or finds the accused guilty.

Judgments of guilt

Section 564 The court shall declare an accused guilty if it establishes that the accused committed a criminal offence and is liable to punishment.

(2) The operative part of a judgment of guilt shall contain the following:

a) decision of the court to hold the accused guilty,

b) penalty imposed or measure applied, as well as any other legal consequence,

c) any other rules of behaviour set by the court, provided that the court subjects the accused to supervision by a probation officer,

d) if the court decides to refrain from imposing punishment, a reference to this fact.

(3) If an accused is found guilty of a criminal offence committed while, or before, being released on probation, the court shall set aside the provision concerning his release on probation, terminate the release on probation, and impose a concurrent sentence.

(4) A statement of reasons for a judgment of guilt shall contain the following:

a) reasons for imposing, or not imposing, a penalty and applying, or not applying, a measure, with reference to the laws applied,

b) if the court took into account the protraction of the criminal proceeding as a mitigating circumstance during sentencing, a reference to this fact.

Section 565 (1) If a statement of confession of guilt was accepted by the court, the accused shall be found guilty based on his confession of guilt, the acceptance of his confession of guilt, and the case documents of the proceeding.

(2) If a confession of guilt is accepted by the court during a preparatory session, with the exceptions specified in paragraphs (3), it may not impose a penalty, or apply a measure, that is stricter than the one specified in the indictment document or a motion submitted pursuant to section 502 (1).

(3) In a situation under paragraph (2), the legal consequences of an order on accepting a statement of confession of guilt cannot be applied if the court, in the course of taking of evidence conducted within the limits set out in section 521 (1), joins the newer case to a criminal proceeding launched earlier and finds the accused guilty in that proceeding.

Judgments of acquittal

Section 566 (1) A court shall acquit an accused if

a) the act does not constitute a criminal offence,

b) the criminal offence was not committed by the accused,

c) the commission of the criminal offence is not proven, or it is not proven that the criminal offence was committed by the accused, or

d) a ground excluding the liability for punishment of the accused or the punishability of the act can be established.

(2) The operative part of a judgment of acquittal shall contain the decision of the court to acquit the accused.

(3) The court shall order the compulsory psychiatric treatment of the accused if the conditions for ordering compulsory psychiatric treatment of an accused acquitted due to mental disorder are met.

(4) The statement of reasons for a judgment of acquittal shall also specify the reason, from among those specified in paragraph (1) *a)* to *d)*, the court relied on when passing its judgment.

(5) If acquittal is based on infancy or a mental disorder, the court may order confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision.

Orders terminating a proceeding

Section 567 (1) A court shall terminate its proceeding with a conclusive order if

a) the liability to punishment of the accused was terminated due to his death, the statute of limitations, a pardon, or for any other reason specified in a law,

b) the act has been adjudicated with final and binding effect,

c) the prosecution service abandoned the indictment and neither private prosecution nor substitute private prosecution can be brought, or the aggrieved party did not take action as a private prosecuting party or substitute private prosecuting party,

d)

e)

f) it is conducted regarding a criminal offence that is, in comparison to another criminal offence of greater material gravity also subject to the indictment, not significant for establishing criminal liability, or

g) a private motion is missing and it may not be rectified any longer pursuant to section 378 (4).

(2) A court shall terminate its proceeding with a non-conclusive order if

a) a crime report, or an act by the Prosecutor General as specified in section 4 (9), or in section 3 (3) of the Criminal Code, is missing,

b)

c) the indictment was brought by an ineligible person,

d) the indictment document does not contain or imperfectly contain all statutory elements required under section 422 (1) rendering it unsuitable for adjudicating the merits of the indictment.

e) the criminal proceeding is conducted by an authority of another country due to the transfer of the criminal proceeding or the result of a consultation procedure as defined in the Act on cooperation with the Member States of the European Union in criminal matters

f) the case does not fall within Hungarian criminal jurisdiction.

(3) When noticing the existence of a ground specified in paragraphs (1) to (2), the court shall terminate its proceeding immediately.

(4) The operative part of an order terminating a proceeding shall contain the decision of the court to terminate its proceeding.

(5) The statement of reasons for an order terminating a proceeding shall also specify the reason, from among those specified in paragraph (1) *a)* to *f)* or paragraph (2) *a)* to *d)*, the court relied on when passing its order, as well as the underlying facts and circumstances.

(6) In a non-conclusive order terminating a proceeding,

a) the introductory part of the decision shall also contain the elements required under section 561 (1),

b) the operative part of the decision shall contain the elements required under section 561 (2) *a)* to *e)*,

c) the statement of reasons for the decision shall contain the elements required under section 561 (3) *a)* to *f)* as necessary.

(7) If it becomes known after a conclusive decision is announced, but before it becomes final and binding, that the accused deceased or was granted a procedural pardon, and if no appeal was submitted against the decision, the court shall set aside its conclusive decision that is not final and binding, or the part of its decision relating to the accused concerned, and it shall terminate its proceeding due to the death of, or the procedural pardon granted to, the accused.

Section 568 If the prosecution service abandoned an indictment and a substitute private prosecuting party may proceed, the fact that the statement made by the prosecution service on abandoning the indictment could not be served on the aggrieved party because his whereabouts were unknown shall not be an obstacle to terminating the proceeding.

Section 569 (1) If a proceeding is terminated on the basis of section 567 (1) *a)*, *f)* or *g)* , the court may order, in its conclusive order, confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision.

(2) If a proceeding is terminated on the basis of section 567 (7), the court shall maintain any provision laid down in its previous conclusive decision concerning confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision.

Ordering electronic data to be rendered permanently inaccessible by preventing access permanently

Section 570 Acting *ex officio*, or upon a motion by the prosecution service, the court shall order electronic data to be rendered permanently inaccessible by preventing access to such electronic data permanently if access to such electronic data was ordered to be prevented temporarily pursuant to section 337 (1), and preventing access to such data is still justified.

Adjudicating civil claims

Section 571 (1) A court shall decide on the merits of a civil claim by passing a judgment either granting or dismissing the claim.

(2) If the court determines, in its judgment, the amount of damage or pecuniary loss caused by committing the criminal offence, or the value affected by the criminal offence, it shall adjudicate the merits of any civil claim submitted up to that amount.

(2a) In a situation under section 556 (6), the court shall adjudicate the civil claim as submitted by the civil party.

(2b) A claim for grievance award filed by the civil party as a civil claim may be adjudicated only in a situation under section 556 (6).

(3) The provisions laid down in the Act on the Code of Civil Procedure regarding the limits of a decision on the merits of a claim, the time limit for performance, and the calculation of such a time limit, shall apply when adjudicating a civil claim.

(4) A court may declare provisions of its judgment concerning a civil claim to be preliminarily enforceable pursuant to the provisions laid down in the Act on the Code of Civil Procedure regarding preliminary enforceability.

Terminating parental custody rights

Section 572 (1) Acting on the basis of a motion filed by the prosecution service, the court may terminate the parental custody rights of an accused pursuant to the provisions laid down in the Act on the Civil Code regarding the termination of parental custody rights, provided that the court finds the accused guilty of an intentional criminal offence against his child.

(2) Filing a motion for terminating parental custody rights may be initiated by the child of the accused, or the other parent of the child of the accused, at the proceeding prosecution office. If the prosecution service does not agree with the initiative, it shall transmit the initiative without delay to the guardianship authority for the purpose of considering the possibility of filing an action for terminating parental custody rights, and it shall inform the initiating person accordingly.

(3) A court shall order a claim for terminating parental custody rights to be enforced by other legal means if adjudicating the corresponding motion would delay the conclusion of the criminal proceeding considerably, or adjudicating the merits of the motion during the criminal proceeding is prevented by any other circumstance.

Adjudicating infractions

Section 573 (1) If a court finds, in light of the outcome of a trial, that an act stated in the indictment document constitutes an infraction and, as a consequence, it acquits the accused, it shall adjudicate the infraction.

(2) In a situation described in paragraph (1), the court may order confiscation and adjudicate the merits of a civil claim.

(3) If an accused is indicted for more than one criminal offence, and the court establishes that an act stated in the indictment document constitutes an infraction, the court may terminate the proceeding regarding that infraction, provided that the given act is, in comparison to another criminal offence also subject to the indictment, not significant for establishing criminal liability.

Bearing the criminal costs

Section 574 (1) A court shall oblige an accused to bear all criminal costs specified in section 145 (1) if the accused is found guilty or liable for an infraction.

(2) An accused may be obliged to bear criminal costs only if they arose in connection with an act, or an element of the facts of the case, he is found guilty of or liable for.

(3) An accused may not be obliged to bear any criminal cost that arose unnecessarily, for a reason other than an omission on his part, or to the bearing of which another person is to be obliged by virtue of an Act.

(4) Each accused a court finds guilty shall be obliged to bear criminal costs separately. If the criminal costs, or any criminal cost, may not be broken down into lots that are attributable to individual accused persons who are found guilty, the court shall oblige all accused persons to bear such criminal costs jointly and severally.

(5) A court may relieve an accused from bearing a part of the criminal costs if they are disproportionally high considering the material gravity of his criminal offence.

Section 575 (1) If a court acquits an accused, or terminates a proceeding against him, the criminal costs specified in section 145 (1) *a)* shall be borne by the State.

(2) If an accused is acquitted, or the proceeding against him is terminated, he shall still be obliged to bear all costs that arose due to any omission on his part.

(3) If a proceeding is terminated, the court may oblige the accused to bear all or some of the criminal costs, provided that the proceeding was terminated because the liability to punishment of the accused was terminated for a reason that depends on the behaviour of the accused and is specified in the Special Part of the Criminal Code.

(4) The obligation of the accused shall be determined taking into account the material gravity of the criminal offence and the financial, income and personal situation and lifestyle of the accused.

(5) If a proceeding is terminated for a ground under section 567 (2), the court shall adopt provisions only on the criminal costs accrued in the course of the court proceeding, with the exception of a situation under section 567 (2) *a)*, where the crime report or the act by the Prosecutor General was obtained and the proceeding cannot be continued.

Section 576 (1) The State shall bear

a) all costs an accused is not obliged to bear pursuant to section 76 *a)*, and

b) all costs that arose because the accused is hearing-impaired, speech-impaired, blind, or deaf-blind, does not understand the Hungarian language, or used his national minority mother tongue in the course of the proceeding.

(2) If prosecution was represented by the prosecution service and the court acquitted the accused in a situation other than that specified in section 566 (3), or terminated the proceedings against the accused because the prosecution service abandoned the indictment, the State shall reimburse, in an amount specified by law, the costs incurred by the accused, and the fee and costs of his authorised defence counsel, within one month after the conclusive decision becomes final and binding.

Section 577 (1) In its conclusive decision, the court shall, without specifying the amount, or specifying a proportionate part of the fee, determine who shall pay the fee of a legal aid lawyer. A court passing a final and binding conclusive decision shall inform the legal aid service that acted in the matter of the authorisation of legal aid about arrangements for bearing the legal aid lawyer's fee by communicating the below data within eight days:

a) decision on the payment of the legal aid lawyer's fee,

b) name, home address, contact address, place of actual residence, service address, mother's name, and date of birth of the person, or the name, seat, name of registering organ, and registration number of the organisation obliged to pay the legal aid lawyer's fee.

(2) Any fee of a legal aid lawyer a person participating in a criminal proceeding may not be obliged to pay shall be borne by the State.

Section 578 (1) Under the conditions and within the limits specified in section 42 (1) of the Sentence Enforcement Act and upon a request submitted immediately after a conclusive decision becomes final and binding, the proceeding single judge or the chair of the panel may grant a payment moratorium, or allow payment in instalments, regarding the criminal costs payable to the State.

(2) An application for payment moratorium or payment in instalments shall not have suspensory effect.

(3) An application shall be decided by the court that passed the final and binding conclusive decision. No appeal shall lie against this decision.

Chapter LXXXI

APPEALS

Right to appeal

Section 579 (1) Appeals against a conclusive decision passed by a court of first instance may be submitted to a court of second instance.

(2) Appeals against a non-conclusive order passed by a court of first instance may be submitted to a court of second instance, unless appealing is prohibited under this Act.

(3) The provisions applicable to appeals against judgments shall apply to the administration of appeals against orders as appropriate, with the proviso that, with regard to non-conclusive orders,

a) sections 583 (3), 584 (6) and 590 (5) shall not apply, and

b) other interested parties shall be also eligible to appeal.

Limits to appeals

Section 580 (1) No appeal shall lie

a) against ordering a motion to terminate parental custody rights, or a civil claim, to be enforced by other legal means,

b) against dismissing an appeal submitted after a judgment is accepted,

c) on the ground that the court passed a conclusive decision in the absence of the accused, provided that the attendance of the accused at trial was not mandatory,

d) against a case administration order, or

e) against taking a court measure that does not require passing a decision.

(2) If a statement of confession of guilt made by an accused is accepted, by way of an order by the court, no appeal shall lie against the judgment on the ground that

a) it establishes guilt, or

b) the facts of the case are established and assessed in line with the indictment.

(3) If no appeal lies against an order passed, or measure taken, by a court, a person eligible to appeal against the conclusive decision may challenge the order passed, or measure taken, by the court in an appeal against the conclusive decision.

Eligibility to appeal

Section 581 An appeal against a judgment of a court of first instance may be filed by

a) the accused,

b) the prosecution service,

c) the defence counsel,

d) an heir of the accused with regard to any provision granting a civil claim,

e) by the spouse or cohabitant of the accused if compulsory psychiatric treatment is ordered,

f) a civil party with regard to any provision on the merits of his civil claim,

g) a party with a pecuniary interest with regard to a provision affecting him.

Submitting an appeal

Section 582 (1) A person to whom the judgment of a court of first instance is communicated by announcement may submit an appeal immediately or may reserve three working days to do so. No application for excuse shall be accepted for failing to meet this time limit.

(2) If a non-conclusive order of a court of first instance is communicated by announcement, appeals shall be submitted at the time of announcement.

(3) Appeals against a judgment communicated by service may be filed within eight days. This provision shall also apply where the operative part of a judgment of a court of first instance is communicated by service.

(4) At a time other than the time of announcement, an appeal shall be filed in writing with, or recorded in minutes at, the court of first instance.

(5) The court of first instance shall inform the accused and the defence counsel about any appeal filed by the prosecution service pursuant to paragraph (4).

The ground, content, and aim of an appeal

Section 583 (1) An appeal may be filed on legal or factual grounds.

(2) An appeal may be filed against any provision of, or the statement of reasons for, a judgment.

(3) An appeal may also be filed solely against

a) a provision on imposing a penalty or applying a measure, also including a provision on expungement in advance,

b) a judgment provision that is subject to a simplified review procedure, or adjudicates the merits of a motion for terminating parental custody rights or a civil claim, or

c) an element of a statement of reasons for a judgment of acquittal required under section 566 (4), or an element of a statement of reasons for a terminating decision required under section 567 (5).

(4) An appeal may be filed by the prosecution service either to the detriment or the benefit of an accused, or by an accused or a defence counsel only to the benefit of a defendant; the prosecution service shall indicate in an appeal if it is to the detriment of an accused.

Section 584 (1) An appellant shall specify the judgment provision, or the part of the statement of reasons, challenged by the appeal.

(2) If a defendant, in a court judgment, is found guilty of, or acquitted from, more than one criminal offence, or a proceeding against him is terminated concerning more than one criminal offence, an appeal shall specify the criminal offence a provision on which is challenged in the appeal.

(3) An appellant may not subsequently extend the scope

a) of his appeal under paragraph (2) to an act not affected by the appeal,

b) of his appeal under section 583 (3) to a provision not affected by the appeal.

(4) If a submitted appeal does not comply with the provisions laid down in paragraphs (1) to (2), and its content could not be clarified at the time of submission, it shall be deemed as submitted against all judgment provisions with the exception of any provision on acquittal or terminating a proceeding.

(5) No new fact or piece of evidence may be invoked in an appeal, unless the appellant substantiates that the fact or means of evidence underlying his appeal arose, or was created, only after the announcement of the judgment, or that he became aware of that fact or means of evidence only after the announcement of the judgment through no fault of his own. In an appeal, a motion for evidence may be submitted, even if it was dismissed by the court of first instance.

(6) The prosecution service or a defence counsel shall provide a written statement of reasons for his appeal. A statement of reasons may be submitted to the court of first or, after the referral of the case documents, to the court of second instance on the fifteenth day before the panel session of, or the trial held by, the court of second instance at the latest.

(7) If the prosecution service fails to meet the time limit specified in paragraph (6), the chair of the panel shall notify the head of the prosecution office concerned; in case of an omission by a defence counsel, the court may impose a disciplinary fine on him.

Section 585 A civil party may amend his civil claim, in an appeal filed against a provision passed by a court of first instance on the merits of his civil claim or during the proceedings of the court of second instance, pursuant to the provisions laid down in the Act on the Code of Civil Procedure regarding the amendment of actions during procedural remedy proceedings and related procedures.

Observations concerning appeals

Section 586 (1) A person affected by an appeal may make observations concerning the appeal before the court of first instance or, after the referral of the case documents, before the court of second instance.

(2) The prosecution service, an accused affected by an appeal, or his defence counsel, and the appellant may invoke in an observation any issue that the court of second instance revises *ex officio*, even if he has not filed an appeal or filed an appeal on a ground other than that issue.

Withdrawing an appeal

Section 587 (1) An appellant may withdraw his appeal until a decision is passed by the court of second instance on the appeal.

(2) An appeal filed by the prosecution service may be withdrawn, after the referral of the case documents, by the prosecution office attached to the court of second instance. If an appeal is withdrawn by the prosecution service, and no other appeal was filed, the case documents shall be sent back to the court of first instance with a corresponding statement.

(3) An appeal submitted to the benefit of an accused by another person may be withdrawn by the appellant only with the consent of the accused. This provision shall not apply to an appeal by the prosecution service.

(4) A withdrawn appeal may not be submitted again.

Tasks of a court of first instance and the prosecution service after an appeal is filed

Section 588 (1) An appeal shall be dismissed by the court of first instance if it is prohibited by law, or it was filed by an ineligible person or late. If an appeal is filed in such a manner repeatedly, it shall be dismissed by the court without stating any reason as to its merits.

(2) If the time limit for appeal expired with respect to all persons entitled to appeal, the single judge or the chair of the panel proceeding at first instance shall refer, through the prosecution office attached to the court of second instance, the case documents to the court of second instance without delay after laying down its conclusive decision in writing.

(3) If an appeal is based on a procedural violation of law the circumstances of which are not clear from the case documents, the proceeding single judge or the chair of the panel shall supplement the referral with information on this matter .

(4) The prosecution office attached to the court of second instance shall send the case documents and its motion to the court of second instance within one month or, if the case is particularly complex or extensive, two months. Exceptionally, the head of the prosecution office may extend the time limit by one more month.

PART FIFTEEN

COURT PROCEDURE AT SECOND INSTANCE

Chapter LXXXII

GENERAL RULES OF COURT PROCEDURES AT SECOND INSTANCE

Provisions to be applied in a court proceeding at second instance

Section 589 The provisions set out in Part Eleven and Parts Thirteen to Fourteen shall apply to a court proceeding at second instance subject to the derogations laid down in this Part.

The scope of revision

Section 590 (1) Unless an exception is made in this Act, a court of second instance shall revise a judgment, including the prior court proceeding, challenged by an appeal.

(2) Unless otherwise provided in this Act, the court shall revise the grounds of the judgment, all judgment provisions on establishing guilt, classifying the criminal offence, imposing a penalty, and applying a measure, as well as the correctness of the statement of reasons, and compliance with all procedural rules, regardless of who filed the appeal and for what reason.

(3) If an appeal was submitted only under section 583 (3), the court of second instance shall revise only the judgment provision, or the part of the judgment, that is challenged in the appeal.

(4) If the judgment of the court of first instance includes provisions on more than one criminal offence, the court of second instance shall revise only the provisions, or parts, of the judgment that concern the criminal offence affected by the appeal.

(5) In a situation specified in paragraph (3) or (4), the court of second instance shall revise, even with regard to any part of the judgment not challenged in the appeal including provisions that became final and binding in part pursuant to section 458 (5),

a) the proceeding of the court of first instance, including the verification of compliance with all procedural rules any violation of which would serve as a ground for setting aside the judgment

aa) pursuant to section 607 (1) or section 608 (1), or

ab) pursuant to section 609 (1),

b) any provision concerning the establishment of guilt, provided that the accused is to be acquitted or the proceeding against him is to be terminated,

c) any provision concerning the classification of the criminal offence, and

d) any provision concerning imposing a penalty or applying a measure.

(5a) The court of second instance shall revise the judgment of the court of first instance pursuant to paragraph (5) *a) ab)* if a procedural violation of law, other than those specified in sections 607 (1) and 608 (1), can be established without examining the groundlessness of the judgment, which could not be remedied in a second instance proceeding, but had a material impact on the course of the proceeding, the establishment of guilt, the classification of the criminal offence, imposing a penalty or applying a measure.

(6) If an appeal was submitted under section 583 (3) *b)*, the court of second instance shall revise any provision on imposing a penalty, or applying a measure, on the basis of paragraph (5), provided that

a) it changes any provision on establishing guilt or classifying the criminal offence, or

b) the penalty imposed or the measure applied is unlawful.

(7) The court of second instance shall decide *ex officio* on all matters subject to simplified review, as well as any provision concerning parental custody rights or a civil claim.

(8) A judgment provision on acquittal, or terminating a proceeding, may not be subject to a revision, unless the provision concerned was challenged on appeal.

(9) If the judgment of the court of first instance includes provisions on more than one accused, the court of second instance shall revise, within the limits specified in paragraphs (4) to (8), only the provisions or parts of the judgment that concern the accused affected by the appeal.

(10) If more than one eligible appellant submits appeals concerning the same criminal offence, and a judgment provision passed by the court of first instance on establishing guilt is challenged in at least one appeal, the court of second instance shall revise the judgment challenged on appeal, including the prior court proceeding, pursuant to paragraph (2) and, where the judgment of the court of first instance includes provisions on more than one criminal offence, applying paragraph (4).

(11) An accused not affected by an appeal shall be acquitted, the penalty imposed, or measure applied in place of a penalty, that is unlawfully severe due to a classification of his criminal offence as one of lesser gravity shall be reduced, or the provisions of the first instance judgment concerning him shall be set aside and either the proceeding against him shall be terminated or the court of first instance shall be instructed to conduct a new proceeding by the court of second instance if the same decision was made with regard to an accused affected by the appeal.

(11a) The court of second instance shall set aside a provision of a first instance judgment concerning an accused not affected by an appeal if the procedural violation of law under section 609 (1) had a material impact on the course of the proceeding, the establishment of guilt, the classification of a criminal offence, imposing a penalty or applying a measure also concerning the accused not affected by the appeal.

(12) If a court of second instance sets aside a provision of a first instance judgment concerning an accused not affected by an appeal, or it acquits an accused not affected by an appeal, while the penalty imposed on that accused by the court of first instance was included in an accumulative sentence, the court of second instance shall also set aside the judgment imposing the accumulative sentence.

(13) In case a judgment is groundless, the court of first instance may be instructed, applying paragraph (11), to conduct a new proceeding only if doing so may result in acquitting an accused not affected by the appeal, in reducing a sentence that is unlawfully severe due to a classification of the criminal offence as one of lesser gravity, or in terminating the proceeding.

The binding effect of facts established in a court judgment at first instance

Section 591 (1) A decision of a court of second instance shall be based on facts established by a court of first instance, unless the judgment of the court of first instance is groundless, or any new fact was stated or evidence was invoked in the appeal, as a result of which the court of second instance conducts a procedure to take evidence.

(2) A court of second instance shall not examine the grounds of a first instance judgment, and, when passing its decision, it shall rely on the facts established by the court of first instance

a) if an appeal was submitted only under section 583 (3),

b) regarding any provision or part of the judgment that concerns a criminal offence not affected by the appeal, in a situation specified in section 590 (5).

Groundlessness and its consequences

Section 592 (1) A first instance judgment shall be considered groundless in its entirety if

a) the court of first instance failed to establish the facts of the case, or

b) all facts of the case remain undetected.

(2) A first instance judgment shall be considered groundless in part if

a) the court of first instance failed to establish all facts of the case, or

b) some facts of the case remain undetected,

c) the facts of the case as established are inconsistent with the content of case documents concerning the evidence taken by the court,

d) the court of first instance reached incorrect conclusions regarding a further fact on the basis of the facts established.

Section 593 (1) A court of second instance shall eliminate any partial groundlessness of a judgment and, in the course of doing so, it

a) supplements or rectifies the facts of the case, provided that the correct facts can be established on the basis of case documents relating to the evidence taken by the court of first instance, of drawing factual conclusions, or of the evidence taken,

b) may establish facts that deviate from the facts established by the court of first instance on the basis of case documents relating to the evidence taken by the court of first instance, of drawing factual conclusions, or of the evidence taken, provided that acquitting the accused in full or in part or terminating the proceeding in full or in part is in order,

c) may find an accused, originally acquitted by the court of first instance, guilty by establishing facts that deviate from the facts established by the court of first instance on the basis of case documents relating to the evidence taken by the court of first instance, of drawing factual conclusions, or of evidence taken upon a motion submitted by the prosecution service.

(2) If, when eliminating the partial groundlessness of a judgment, on the basis of taking of evidence for establishing the correct facts of the case, the content of case documents or drawing factual conclusions, the court of second instance establishes facts that are different from those established by the court of first instance, it may evaluate pieces of evidence relating to these different facts in deviation from the court of first instance. The court of second instance cannot evaluate a piece of evidence in deviation from the court of first instance if it does not relate to a fact established by the court of second instance or it relates to a fact not affected by the groundlessness.

(3) A court of second instance shall revise a first instance judgment on the basis of the corrected, supplemented, or differently established facts of the case.

(4) If the groundlessness is clearly due to any failure to perform the obligation provided for under section 164 (1), the consequences of groundlessness shall not apply.

(5) Establishment of different facts of the case means a modification of the facts of the case that results in

a) finding an accused guilty after he was acquitted or the proceeding against him was terminated, or

b) acquitting an accused or terminating a proceeding against him, after he was found guilty.

Taking evidence in a court proceeding at second instance

Section 594 (1) In a court proceeding at second instance, evidence may be taken to eliminate any partial groundlessness or procedural violation of law, or if any new fact was stated, or evidence was invoked, in the appeal.

(2) A court of second instance shall not take evidence regarding any fact that is irrelevant to establishing guilt, acquitting, terminating a proceeding, classifying a criminal offence, imposing a penalty, or applying a measure.

Prohibition of *reformatio in peius*

Section 595 (1) An accused acquitted by a court of first instance may be found guilty, or a penalty imposed on or a measure applied in place of a penalty against an accused may be rendered more severe, only if an appeal is submitted to the detriment of the accused. This provision shall also apply if a criminal offence of greater gravity can be established on the basis of any evidence taken by the court of second instance.

(2) An appeal shall be deemed as submitted to the detriment of an accused if it is aimed at finding him guilty, classifying his criminal offence as one of greater gravity, rendering more severe his penalty, or a measure applied in place of a penalty, or imposing a penalty in place of such a measure.

(3) If a court of first instance, in addition to imposing a penalty, or a measure applied in place of a penalty, for committing a criminal offence, acquits an accused from a criminal offence he was indicted for, or terminates a proceeding against him, the penalty, or measure applied in place of a penalty, imposed for committing the criminal offence may not be rendered more severe, provided that an appeal submitted to the detriment of the accused challenges his acquittal or the termination of the proceeding only, unless the appeal against the judgment provision on his acquittal, or on the termination of the proceeding, is successful.

(4) Due to the prohibition of *reformatio in peius*, a court of second instance may not impose, in the absence of an appeal submitted to the detriment of the accused,

a) any penalty on a person the case of whom was adjudicated at first instance by applying a measure that may be applied on its own,

b) imprisonment, even if suspended, in place of any confinement, community service, financial penalty, disqualification from a profession, disqualification from driving a vehicle, ban on entering certain areas, ban on visiting sports events, or expulsion,

c) imprisonment to be served in place of suspended imprisonment,

d) imprisonment for a longer period, even if suspended, in place of imprisonment to be served,

e) any penalty in addition to the number of penalties imposed by the court of first instance, not including any penalty applied in place of imprisonment,

f) any secondary penalty not applied by the court of first instance,

g) imprisonment, even if suspended, in place of demotion or discharge from service.

(5) If life imprisonment is imposed as penalty, setting the earliest date of release on parole to a later date or excluding the possibility of release on parole shall be considered rendering a penalty more severe, and an appeal submitted for such an end shall be deemed as submitted to the detriment of the accused concerned.

(6) If a court of first instance, in conflict with the provisions of an Act, did not provide for confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision, the court of second instance may also decide on these even if no appeal was submitted to the detriment of the defendant, provided that the facts of the case contain all data required for passing such a decision.

(7) If a court of first instance applied any legal consequence on the ground of committing an infraction, that legal consequence may be rendered more severe in a second-instance proceeding, provided that an appeal is filed for the purpose of challenging the acquitting provision or rendering more severe the legal consequence applied for infraction.

Chapter LXXXIII

ADMINISTERING AN APPEAL

Preparing for the administration of an appeal

Section 596 (1) The chair of a second-instance court panel shall

a) take measures, as necessary, to remedy deficiencies, supplement case documents, obtain new case documents, or receive information from the court of first instance,

b) send back case documents to the court of first instance if all appeals are withdrawn,

c) serve on the accused and the defence counsel any appeal submitted by any other person, or any motion by the prosecution office attached to the court of second instance,

d) send to the prosecution office attached to the court of second instance any statement of reasons for an appeal filed by an accused or the defence counsel if it was submitted before the court of second instance and was not yet sent to the prosecution office directly,

e) examine if the attendance of a prosecutor or a defence counsel in the second-instance proceeding is mandatory,

f) examine if any decision on a coercive measure affecting personal freedom subject to judicial permission needs to be passed.

(2) For the closest possible due date within two months after receipt of the case documents,, the chair of the panel shall schedule a panel session, public session, or trial for adjudicating the appeal.

(3) A court of second instance may order evidence to be taken before a trial, and the chair of the panel may take measures as necessary to do so.

Dismissing or transferring an appeal, suspending a proceeding

Section 597 (1) A court of second instance shall dismiss an appeal if the court of first instance failed to dismiss the appeal in a situation specified in section 588 (1).

(2) If a court of second instance lacks subject-matter or territorial jurisdiction to adjudicate an appeal, it shall transfer the case documents, in a panel session, to a court with subject-matter and territorial jurisdiction.

(3) A court of second instance may suspend a proceeding in a panel session for a reason specified in section 487, section 488 (1) *a)*, *c)*, or *d)* to *g)*, or sections 489 to 490.

Panel sessions

Section 598 (1) A court of second instance shall decide in a panel session

a) on dismissing an appeal, transferring, joining or separating a case, or suspending a proceeding,

b) on acquitting, or terminating a proceeding against, an accused,

c) on acquitting, or terminating a proceeding against, an accused not affected by an appeal, provided that any such provision regarding an accused affected by the same appeal is also passed in a panel session,

d) if the court of first instance passed its judgment in violation of a procedural rule as specified in section 608 (1),

e) if the court of first instance terminated the criminal proceeding under section 492,

f) if an appeal was submitted only under section 583 (3) *b)*,

g) if an appeal against a non-conclusive order of the court of first instance may be adjudicated without taking any evidence.

(2) A court of second instance shall also decide in a panel session if no appeal was submitted against a judgment to the detriment of an accused and the facts of the case are well-grounded, or an appeal submitted to the detriment of an accused is based solely on section 583 (3) *a)* or *c)*, and the prosecution service, the accused, the defence counsel, or the appellant does not move for a public session or trial.

(3) The chair of a panel may schedule a public court session or a trial in a case to be handled in a panel session.

(4) In a situation under paragraph (2), the chair of a panel shall notify the prosecution service, the accused, the defence counsel, and the appellant about setting a panel session, including the composition of the panel and the date and time of the panel session, also noting that they may make observations within eight days regarding any appeal, motion, or statement submitted by any other person.

(5) If the chair of a panel does not set a public session or trial *ex officio* in a situation specified in paragraph (2), the notification under paragraph (4) shall also include that a motion for setting a public session or a trial may also be submitted by the time limit open for filing observations. No application for excuse shall be accepted for failing to meet this time limit.

(6) If a court of second instance establishes in a panel session that the case may not be handled in a panel session, it shall set a public session or a trial concerning the case. A court of second instance may also pass in a public session or a trial any decision that could be passed in a panel session if a reason to do so is noted during a public session or a trial.

Public sessions

Section 599 (1) A court of second instance shall hold a public session to administer an appeal, unless the case is to be administered in a panel session, or a trial is to be held.

(2) In a public session, a court of second instance may

a) establish the complete and correct facts of the case where the first instance judgment is partially groundless, provided that doing so is possible on the basis of factual conclusions or the content of case documents concerning the evidence taken by the court of first instance,

b) interview the accused in the case with a view to clarifying further all sentencing factors.

(3) The presentation of the case in a public court session may be omitted, unless a motion for presenting the case is submitted by a person present.

(4) In a public session, the attendance of a prosecutor and, except for a case under section (2) *b)*, the accused shall not be mandatory.

(5) An appeal may also be adjudicated in the absence of an accused who was duly summoned if it can be established as a result of the public session that an interview with the accused is not necessary.

Trial

Section 600 (1) A court of second instance shall hold a trial if

a) a case may not be handled in a panel session,

b) it is necessary to take evidence,

c) a trial is set by the chair of the panel in a case to be handled in a panel session or a public session.

(2) Aggrieved parties and appellants shall be notified about a trial.

(3) A trial may also be held in the absence of an accused who was duly summoned, and the appeal may be adjudicated, if no appeal was submitted to the detriment of the accused.

(4) No application for excuse shall be accepted for failing to appear at trial.

Section 601 (1) At trial, the judge designated by the chair of the panel shall present the case. He shall present a summary of the first instance judgment, the appeal, and any observation made concerning the appeal; he shall also present case documents that are necessary for the purpose of revision. Presenting the statement of reasons for the first instance judgment may be omitted if no motion for such a presentation is submitted by the persons present, and the court of second instance considers such a presentation to be unnecessary.

(2) The members of the court, the prosecutor, an accused, a defence counsel, or an aggrieved party may request the presentation of the case to be supplemented; subsequently, persons eligible to appeal shall be allowed to present and submit their observations and motions, with the proviso that any motion for evidence shall be subject to the limitations laid down in section 584 (5).

(3) Taking of evidence shall be preceded by the presentation of the case and the filing of motions specified in paragraph (2).

(4) Section 520 shall apply with regard to motions for evidence submitted after the commencement of the evidentiary procedure.

(5) After the case is presented and evidence is taken, eligible persons may deliver closing arguments or address the court. The appellant shall be the first to deliver a closing argument. If an appeal was filed also by the prosecution service, the prosecutor shall be the first to deliver a closing argument.

(6) If a court of second instance establishes before passing a conclusive decision that the act may be classified differently than the classification established by the court of first instance, it shall proceed pursuant to section 548.

Decisions on coercive measures

Section 602 If a judgment of a court of first instance is set aside, the court of second instance, in its setting aside order, shall decide on the matter of any coercive measure affecting personal freedom subject to judicial permission. The court of second instance shall maintain any coercive measure affecting personal freedom subject to judicial permission until a decision is passed under section 290 (4) by the court instructed to conduct a repeated procedure, having regard to section 297 (4) and 301 (2), or, if an appeal was filed, until a decision is passed under section 630 (5) by the court adjudicating the appeal.

Measures taken after concluding a court procedure at second instance

Section 603 (1) After concluding a court procedure at second instance, the decision shall be served by the court of second instance.

(2) An order setting aside a first instance judgment shall be served on the appellant, any aggrieved party, and any person eligible to appeal against the decision of the court of second instance, even if the operative part of the decision has already been communicated to any such person by announcement.

(3) A court of second instance shall send back all case documents, together with its decision and the minutes of the trial, to the court of first instance if no appeal is submitted against the second instance decision, or all appeals were dismissed by the court of second instance.

Chapter LXXXIV

DECISIONS BY COURTS OF SECOND INSTANCE

Section 604 (1) In situations specified in this Act, a court of second instance shall

a) uphold a judgment of a court of first instance,

b) amend a judgment of a court of first instance, or

c) set aside a judgment of a court of first instance, and

ca) terminate the proceeding, or

cb) instruct the court of first instance to conduct a new proceeding.

(2) A court of second instance shall decide by passing a judgment if it amends the judgment of a court of first instance, or an order, in any other case.

(3) The operative part of a decision shall contain the following:

a) name of the court of first instance that passed the decision challenged in the appeal, and reference number of the decision challenged,

b) decision of the court as specified in paragraph (1),

c) personal data specified in section 561 (2) *b)* if changed.

(4) The statement of reasons for the decision shall contain a summary of the operative part of the first instance judgment and the motion filed by the prosecution office attached to the court of second instance; it shall identify the appellant and the ground for his appeal; and it shall describe the reasons for the decision of court, also indicating the information required under sections 561 (3) *b)* to *g)* and 564 (4) *a)* and *b)* and sections 566 (4) and 567 (5) as necessary.

Upholding a first instance judgment

Section 605 (1) A court of second instance shall uphold a first instance judgment if an appeal is groundless and there is no other reason to set aside the judgment, or if it is not necessary to amend the judgment, or doing so is not possible due to the prohibition of *reformatio in peius*, the limits of the scope of revision, or the provisions laid down in paragraph (2).

(2) If a court of second instance does not supplement or correct the facts of the case, a penalty imposed in the first instance judgment within the penalty range may not be changed to a minor extent.

(3) An order of a court of second instance upholding a first instance judgment shall constitute a conclusive decision.

(4) The statement of reasons for a decision shall provide a short description of the reasons for upholding the judgment.

Amending a first instance judgment

Section 606 (1) If a court of first instance applied the law incorrectly, but it is not necessary to set aside its judgment, the court of second instance shall amend the judgment and pass a decision in compliance with the legal requirements.

(2) A court of second instance may also amend a first instance judgment if it eliminated the partial groundlessness of the first instance judgment.

(3) If a first instance judgment is based on an accepted confession of guilt by an accused, the court of second instance may not amend the provisions of the appealed judgment with regard to the establishment of guilt or any assessment in line with the indictment document, unless it can be established that acquitting the accused, terminating the proceeding or changing the classification of the criminal offence would be in order.

(4) In a situation specified in section 590 (6), a court of second instance may amend the provisions of a first instance judgment on imposing a penalty or applying a measure only if the penalty or measure is unlawful, excessively severe, or excessively lenient.

Setting aside a first instance judgment

Section 607 (1) A court of second instance shall set aside the first instance judgment and

a) terminate the proceeding in the situations described in sections 567 (1) and (2), or

b) terminate the proceeding by a non-conclusive order if the court of first instance found the accused guilty, acquitted him or terminated the proceeding against him, in respect of an act not included in the indictment.

(2) If a court of second instance terminates a proceeding because the liability to punishment of the accused terminated, any provision of the first instance judgment concerning confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, termination of hosting service provision, or granting a civil claim shall be upheld, unless an appeal submitted regarding any such provision.

(3) If the judgment of the court of first instance relates to more than one criminal offence, the court of second instance shall take a decision pursuant to paragraph (1) only on the criminal offences that are affected by the reason for setting aside.

Section 608 (1) The court of second instance shall set aside the first instance judgment with a non-conclusive order and instruct the court of first instance to conduct a new proceeding if

a) the court panel was not formed in accordance with the law, or not all members of the panel were present during the entire trial,

b) a judge disqualified by an Act participated in the passing of a judgment,

c) the court exceeded its subject-matter jurisdiction, or adjudicated a case that is subject to military criminal proceeding or falls within the exclusive territorial jurisdiction of another court,

d) the trial was held in the absence of a person the attendance of whom was mandatory under an Act,

e) the court terminated the proceeding because a ground specified in section 492 (1) *c)* to *d)* and *i)* or section 567 (1) *a)* to *b)* or *g)*, or paragraph (2), was established in violation of an Act,

f) the statement of reasons for the first instance judgment is fully inconsistent with its operative part,

g) the facts of the case presented in the oral and the written statement of reasons of the judgment differ to an extent that influences the classification of the criminal offence and the appeal was submitted on the ground of section 583 (3) or, in the case of an appeal filed under section 584 (2), the difference relates to an act not affected by the appeal,

h) the court of first instance accepted the confession of guilt without the conditions under section 504 (2) being met, or the facts of the case presented in the written judgment and the indictment document differ to an extent that influences the classification of the criminal offence.

(2) As for paragraph (1) *d)*,

a) where a court of second instance establishes, as a result of changing the classification of a criminal offence, that the attendance of a defence counsel should have been mandatory at a first instance trial, the judgment passed shall not be set aside, unless the original criminal offence specified in the indictment filed by the prosecution service is punishable by imprisonment for up to five or more years, or the court of first instance established that the act may constitute a criminal offence of greater gravity than that specified in the indictment,

b) a judgment may not be set aside because of a defence counsel not being present if the act was classified by the court of first instance incorrectly as a criminal offence punishable by imprisonment for up to five or more years,

c) a judgment provision acquitting the accused or terminating the proceeding need not be set aside if the judgment was passed by the court of first instance in the absence of the accused or the defence counsel.

Section 609 (1) The court of second instance shall set aside the first instance judgment with a non-conclusive order, and instruct the court of first instance to conduct a new proceeding, if a procedural violation of law, other than those specified in sections 607 (1) and 608 (1), was committed, which could not be remedied in a second-instance proceeding but had a material impact on the course of the proceeding, the establishment of guilt, the classification of a criminal offence, imposing a penalty or applying a measure.

(2) Procedural violations of law referred to in paragraph (1) shall include, in particular, situations where

a) any provision on the legality of taking evidence is violated after the indictment,

b) a person participating in a criminal proceeding could not exercise, or was restricted in exercising, any of his statutory rights after the indictment,

c) the public was excluded from a trial without a lawful reason,

d) the court of first instance failed to perform, in whole or in part, its obligation to state its reasons for establishing guilt, acquitting, terminating a proceeding, classifying an act under the Criminal Code, imposing a penalty or applying a measure,

e)

(3) A judgment provision acquitting the accused or terminating the proceeding need not be set aside if a procedural violation of law referred to in paragraph (1) limited the exercise of a statutory right of the accused or his defence counsel.

(4) If, in violation of an Act, a court of first instance did not adopt any provision on a seized thing, confiscation, forfeiture of assets, or rendering electronic data permanently inaccessible, and the information needed to pass a decision could not be clarified by taking evidence in a second-instance proceeding, the court of second instance shall instruct the court of first instance to conduct a procedure pursuant to Chapter CVI.

Section 610 (1) If a first instance judgment is completely groundless, the court of second instance shall pass a non-conclusive order setting aside the first instance judgment and instructing the court of first instance to conduct a new proceeding.

Section 611 (1) In a statement of reasons for a setting aside order, the court of second instance shall specify the reason for setting aside and provide guidance regarding the repeated procedure.

(2) A court of second instance may order the case to be tried by another panel of the court of first instance or, exceptionally, by another court.

Provisions concerning other matters

Section 612 (1) If a party with a pecuniary interest submitted an appeal against a provision of a first instance judgment concerning confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision and the court of second instance did not refrain from applying, on the basis of that or any other appeal, the first instance judgment provision on any confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision affecting an ownership right, asset, or the right to dispose of electronic data or the right to a hosting service, of the party with a pecuniary interest, the court of first instance shall communicate the decision of the court of second instance to the party with a pecuniary interest, also informing him about his rights provided for under section 57 (4).

(2) If a court of second instance orders any confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision affecting an ownership right of a party with a pecuniary interest, the operative part of its decision shall include information to the party with a pecuniary interest about his right provided for under section 57 (4).

(3) If deciding on the termination of parental custody rights would delay the conclusion of the criminal proceeding considerably, or adjudicating the merits of the matter during the criminal proceeding is prevented by any other circumstance, the court of second instance shall set aside the provisions passed by the court of first instance regarding this matter, and the motion for terminating parental custody rights shall be ordered to be enforced by other legal means.

Criminal costs

Section 613 (1) In its decision, a court of second instance shall determine the amount of criminal costs incurred during a second-instance court proceeding, and it shall adopt provisions on bearing such costs as necessary.

(2) An accused found guilty may be relieved by a court of second instance from bearing any, or some of, the criminal costs incurred during a second-instance court proceeding, provided that

a) an appeal submitted by the prosecutor to the benefit of the accused or by the accused or his defence counsel was successful,

b) with the exception of an appeal under point *a)*, an appeal submitted by the prosecutor was unsuccessful.

Appeals against non-conclusive orders

Section 614 (1) The provisions set out in Chapters LXXXI to LXXXIV shall apply, subject to the derogations laid down in this section, to an appeal against a non-conclusive order against which, if adopted in a first-instance proceeding, legal remedy may be sought and that was passed in a second-instance court proceeding, a third-instance court proceeding, or a proceeding conducted to adjudicate an appeal filed against a setting aside order.

(2) No appeal shall lie against a decision specified in paragraph (1) if it was passed by the Curia.

(3) An appeal filed against an order specified in paragraph (1) shall be adjudicated by

a) a regional court of appeal if the order was passed by a regional court,

b) the Curia if the order was passed by a regional court of appeal.

(4) Appeals shall be adjudicated by a regional court of appeal, or the Curia, in a panel session.

Chapter LXXXV

APPEALS AGAINST DECISIONS BY COURTS OF SECOND INSTANCE

Right to appeal, limits to appeals

Section 615 (1) Appeals against a judgment of a court of second instance may be submitted to a court of third instance, provided that the decision of the court of second instance contradicts that of the court of first instance.

(2) A contradiction between the relevant decisions exists if the court of second instance

a) found an accused guilty or ordered compulsory psychiatric treatment for an accused who was acquitted, or the proceeding against whom was terminated, by the court of first instance,

b) acquitted, or terminated the criminal proceeding against, an accused who was found guilty at first instance,

c) found the accused guilty of a criminal offence on which the court of first instance did not pass any provision.

(2a) A contradiction between the relevant decisions cannot be established if an act of the accused constitutes more than one criminal offence and in the light of this, changing the classification established by the court of first instance would have been in order in the second-instance proceeding.

(3) An appeal may challenge

a) a contradicting decision, or

b) only those provisions or parts of the statement of reasons under section 583 (3) that are based on a revision connected to the contradicting decision.

(4) In an appeal filed against a second instance judgment, the facts serving as ground for the contradicting decision may not be challenged, provided that

a) an appeal was submitted against the first instance judgment solely on the basis of section 583 (3), or

b) the contradicting decision is based on a revision as provided for under section 590 (5).

(5) No appeal shall lie against a provision or part of a second instance judgment that is not specified in paragraph (3).

(6) In an appeal, no motion for evidence may be submitted, no new fact may be stated, and no new evidence may be invoked.

Eligibility to appeal

Section 616 An appeal against a judgment passed by a court of second instance may be submitted by

a) the accused,

b) the prosecution service,

c) the defence counsel,

d) the spouse or cohabitant of the accused if compulsory psychiatric treatment is ordered.

PART SIXTEEN

THIRD-INSTANCE COURT PROCEEDINGS

Chapter LXXXVI

GENERAL RULES OF THIRD-INSTANCE COURT PROCEEDINGS

Section 617 In a third-instance court proceeding, the provisions on second-instance court proceedings shall apply accordingly subject to the derogations laid down in this Part.

The scope of revision

Section 618 (1) A court of third instance shall revise

a) in a second instance judgment

aa) any contradicting decision challenged on appeal,

ab) those provisions or parts of the second instance judgment that were passed as a result of revising, in connection with the challenged contradicting decision, the first instance judgment, and

b) the first- and second-instance court proceeding

regardless of who filed the appeal and for what reason.

(2) A court of third instance shall decide *ex officio* on all matters subject to a simplified review, as well as any provision concerning parental custody rights or a civil claim.

(3) The court of third instance shall revise, even with regard to any part of the judgment not challenged in the appeal,

a) the elements specified in section 590 (5) *a)* to *c)*,

b) also the elements specified in section 590 (5) *d)* if an appeal specified in section 615 (3) *b)* challenged any provision other than those concerning imposing a penalty or applying a measure, and

ba) the provision on the establishment of guilt, or on the classification of the criminal offence, is changed, or

bb) the penalty imposed or the measure applied is unlawful.

(4) A judgment provision on acquittal, or terminating a proceeding, may not be subject to a revision, unless the provision concerned was challenged on appeal.

The binding effect of facts established in a judgment subject to a revision

Section 619 (1) A decision passed by a court of third instance shall be based on the same facts the court of second instance relied on in its judgment, unless the second instance judgment is groundless as regards the contradicting decision challenged by an appeal.

(2) Evidence may not be taken in a third-instance court proceeding.

(3) If the second instance judgment is groundless as regards the contradicting decision challenged by the appeal, and the facts may be established correctly on the basis of case documents concerning evidence taken by the court of first or second instance, or if the incorrect factual deduction may be eliminated on the basis of case documents concerning evidence taken by the court of first or second instance, the court of third instance

a) shall supplement or correct the facts of the case,

b) may establish facts that deviate from the facts of the case as established by the court of second instance provided that acquitting the accused in full or in part or terminating the proceeding in full or in part is in order.

(3a) Where the court of second instance established facts that deviate from the facts of the case as established by the court of first instance in a manner that is unlawful, taking into account section 593 (1) and (2), the court of third instance shall exclude the part of the judgment that results in the establishment of the deviating facts and may find the accused acquitted by the court of second instance, or affected by the termination, guilty.

(3b) The court of third instance may supplement or correct the facts that are relevant in accordance with paragraph (3a) on the basis of case documents and factual deduction concerning evidence taken by the court of first or second instance.

(4) If an appeal was submitted solely under section 615 (3) *b)* or section 615 (4), or with regard to any criminal offence not affected by the appeal, the court of third instance shall not examine the grounds of the second instance judgment, and, when passing its decision, it shall rely on the facts established by the court of second instance.

Chapter LXXXVII

ADMINISTERING AN APPEAL

General provisions

Section 620 (1) An appeal shall be adjudicated by a court of third instance in a panel session in a situation specified in section 621 (1), or otherwise in a public court session.

(2) The participation of a defence counsel in a third-instance court proceeding shall be mandatory. If an accused does not have a defence counsel, the chair of the panel shall appoint a defence counsel without delay after the appeal is received by the court of third instance.

Panel sessions and public court sessions

Section 621 (1) A court of third instance shall decide in a panel session if

a) an appeal may not be adjudicated because the challenged judgment is groundless,

b) the court of first or second instance passed its judgment in violation of a procedural rule as specified in section 608 (1).

(2) A court of third instance shall also decide in a panel session if no appeal was submitted against a judgment to the detriment of an accused, and the prosecution service, the accused, the defence counsel, or the appellant did not move for a public session.

(3) If the chair of a panel does not set a public court session *ex officio* in a situation specified in paragraph (2), the information provided on setting a panel session shall also include that a motion for setting a public session may be submitted by the time limit open for filing observations. No application for excuse shall be accepted for failing to meet this time limit.

(4) In a public court session, the attendance of a prosecutor and a defence counsel shall be mandatory.

Decisions on coercive measures, measures taken after administering an appeal

Section 622 (1) If a judgment of a court of first or second instance is set aside, the court of third instance, in its setting aside order, shall decide on the matter of any coercive measure affecting personal freedom subject to judicial permission.

(2) After administering an appeal and serving its decision, a court of third instance shall send back all case documents, including its decision and the minutes of the third-instance proceeding, to the court of second instance or the court instructed to conduct a new proceeding.

Chapter LXXXVIII

DECISIONS BY COURTS OF THIRD INSTANCE

Upholding a second instance judgment

Section 623 A court of third instance shall uphold a second instance judgment if an appeal is groundless and there is no other reason to set aside the judgment, and if it is not necessary to amend the judgment, or doing so is not possible due to the prohibition of *reformatio in peius*, the limits of the scope of revision, or the provisions laid down in section 605 (2).

Amending a second instance judgment

Section 624 (1) If a court of second instance applied the law incorrectly, but it is not necessary to set aside its judgment, the court of third instance shall amend the judgment and pass a decision in compliance with the legal requirements.

(2) A court of third instance may also amend a second instance judgment if it eliminated the partial groundlessness of the second instance judgment.

Setting aside a second instance judgment

Section 625 (1) In a situation described in section 607 (1), a court of third instance shall set aside a first or second instance judgment and terminate the proceeding.

(2) A court of third instance shall set aside a second instance judgment, and instruct the court of second instance to conduct a new proceeding, if the court of second instance passed its judgment

a) in violation of a procedural rule specified in section 608 (1),

b) in violation of the prohibition of *reformatio in peius*,

c) unlawfully establishing the ground referred to in section 607 (1) *b)*.

(3) In addition to setting aside a second instance judgment, a court of third instance shall also set aside the related first instance judgment, and instruct the court of first instance to conduct a new proceeding, if a procedural violation of law specified in paragraph (2) *a)* was committed by the court of first instance.

(4) A court of third instance shall set aside a second instance judgment, as well as the first instance judgment if necessary, and instruct the court of second or first instance to conduct a new proceeding if it is unable to eliminate the groundlessness of the second instance judgment pursuant to section 619 (3).

PART SEVENTEEN

ADJUDICATING AN APPEAL FILED AGAINST A SETTING ASIDE ORDER BY THE COURT OF SECOND OR THIRD INSTANCE

Section 626 In a proceeding aimed at adjudicating an appeal filed against a setting aside order of a court of second or third instance, the provisions on third-instance court proceedings shall apply accordingly subject to the derogations laid down in this Part.

The right to appeal, and the persons eligible to appeal

Section 627 (1) Appeals may be filed against an order passed by a court of second instance setting aside a first instance judgment and instructing a court of first instance to conduct a new proceeding, or an order passed by a court of third instance setting aside a second instance judgment, or a first instance judgment and a second instance judgment, and instructing the court of second or first instance to conduct a new proceeding if setting aside is applied due to

a) a procedural violation of law specified in section 608 (1),

b) a procedural violation of law specified in section 609 (1), or

c) a complete groundlessness as specified in section 592 (1),

d) a reason specified in section 625 (4).

(2) A setting aside order passed by a court of second or third instance may be challenged by an appeal, also if in the course of passing the setting aside order a procedural violation of law specified in section 608 (1) occurred.

(3) Appeals against a setting aside order passed by a court of second or third instance may be filed by

a) the accused,

b) the prosecution service,

c) the defence counsel.

(4) A person shall not be eligible to submit an appeal under paragraph (3) if he submitted an appeal against the judgment to have it set aside and to have the court instructed to conduct a new proceeding, provided that the judgment was set aside for a reason stated in the appeal.

(5) If a setting aside order passed by a court of second or third instance affects more than one person accused with a criminal offence, an appeal submitted by an eligible person shall suspend the enforceability of the setting aside decision with regard to all accused persons.

The general rules of administering appeals

Section 628 (1) If a setting aside order was passed by

a) a regional court, appeals shall be adjudicated by a regional court of appeal,

b) a regional court of appeal, appeals shall be adjudicated by the Curia,

in a panel session.

(2)

(3) No appeal shall lie against a setting aside order if it was passed by the Curia.

Preparing for the administration of an appeal, and decisions of a court

Section 629 (1) For the closest possible due date within one month after receipt of a case, the chair of the panel shall schedule a panel session for adjudicating the appeal.

(2) In situations specified in this Act, a court adjudicating an appeal shall

a) uphold the challenged setting aside order or

b) set aside the challenged setting aside order, and instruct the court of second or third instance to conduct the second or third-instance proceeding, or to conduct a new proceeding.

(3) A court adjudicating an appeal shall decide the appeal by passing a non-conclusive order.

(4) No appeal shall lie against a decision specified in paragraph (2) or dismissing an appeal.

Upholding or setting aside a setting aside order

Section 630 (1) A court adjudicating an appeal shall uphold a setting aside order if the appeal is groundless and the setting aside order need not be set aside for any other reason.

(2) A court adjudicating an appeal shall set aside a setting aside order, and it shall instruct the court of second or third instance to conduct the second or third-instance proceeding, if the court of second or third instance passed any provision on setting aside a judgment in violation of the provisions of the procedural Act or otherwise in an unjustified manner.

(3) In a situation specified in section 627 (2), a court adjudicating an appeal shall set aside the decision challenged by the appeal, and it shall instruct the court that passed the decision to conduct a new proceeding.

(3a) If the court adjudicating an appeal sets aside a setting aside order as regards an accused affected by the appeal, then it shall pass the same decision concerning the same criminal offence as regards also accused persons not affected by the appeal.

(4) In a statement of reasons for a setting aside order, a court adjudicating an appeal shall specify the reason for setting aside and provide guidance regarding the repeated procedure.

(5) After passing its decision, a court competent to adjudicate an appeal shall decide on any coercive measure affecting personal freedom subject to judicial permission.

Bearing of criminal costs

Section 631 All criminal costs incurred in a proceeding conducted under this Part shall be borne by the State.

PART EIGHTEEN

REPEATED PROCEEDINGS

General provisions

Section 632 (1) If a court decision is set aside or annulled by the Constitutional Court, the proceeding shall be repeated.

(2) In a repeated proceeding, a court shall adjudicate the case with due regard to the grounds of, and reasons for, the setting aside decision, or the decision of annulment of the Constitutional Court.

(3) In the course of revising a judgment passed in a repeated proceeding, the court of second or third instance shall not be bound by any fact or reasoning stated in the setting aside decision, even if the facts of the case remained unchanged.

(4) The accused shall not be obliged to bear any criminal costs arising, for a reason other than an omission on his part, in a repeated proceeding.

Repeating a court proceeding at first instance

Section 633 (1) The provisions laid down in Parts Thirteen to Fourteen concerning the preparation of a trial and first-instance court proceedings shall apply accordingly, subject to derogations laid down in this section and section 634.

(2) In a repeated proceeding, a preparatory session may not be held.

(3) After the commencement of a trial, the proceeding single judge or the chair of the panel shall present a summary of the setting aside decision passed by the court of second or third instance, or of the decision of annulment passed by the Constitutional Court, of the decision, set aside or annulled, of the court of first or second instance, of the minutes of the second instance trial if evidence was taken at second instance, and of the indictment document.

(4) If the prosecution service modified the indictment after the decision of the court of first instance is set aside, the prosecutor shall present a summary of the modified indictment document.

(5) If the accused does not give a testimony, the proceeding single judge or the chair of the panel may also present or read out a summary of his testimony given at the trial underlying the decision set aside, or annulled by the Constitutional Court.

(6) In place of interrogating a witness or interviewing an expert, the summary of the minutes taken of the testimony of the witness given, or opinion of the expert presented, at the trial underlying the decision set aside, or annulled by the Constitutional Court, may be presented or read out.

(7) Paragraph (6) may not apply if a first instance judgment was set aside because the groundlessness of the judgment could not be eliminated in a second-instance court proceeding.

(8) Paragraph (7) shall not prevent a summary of a witness testimony or expert opinion from being presented or read out, provided that it does not concern any groundless fact established in the judgment.

Section 634 (1) An acquitted accused may not be found guilty, a penalty that is more severe than the penalty imposed under the judgment set aside may not be imposed, or a measure that is more severe than a measure applied in place of a penalty may not be applied, in a repeated proceeding, unless an appeal is submitted to the detriment of an accused.

(2) If a judgment is annulled by the Constitutional Court, an acquitted accused may not be found guilty, a penalty that is more severe than the penalty imposed under the judgment may not be imposed, or a measure that is more severe than a measure applied in place of a penalty may not be applied, in a repeated proceeding.

(3) Paragraph (1) shall not apply if

a) a first instance judgment was set aside for a reason specified in section 608 (1) *a)* to *c)* or *e)* or section 610,

b)

c) a more severe penalty is to be imposed on the ground of a new fact established by the court on the basis of evidence taken in the repeated proceeding, provided that the prosecution service submits a motion to that effect,

d) the accused is to be found guilty also of another criminal offence due to the extension of the indictment by the prosecution service,

e) the first instance judgment was set aside in a review procedure due to a motion for review submitted to the detriment of the defendant.

(4) Even in a situation specified in paragraph (3), an acquitted accused may not be found guilty, a more severe penalty may not be imposed, or a measure that is more severe than a measure applied in place of a penalty may not be applied, if the court of second instance set aside a provision passed by the court of first instance regarding the accused on the basis of section 590 (11).

Repeating a second- or third-instance court proceeding

Section 635 (1) If a court of third instance or the Curia sets aside a second instance decision and instructs the court of second instance to conduct a new proceeding, or if the Constitutional Court annuls a second instance decision, to the proceeding conducted by the court of second instance, the provisions laid down in Part Fifteen shall apply.

(2) If the Curia sets aside a third instance decision and instructs the court of third instance to conduct a new proceeding, or if the Constitutional Court annuls a third instance decision, to the proceeding conducted by the court of third instance, the provisions laid down in Part Sixteen shall apply.

Repeating a proceeding for extraordinary legal remedy

Section 636 (1) If the Constitutional Court annuls a decision passed by the Curia in a review procedure, to the proceeding of the Curia, the provisions laid down in Chapter XC shall apply.

(2) If the Constitutional Court annuls a decision passed by the Curia on the basis of a legal remedy submitted on the ground of legality, to the proceeding of the Curia, the provisions laid down in Chapter XCII shall apply.

(3) If the uniformity complaint chamber sets aside a decision by the Curia passed in a review proceeding, the provisions laid down in Chapter XC shall apply to the proceeding of the Curia, with the proviso that the proceeding chamber initiates a procedure for the uniformity of jurisprudence. In a repeated review proceeding, the decision challenged by the motion for review shall not be amended to the detriment of the defendant and may be set aside only if the defendant is to be acquitted or the proceeding is to be terminated.

PART NINETEEN

EXTRAORDINARY LEGAL REMEDIES

Chapter LXXXIX

RETRIAL

Grounds for retrial

Section 637 (1) A retrial may be granted regarding a criminal proceeding concluded with a final and binding conclusive court decision on the indictment if

a) new evidence is brought up regarding a fact, either covered or not covered in the main case, suggesting the likelihood that

aa) the defendant is to be acquitted, a considerably more lenient penalty is to be imposed, or a measure is to be applied in place of a penalty, or the criminal proceeding is to be terminated, or

ab) the defendant is to be found guilty, or a considerably more severe penalty is to be imposed, or a penalty is to be imposed in place of a measure, or a measure, that is considerably more severe than the measure applied in place of a penalty, is to be applied,

b) more than one final and binding conclusive decision on the indictment is passed against the defendant for the same act,

c) the defendant is referred to under an identity that is other than his own in the conclusive decision, and the situation could not be remedied by rectifying the decision,

d) false or falsified evidence was used in the main case,

e) in the main case a member of the court, the prosecution service, or the investigating authority violated his duties in a manner contrary to criminal law,

f) the President of the Republic decided to pardon the defendant and terminate the criminal proceeding against him,

g) the main case was concluded pursuant to Chapters CI to CII.

(2) Witness testimony given by a person who refused to testify in the main case by exercising his right to exemption shall be considered new evidence for the purpose of paragraph (1) *a)*.

(3) In a situation described in paragraph (1) *d)* or *e)*, a retrial may be granted only if

a) the commission of the criminal offence stated as the ground for retrial is established in a final and binding conclusive decision on the indictment, or passing such a conclusive decision was not prevented by the lack of evidence, and

b) that criminal offence had a material impact on the conclusive court decision on the indictment.

(4) The fact that the criminal liability for a criminal offence specified in paragraph (3) *a)* was not established for a reason excluding the liability to punishment of the perpetrator or the punishability of his act, or for a reason terminating liability to punishment, shall not be an obstacle to retrial

(5) Conducting the retrial shall be mandatory in a situation specified in paragraph (1) *f)* or, if the defendant is available, *g)*.

Section 638 (1) A retrial shall not be granted if the proceeding was terminated by the court due to the prosecution service abandoning the indictment.

(2) A retrial may be granted to the detriment of a defendant only if he is alive and the limitation period has not passed.

(3) A retrial shall not be prevented by the fact that the defendant served his sentence, while a retrial to the benefit of a defendant shall not be prevented even by the fact that the liability to punishment of the defendant was terminated.

(4) The provisions laid down in the Act on the Code of Civil Procedure shall apply to the granting of a retrial regarding only provisions passed in a final and binding conclusive decision of a court that concern a civil claim or parental custody rights.

Motions for retrial

Section 639 (1) A motion for retrial to the detriment of a defendant may be submitted by the prosecution service.

(2) A motion for retrial to the benefit of a defendant may be submitted by

a) the prosecution service,

b) the defendant,

c) a defence counsel,

d) the statutory representative of the defendant,

e) the spouse or cohabitant of the defendant against ordering compulsory psychiatric treatment,

f) a lineal relative, sibling, spouse, or cohabitant of the defendant after his death or, if more than fifty years have passed since the death of the defendant, his collateral relative.

(3) A defendant or the defence counsel may submit a motion for retrial on the basis of section 637 (1) *g)* within one month after the day of the defendant becoming aware that the conclusive decision concluding the main case became final and binding. If an arrest warrant is issued for the enforcement of a sentence, the date of the service of the judgment following the admission of the defendant to the penal institution shall be considered the date of the defendant becoming aware.

(4) In a motion for retrial, the main case challenged on retrial, the reason of the motion, and the facts and evidence serving as grounds for retrial shall be specified. In a motion for retrial submitted on the basis of section 637 (1) *g)*, the likely date of becoming aware that the conclusive decision concluding the main case became final and binding shall be substantiated.

(5) A motion for retrial shall include contact details that are suitable for service to the person filing the motion; a motion for retrial submitted on the basis of section 637 (1) *g)* shall also specify the place of actual residence of the defendant.

(6) If an authority or public officer becomes aware in his official capacity of a circumstance that may serve as a ground for a motion for retrial, he shall inform the prosecution office attached to the court that decides on the admissibility of a retrial accordingly.

Section 640 (1) A motion for retrial may be withdrawn before the commencement of a panel session of the court of second instance on the admissibility of a retrial.

(2) A defendant may withdraw also a motion for retrial that was filed to his benefit by another eligible person, unless

a) it was filed by the prosecution service,

b) it was filed against ordering compulsory psychiatric treatment.

(3) If a motion for retrial is withdrawn, the person filing the motion shall be obliged to bear all criminal costs incurred. If a motion for retrial is withdrawn by the prosecution service, the criminal costs shall be borne by the State.

Retrial investigation

Section 641 (1) If a retrial investigation is ordered by the prosecution service, the provisions laid down in Part Ten shall apply to the investigation in line with the nature of retrial procedures.

(2) If a retrial investigation is ordered by a court, the provisions laid down in Part Ten shall apply to the investigation, in line with the nature of retrial procedures, subject to the following derogations:

a) the court shall send the order on ordering an investigation, with other case documents, to the general investigating authority,

b) in the course of the retrial investigation, the control powers specified in section 26 (3) *a)* to *c)* and *g)* to *h)* shall be exercised by the court,

c) the time limit for a retrial investigation shall be two months, which may be extended by the court two times, for up to two months each time,

d) the general investigating authority shall return all case documents to the court after completing the retrial investigation.

(3) Pre-trial detention, preliminary compulsory psychiatric treatment, or criminal supervision may not be ordered.

(4) In the course of a retrial investigation, covert means may be used pursuant to the provisions laid down in Chapter LV. The use of covert means subject to permission of a judge may be permitted by the court pursuant to the provisions laid down in Part Twelve. If a retrial investigation is ordered by a court, the court may not instruct the general investigating authority to use any covert means subject to permission of a judge. If covert means subject to permission of a judge were already used against a person concerned during the investigation of the underlying case, and the use of covert means subject to permission of a judge is permitted again in the retrial investigation, the periods of using such covert means shall be added together, and the period specified in section 239 (2) shall be calculated accordingly.

Proceedings by the prosecution service

Section 642 (1) A motion for retrial, if filed by another eligible person, shall be filed in writing with, or recorded in minutes at, the prosecution office attached to the court that is authorised to decide on the admissibility of a retrial.

(2) If a motion for retrial is filed by an ineligible person, the prosecution office shall not send it to the court, and it shall notify the person filing the motion accordingly in writing.

(3) If a motion for retrial is filed by another eligible person, the prosecution service shall send the motion, together with its observations, to the court within one month.

(4) If a motion for retrial is submitted by the prosecution service, the means of evidence serving as grounds for a retrial shall be attached to or, if attaching them is not possible, identified in the motion for retrial.

(5) With a view to obtaining the court case documents of the main case, the prosecution service shall send a request, without delay, to the court that acted as court of first instance in the main case, provided that the case documents are needed for making a statement pursuant to paragraph (3) or submitting a motion for retrial. In such an event, the time limit specified in paragraph (3) shall be calculated from the day when the court case documents of the main case are received by the prosecution service.

(6) The prosecution service shall order a retrial investigation before sending a motion for retrial if doing so is necessary to clarify the conditions for a retrial or to acquire new evidence. In such an event, the time limit specified in paragraph (3) shall be calculated from the completion of the retrial investigation.

The admissibility of retrial

Section 643 (1) The matter of admissibility of a retrial shall be decided by a regional court, if a district court proceeded at first instance in the main cases, or a regional court of appeal, if a regional court proceeded at first instance in the main case.

(2) A court shall adjudicate a motion for retrial in a panel session.

(3) After receipt of a motion for retrial, the court shall obtain the case documents of the main case, unless such documents were attached by the prosecution service.

(4) If a motion for retrial was submitted to a court, the court shall send the motion, together with the court case documents of the main case, to the prosecution service for taking the measures specified in section 642. The prosecution service shall send back the case documents of the main case, together with its statement, to the court within one month. If the prosecution service ordered a retrial investigation pursuant to section 642 (6), the time limit shall be calculated from the completion of the retrial investigation.

(5) The court shall serve the statement of the prosecution service on the person who submitted the motion for retrial. A defendant and his defence counsel shall be served a motion for retrial filed by another person, together with the statement of the prosecution service.

(6) The persons referred to in paragraph (5) may make their observations regarding the motion for retrial, or the statement of the prosecution service within fifteen days of service.

(7) With regard to admissibility of a retrial, the court shall assess, in the context of section 637 (1) *a)*, whether the factors invoked by the person filing the motion as grounds for a retrial, were they proven to be true, would be suitable for allowing the court to pass a judgment in accordance with section 637 (1) *a) aa)* or *ab)*.

(8) The court shall order a retrial investigation if locating any means of evidence is necessary for deciding on the admissibility of a retrial.

Section 644 (1) If a court finds a motion for retrial to be well-grounded, it shall order a retrial by passing a non-conclusive order, and, with the exception specified in paragraph (2), it shall

a) send the case to the court of first instance that proceeded in the main case, or

b) transfer the case to the court with subject-matter and territorial jurisdiction,

for conducting a repeated proceeding.

(2) A retrial shall be ordered under section 637 (1) *g)* only with regard to the second- or third-instance court proceeding if only the second- or third-instance court proceeding was conducted in the absence of the defendant.

(3) If a court orders a retrial under section 637 (1) *b)*, it may also set aside the judgment passed in the main case, or the part of the judgment challenged on retrial, and may terminate the proceeding under section 567 (1) *b)*.

(4) If a court orders a retrial under section 637 (1) *f)*, it may also set aside the conclusive decision passed in the main case, or the part of the decision challenged on retrial, and may pass a decision in compliance with the legal requirements.

(5) At the time of ordering a retrial, the court may suspend or interrupt the enforcement of a penalty imposed or a measure applied in the main case, or the implementation of the provisions of the final and binding conclusive decision, or order the necessary coercive measures.

(6) A motion for retrial that is groundless, or excluded by an Act, filed by an ineligible person, or late shall be dismissed by a court in a non-conclusive order. A motion for retrial shall also be dismissed by a court, if the person filing the motion or, where the motion for retrial is based on section 637 (1) *g)*, the defendant becomes unavailable.

(7) A court shall communicate its decision dismissing a motion for retrial to the person who submitted the motion for retrial and, if the motion was not filed by the prosecution service, to the prosecution service. A decision dismissing a motion for retrial filed by another person shall also be communicated to the defendant and his defence counsel.

(8) If a motion for retrial is filed again with unaltered content, it shall be dismissed by a court without stating any reason as to its merits.

(9) If a motion for retrial is dismissed, all criminal costs incurred shall be borne by the person filing the motion; if the motion was filed to the benefit of the defendant by another person, all criminal costs shall be borne by the defendant, provided that he could have withdrawn the motion under this Act. If a dismissed motion for retrial was filed by the prosecution service, all criminal costs shall be borne by the State.

Section 645 (1) No appeal shall lie against ordering a retrial.

(2) If a motion for retrial is dismissed, the person filing the motion may file an appeal, but he may not invoke a new ground for a retrial in his appeal.

(3) An appeal filed against a non-conclusive order with administrative finality may be dismissed by a court without stating any reason as to its merits.

(4) An appeal against an order of a regional court shall be adjudicated by a regional court of appeal, and an appeal against an order of a regional court of appeal shall be adjudicated by the Curia, in a panel session.

(5) In other respects, the provisions laid down in Chapters LXXXI to LXXXIV shall apply to appeals and the administration of appeals accordingly.

Conducting a retrial

Section 646 (1) If a retrial is ordered, the provisions laid down in Chapters Eleven, Thirteen, and Fourteen shall apply to conducting the retrial, subject to derogations arising from the nature of retrials.

(2) In a retrial, a preparatory session may not be held.

(3) The court may suspend or interrupt the enforcement of a penalty imposed or a measure applied in the main case, or the implementation of the provisions of the final and binding conclusive decision, or order the necessary coercive measures.

(4) When summoning the defendant to the trial or when summoning or notifying his defence counsel, the court shall also serve on him the decision ordering a retrial if it had not been served earlier.

(5) At trial, in place of an indictment document, the court shall present a summary of the judgment challenged in the retrial, and the order on ordering a retrial.

(6) In the course of a retrial,

a) the scope of taking evidence shall be determined solely by the ground for ordering the retrial with the exception of the ground specified in section 637 (1) *g)*, and

b) no taking of evidence that would result in any change to the detriment of the defendant may be ordered if the motion for retrial was filed to the benefit of the defendant.

Section 647 (1) If a court establishes that a retrial is well-grounded, it shall set aside the judgment or order on terminating the proceeding passed in the main case, or the part of the decision challenged on retrial, and it shall pass a decision in compliance with the legal requirements.

(2) A court shall dismiss a retrial if

a) it finds the retrial groundless, or

b) retrial was ordered under section 637 (1) *g)*, and the defendant became unavailable.

(3) If a penalty imposed in the main case is included in an accumulative sentence, and the judgment imposing the accumulative sentence is to be set aside because the retrial is well-grounded, the court shall also set aside the judgment imposing the accumulative sentence and conduct an accumulative sentence proceeding, provided that the relevant conditions are met and doing so does not exceed the subject-matter jurisdiction of the court pursuant to section 839 (1); otherwise, the case documents shall be sent to a court with subject-matter jurisdiction to conduct an accumulative sentence proceeding.

(4) If a motion for retrial was filed to the benefit of a defendant, provisions on the prohibition of *reformatio in peius* shall apply accordingly when passing a new decision.

(5) If a court establishes that a retrial is well-grounded,

a) it shall again adjudicate any civil claim, already adjudicated on its merits, upon a motion filed by the prosecution service, the defendant, his defence counsel or a civil party,

b) it shall pass a new decision on terminating parental custody rights upon a motion filed by the prosecution service, the defendant or his defence counsel.

(6) Legal remedy against a decision passed after a retrial is ordered shall be available pursuant to the general rules.

Chapter XC

REVIEW

Grounds for a review

Section 648 A review shall be granted regarding a final and binding conclusive court decision on the indictment

a) if the rules of substantive criminal law were violated,

b) if a procedural violation of law was committed,

c) on the basis of a decision passed by the Constitutional Court or a human rights organisation established by an international treaty,

d) if it deviates from a decision by the Curia published in the collection of court decisions *Bírósági Határozatok Gyűjteménye*.

Section 649 (1) A motion for review may be filed for violating the rules of substantive criminal law if a court

a) in violation of the rules of substantive criminal law

aa) found a defendant guilty,

ab) ordered compulsory psychiatric treatment for a defendant,

ac) acquitted a defendant, or

ad) terminated a proceeding;

b) due to the unlawful classification of the criminal offence or in violation of any other rule of the Criminal Code

ba) imposed an unlawful penalty,

bb) applied an unlawful measure;

c) suspended the enforcement of a sentence despite a ground for exclusion specified in section 86 (1) of the Criminal Code.

(2) A motion for review may be filed for committing a procedural violation of law if a court passed a decision

a) without jurisdiction,

b) in the absence of a private motion, crime report, or an act by the Prosecutor General as specified in section 4 (9), or in section 3 (3) of the Criminal Code,

c) on the basis of an indictment brought to court by an ineligible person,

d) by committing a procedural violation of law specified in section 607 (1) *b)* or section 608 (1),

e) in violation of the prohibition of *reformatio in peius*,

f) in violation of immunity based on the rule of speciality or on immunity arising from public office as afforded by an Act or on international law.

(3) A motion for review may be filed on the basis of a decision of the Constitutional Court if the Constitutional Court ordered the review of a criminal proceeding concluded with a final and binding conclusive decision.

(4) A motion for review may be filed on the basis of a decision passed by a human rights organisation established by an international treaty if the human rights organisation established by an international treaty established that a proceeding, or a final and binding conclusive court decision on the indictment, is in violation of a provision of an international treaty promulgated in an Act, provided that Hungary submitted to the jurisdiction of the international human rights organisation.

(5) A review shall also be granted on the basis of a decision passed by a human rights organisation established by an international treaty if the human rights organisation established by an international treaty establishes the violation of an international treaty provision that constitutes a procedural violation of law and, under this Act, may be challenged only on appeal, but not on a review.

(6) In case of a deviation from a decision by the Curia published in the collection of court decisions *Bírósági Határozatok Gyűjteménye*, a motion for review may be filed only if the deviation resulted in a violation of the rules of substantive criminal law as specified in paragraph (1) or in a procedural violation of law as specified in paragraph (2).

Limits to reviews

Section 650 (1) No review may be granted

a) against a provision, or part, of a final and binding conclusive decision passed by a court of third instance on the ground of violation of a rule of substantive criminal law,

b) against a decision passed on the basis of a procedure for the uniformity of jurisprudence by the Curia, in a review procedure, or as a result of a legal remedy submitted on the ground of legality,

c) if a violation of an Act can be remedied by conducting a simplified review procedure.

(2) Facts established in a final and binding conclusive decision may not be challenged in a motion for review.

(3) A review regarding a provision of a final and binding conclusive court decision concerning solely a civil claim or parental custody rights shall be governed by the provisions laid down in the Act on the Code of Civil Procedure.

(4) A review may not be granted on the basis of a decision passed by an international human rights organisation if that decision established the violation of the requirement of adjudicating a case within a reasonable period only.

Motion for review

Section 651 (1) A motion for review may be submitted, to the detriment of a defendant, by the prosecution service.

(2) A motion for review may be submitted to the benefit of a defendant by

a) the prosecution service,

b) the defendant,

c) a defence counsel,

d) the statutory representative of the defendant,

e) the spouse or cohabitant of the defendant against ordering compulsory psychiatric treatment,

f) a lineal relative, sibling, spouse, or cohabitant of the defendant after his death or, if more than fifty years have passed since the death of the defendant, his collateral relative.

(3) In a situation specified in section 649 (3) to (5), the Prosecutor General shall submit a motion for review *ex officio*.

(4) If an authority or public officer becomes aware, in his official capacity, that a violation that may serve as a ground for a review procedure was committed to the detriment of a defendant, he shall inform the Prosecutor General accordingly.

Section 652 (1) A motion for review shall specify the decision challenged by the motion for review, as well as the reason and purpose of filing the motion. In a situation under section 649 (6), motion for review shall also specify the decision by the Curia published in the collection of court decisions *Bírósági Határozatok Gyűjteménye*, and its part from which the conclusive decision challenged by the motion for review deviates.

(2) A motion for review shall include contact details that are suitable for service to the person filing the motion.

(3) A motion for review may be submitted to the detriment of a defendant within six months after a final and binding conclusive decision is communicated.

(4) A motion for review may be filed to the benefit of a defendant without any time limit.

(5) Filing a motion shall not be excluded by the fact that the defendant served his sentence or his liability to punishment was terminated.

(6) An eligible person may file only one motion for review, unless filing the new motion for review is based on section 649 (3) to (5).

(7) A motion for review may be filed with unaltered content only once.

Review procedures

Section 653 (1) The rules of third-instance court procedures shall apply to the administration of a review procedure subject to the derogations laid down in this Chapter.

(2) A motion for review may be submitted to the court that proceeded as court of first instance in the main case or the court the proceedings of which is challenged in the motion for review.

(3) The court shall refer the motion for review, together with the case documents of the main case, to the Curia within one month.

(4) A motion for review by the Prosecutor General shall be submitted, together with the case documents of the main case, to the Curia directly.

Section 654 (1) A motion for review may be withdrawn until a panel session held by the Curia to make a decision.

(2) A defendant may withdraw also a motion for review that was filed to his benefit by another eligible person, unless

a) it was filed by the prosecution service,

b) it was filed against ordering compulsory psychiatric treatment.

(3) A defence counsel may not withdraw, without the consent of the defendant, a motion for review filed by him.

(4) If a motion for review is withdrawn, the Curia shall terminate the review procedure.

Section 655 (1) With the exception specified in this Act, a motion for review shall be adjudicated in a panel session, or in a public session, by a panel of three professional judges of the Curia.

(2) If a motion for review is not to be dismissed on the basis of section 656 (2) or (4), the motion for review is to be adjudicated by a panel of five professional judges of the Curia.

(3) The participation of a defence counsel in a review procedure shall be mandatory.

(4) The Curia shall appoint a defence counsel if the defendant does not have one, and he shall be invited to draft a motion for review, if necessary.

(5) A disciplinary fine may be imposed on an appointed defence counsel if he fails to file a motion within one month, or files an incomplete motion.

Section 656 (1) The chair of the proceeding panel shall invite the person who submitted the motion to supplement his motion within one month if it is unclear why he considers the final and binding conclusive decision injurious.

(2) A motion for review shall be dismissed by the Curia if

a) a review is excluded in an Act,

b) it was filed by an ineligible person,

c) it is late,

d) with the exception under section 655 (5), the motion for review was not submitted, or was submitted with deficiencies repeatedly, despite an invitation specified in paragraph (1),

e) the person filing the motion became unavailable.

(3) In the course of the proceeding, the Curia shall examine *ex officio* if any of the grounds specified in paragraph (2) exist.

(4) The Curia may dismiss a motion without stating any reason as to its merits if it is filed by the same eligible person, or with unaltered content, repeatedly.

Section 657 (1) If a motion for review may not be dismissed and the prosecution was represented by the prosecution service in the main case, the Curia shall forward the motion, together with the case documents of the main case, to the Office of the Prosecutor General for obtaining a statement.

(2) The prosecution service shall return the case documents of the main case, together with its statement, to the Curia within one month or, if the case is particularly complex or extensive, within two months.

(3) The Curia shall send the statement of the prosecution service to the person who submitted the motion for review. A defendant and his defence counsel shall be sent a motion for review filed by another person, together with the related statement by the prosecution service.

(4) The persons referred to in paragraph (3) may make their observations regarding the motion for review, and the statement of the prosecution service, within fifteen days of service.

(5) The prosecution service, in its statement, or the accused affected by the review, or his defence counsel, may invoke a ground specified in section 649 (2) even if he has not filed a motion for review.

Section 658 (1) The Curia shall inform the Constitutional Court about instituting a review proceeding if a constitutional complaint is submitted against a final and binding conclusive decision or a law serving as ground for a final and binding conclusive decision.

(2) The Curia shall suspend the proceeding until the procedure for the uniformity of jurisprudence is concluded if the proceeding panel initiates a procedure for the uniformity of jurisprudence in the course of adjudicating the motion for review.

Section 659 (1) In a review proceeding, pieces of evidence may not be compared again or assessed differently, and evidence may not be taken; the facts established in the final and binding conclusive decision shall be observed when adjudicating a motion for review.

(2) With the exceptions specified in paragraphs (3) to (4), a motion for review shall be adjudicated on the basis of laws in effect at the time when the challenged decision was passed.

(3) In a situation specified in section 649 (3), a motion for review shall be adjudicated by not applying the law that is in conflict with the Fundamental Law or relying on the decision passed by the Constitutional Court.

(4) In a situation specified in section 649 (4) or (5), a motion for review shall be adjudicated by not applying the law that is inconsistent with an international treaty promulgated by an Act or relying on the decision passed by the international human rights organisation.

(5) With the exception specified in paragraph (6), the Curia shall review a final and binding conclusive decision only to the extent challenged in the motion for review and on the grounds stated in the motion for review.

(6) The Curia shall review a challenged decision on the basis of section 649 (2), even if the motion was filed on a different ground.

(7) A motion for review shall not have suspensory effect, but the Curia may suspend or interrupt the enforcement of a penalty imposed, or a measure applied, in the final and binding conclusive decision, or the implementation of the provisions of the final and binding conclusive decision, until the motion is adjudicated.

Section 660 (1) With the exception specified in paragraph (2), the Curia shall adjudicate a motion for review in a panel session.

(2) The Curia shall decide on a motion for review in a public court session if

a) a motion to that effect is filed by the defendant or the defence counsel within eight days after the service of a motion for review filed to the detriment of the defendant, or

b) the chair of the panel considers it necessary for any other reason.

Section 661 (1) In a public session, the attendance of a defence counsel and, if the prosecution was represented by the prosecution service, the Prosecutor General or his representative shall be mandatory.

(2) The defendant and all eligible persons specified in section 651 (2) *d)* to *f)* shall be notified about the public session.

(3) A notification shall be issued at a time that allows for it to be served at least eight days before the public session. A public session may be held, even if service of a notification failed because the whereabouts of the addressee are unknown.

(4) After opening the public session, the Curia shall present a summary of the motion for review and the challenged decision, and all parts of the case documents that are necessary for adjudicating the motion for review.

(5) After presenting the case, the person who filed the motion for review, the prosecutor, the defence counsel, and the other eligible persons specified in section 651 (2) *c)* to *f)* may address the court within the limits of the motion for review. After the addresses an opportunity to respond shall be granted. The defendant shall be entitled to address the court last.

Decisions passed in review procedures

Section 662 (1) The Curia shall uphold in effect, by passing a non-conclusive order, a decision challenged in a motion for review if it does not grant the motion for review.

(2) The Curia shall amend a decision challenged in a motion for review, and it shall pass a decision in compliance with the legal requirements if the court that proceeded in the main case

a) found the defendant guilty, or ordered compulsory psychiatric treatment for the defendant, in violation of the rules of substantive criminal law,

b) imposed an unlawful penalty or applied an unlawful measure due to the unlawful classification of the criminal offence, or in violation of any other rule of the Criminal Code,

c) suspended the enforcement of a sentence despite a ground for exclusion specified in section 86 (1) of the Criminal Code, or

d) passed its decision in violation of the prohibition of *reformatio in peius*.

(3) The Curia may proceed pursuant to paragraphs (1) and (2) if a review procedure was conducted on the basis of a decision passed by the Constitutional Court or a human rights organisation established by an international treaty.

(4) The Curia may also amend a challenged decision to the benefit of a defendant, even if a motion for review is filed to the detriment of the defendant.

Section 663 (1) The Curia shall set aside a decision challenged in a motion for review, and instruct a court with subject-matter and territorial jurisdiction to conduct a new proceeding, if

a) a defendant was acquitted, or a proceeding was terminated, because of a violation of the rules of substantive criminal law,

b) it is not possible to pass a decision specified in section 662 (1) or (2) on the basis of case documents, or

c) the review was instituted on the basis of a decision passed by a human rights organisation established by an international treaty, and repeating the proceeding is necessary for passing a decision that is in compliance with the relevant international treaty promulgated in an Act, even if the international human rights organisation established a violation that would otherwise not be a ground for setting aside the challenged decision under this Act.

(2) The Curia shall set aside a decision challenged in a motion for review and terminate a proceeding, instruct a court with subject-matter and territorial jurisdiction to conduct a new proceeding, or send the case documents to the prosecution service, if the court that proceeded in the main case passed its final and binding conclusive decision by committing a procedural violation of law specified in section 649 (2) *a)* to *d)*.

(3) If the Curia instructs a court to conduct a new proceeding, it shall provide mandatory instructions on conducting the new proceeding in the setting aside order.

(4) The Curia shall instruct a court of second or third instance to conduct a new proceeding if

a) the ground for a review arose in the second- or third-instance court proceeding,

b) a decision, which is in compliance with the legal requirements, may be passed by repeating the second- or third-instance court proceeding.

(5) If the Curia sets aside a decision challenged in a motion for review and the defendant concerned is detained, it shall decide on the matter of detention.

Section 664 (1) Criminal costs incurred in a review proceeding, including the fee of any defence counsel officially appointed to draft a motion for review, shall be borne by the person who submitted the motion, provided that the motion for review is dismissed and the review proceeding was not initiated by the prosecution service. In any other situation, the criminal costs shall be borne by the State.

(2) After a motion for review is administered, the Curia shall serve its decision. The Curia shall send back the case documents, together with its decision and the minutes, to the court that passed the decision challenged in the motion for review or is instructed to conduct a new proceeding.

Chapter XCI

PROCEEDING CONCERNING CONSTITUTIONAL COMPLAINTS

Section 665 (1) A court that proceeded at first instance in a case may suspend or interrupt the enforcement of a penalty imposed or a measure applied in the final and binding conclusive decision, or the implementation of the provisions of the final and binding conclusive decision, until the proceeding of the Constitutional Court is concluded.

(2) A court that proceeded at first instance in a case shall notify the Constitutional Court about suspending or interrupting the enforcement of a penalty imposed or a measure applied in the final and binding conclusive decision, or the implementation of the provisions of the final and binding conclusive decision.

(3) Upon a call to that effect from the Constitutional Court, a court that proceeded at first instance in a case shall suspend or interrupt the enforcement of a penalty imposed or a measure applied in the final and binding conclusive decision, or the implementation of the provisions of the final and binding conclusive decision, and it shall notify the Constitutional Court accordingly.

(4) No appeal shall lie against an order referred to in paragraph (3).

Chapter XCII

LEGAL REMEDY SUBMITTED ON THE GROUND OF LEGALITY

Section 666 If legal remedy is submitted on the ground of legality, the provisions laid down in Chapter XC shall apply subject to the derogations laid down in this Chapter.

Section 667 (1) The Prosecutor General may submit legal remedy on the ground of legality against an unlawful final and binding conclusive decision, or a non-conclusive order with administrative finality passed by a court.

(2) Legal remedy may not be submitted if

a) the decision was passed by the Curia,

b) the violation may be remedied by conducting a retrial, a review, or a simplified review procedure.

(2a) No legal remedy may be submitted against an order adopted under section 490.

(3) Legal remedy may be submitted without any time limit.

The administration of legal remedies submitted on the ground of legality

Section 668 (1) The Curia shall sit as a panel of five professional judges when adjudicating a legal remedy submitted on the ground of legality. If a legal remedy submitted on the ground of legality may not be dismissed, it shall be adjudicated by the Curia in a panel session, with the exception specified in paragraph (1a).

(1a) The Curia shall decide on a legal remedy submitted on the ground of legality in a public session if

a) the Prosecutor General moves for doing so, or

b) the chair of the panel considers it necessary to do so for any other reason.

(2) The Prosecutor General, the defendant and his defence counsel shall be notified of the public session. If the defendant did not have a defence counsel in the main case, the Curia shall appoint a defence counsel for the defendant.

(3) The defendant and his defence counsel may make observations regarding a motion for legal remedy submitted on the ground of legality.

(4) A public session may not be held in the absence of the Prosecutor General or his representative.

(5) In a public session, the Prosecutor General or his representative, the defendant, and his defence counsel may address the court and, in line with the nature of the proceeding, file motions.

(6) If a panel of the Curia adjudicates a legal remedy submitted on the ground of legality in a panel session, then the defendant and the defence counsel may make observations within eight days from the service of the notification about the public session.

Decisions passed on the basis of a legal remedy submitted on the ground of legality

Section 669 (1) If the Curia finds a legal remedy submitted on the ground of legality to be well-grounded, it shall establish in a judgment that the challenged decision is unlawful; otherwise, it shall dismiss the legal remedy by passing an order.

(2) If a violation is established, the Curia may acquit a defendant, refrain from applying compulsory psychiatric treatment, terminate a proceeding, impose a more lenient penalty, or apply a more lenient measure, or may set aside a challenged decision and instruct the court that proceeded in the case to conduct a new proceeding with a view to passing such a decision, if necessary.

(3) In a situation other than those specified in paragraph (2), the decision passed by the Curia may only establish the fact that a violation was committed.

(4) All criminal costs incurred in a legal remedy proceeding shall be borne by the State.

Chapter XCIII

PROCEDURE FOR THE UNIFORMITY OF JURISPRUDENCE

Section 670 (1) The provisions laid down in the Act on the organisation and administration of the courts concerning procedures for the uniformity of jurisprudence shall apply to a procedure for the uniformity of jurisprudence subject to the derogations laid down in paragraphs (2) to (5).

(2) If the outcome of a procedure for the uniformity of jurisprudence may have an impact on another extraordinary legal remedy proceeding pending before the Curia, the Curia shall suspend the extraordinary legal remedy proceeding until a uniformity decision is passed.

(3) If, following a guidance on a question of principle, a provision, which establishes the criminal liability of a defendant, of a final and binding conclusive decision affected by a uniformity decision is to be considered unlawful, the uniformity chamber shall set aside the unlawful provision and acquit the defendant or terminate the proceeding. If the defendant concerned is detained, his detention shall also be terminated.

(4) The statement of reasons for a uniformity decision shall specify the grounds for acquitting the defendant and terminating the proceeding.

(5) A uniformity decision shall also be communicated to the defendant who is acquitted or the proceeding against whom is terminated and his defence counsel.

(6) A uniformity complaint may be filed pursuant to the provisions of the Act on the organisation and administration of the courts.

(7) In a uniformity complaint procedure, the enforcement of a penalty imposed, or measure applied, by a final and binding conclusive decision, or the implementation of the provisions of a final and binding conclusive decision, shall not be suspended or interrupted.

(8) A decision by the Curia challenged by a uniformity complaint shall not be set aside if the uniformity complaint chamber establishes that the decision challenged in a review procedure unduly deviated from a decision by the Curia published in the collection of court decisions *Bírósági Határozatok Gyűjteménye*, but the challenged decision may not be amended, or set aside, in the review procedure due to the absence of any violation specified in section 649 (1) or (2).

Chapter XCIV

SIMPLIFIED REVIEW

Section 671 A simplified review procedure may be conducted if a court failed to pass a provision in an main case despite a mandatory provision of an Act, or it failed to pass a provision that is in compliance with the legal requirements, on any of the following matters:

1. determining the security level of imprisonment,

2. ordering, on the basis of section 87 *b)* of the Criminal Code, the enforcement of a sentence of imprisonment suspended on probation,

3. setting aside an order to enforce a sentence of imprisonment suspended on probation,

4. passing a provision on parole,

5. terminating a parole on the basis of section 40 (1) of the Criminal Code,

6. crediting remand detention and criminal supervision, crediting confinement, community service or fine imposed and enforced in an infraction proceeding and a penalty or measure already enforced,

7.

8. disqualification from a profession pursuant to section 52 (3) of the Criminal Code and determining a profession a defendant is disqualified from,

9. *ex-post* crediting of disqualification from driving a vehicle,

10. determining the location subject to a ban on entering certain areas or, if section 60 (2a) of the Criminal Code applies, the period of expulsion,

11. determining the sports associations and sports facilities concerned when imposing a ban on visiting sports events,

12. applying confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision, determining a thing to be seized, lifting sequestration or terminating suspension of hosting service provision,

13. terminating release on probation,

14. ordering supervision by a probation officer,

15. criminal costs,

16. determining that a convict is a recidivist,

17. terminating a temporary release from a juvenile correctional institution on the basis of section 121 (3) of the Criminal Code, or

18. costs that arose in causal relationship with the enforcement of the civil claim without qualifying as criminal costs.

Simplified review procedures

Section 672 (1) In a simplified review procedure, the provisions of this Act shall apply subject to the derogations laid down in this Chapter.

(2) In a simplified review procedure, the proceeding court shall be the court that passed the final and binding conclusive decision or the decision that reached administrative finality, provided that less than one month has passed since the conclusive decision became final and binding or the decision terminating the proceeding reached administrative finality; otherwise, the court that proceeded as court of first instance in the main case shall be the proceeding court. If the court proceeded as a panel, a simplified review procedure may also be conducted by the chair of the panel.

(3) A simplified review procedure shall be instituted *ex officio* or upon a motion by the prosecution service, the defendant, his defence counsel, a party with a pecuniary interest or an other interested party. The court may terminate the proceeding if the motion is withdrawn by the person filing it.

(4) A motion for a simplified review procedure may be submitted to the detriment of a defendant, a party with a pecuniary interest, or an other interested party within six months after the decision is communicated, and a simplified review procedure may be instituted *ex officio* to the detriment of a defendant, a party with a pecuniary interest, or an other interested party within six months after the decision is communicated.

(5) A simplified review procedure shall be concluded within six months after it is instituted; after this period, with the exception provided for under paragraph (6), no decision that is more adverse to a defendant, a party with a pecuniary interest, or an other interested party may be passed.

(6) A simplified review procedure may be initiated, or conducted, even after the time limit specified in paragraphs (4) and (5) has passed, provided that

a) a decision is to be passed regarding confiscation or rendering electronic data permanently inaccessible, because possessing the given thing threatens public safety or is in breach of the law, or making accessible or publishing the data published on an electronic telecommunications network constitutes a criminal offence, or

b) a provision on confiscation or forfeiture of assets is to be passed in the context of seizure or sequestration.

Section 673 (1) The court shall decide on the basis of case documents; if interviewing a prosecutor, a defendant, or a defence counsel is necessary, it shall hold a public session; if other evidence is taken, it shall hold a trial.

(2) A simplified review procedure may also be conducted by a junior judge, but he may not hold a public session or a trial.

(3) In a simplified review procedure, proceedings may not be suspended.

(4) If the person filing the motion fails to appear in a public session or trial, his motion shall be deemed withdrawn.

(5) If the court holds a trial, a preparatory session may not be held.

(6) Interviewing a defendant may not be dispensed with if the court

a) decides on an *ex-post* modification of a provision on parole from life imprisonment,

b) imposes special rules of behaviour in connection with ordering supervision by a probation officer,

c)

d) decides on the termination of release on probation.

(7) After opening a public session or a trial, the proceeding single judge or the chair of the panel shall present, as necessary, a summary of the decision passed in the main case, and of the circumstances that serve as grounds for instituting a simplified review procedure *ex officio*.

(8) If a simplified review procedure is instituted on the basis of a motion, the person filing the motion shall present a summary of his motion for a simplified review procedure and the supporting evidence during the public session or trial.

Decisions passed in simplified review procedures, and legal remedies

Section 674 (1) On the basis of a simplified review procedure, the court shall set aside any unlawful provision of a decision passed in an main case, as necessary, and pass a decision in compliance with the legal requirements.

(2) A court shall dismiss a motion if it is groundless. A court shall terminate a proceeding if the proceeding was instituted *ex officio* and the court establishes that the conditions of instituting a proceeding are not met.

(3) The court shall dismiss, without stating any reasons as to its merits, a motion that is late, excluded by law or filed by an ineligible person. If a motion filed by an ineligible person is dismissed, the court shall institute a proceeding *ex officio*, provided that the statutory conditions of a proceeding are met.

(4) A court shall decide on the subject matter of a simplified review procedure by passing an order.

(5) An appeal against a court decision may be filed by a person who is entitled to file a motion for instituting a proceeding, or by a person a right or obligation of whom is affected by the decision, concerning matters affecting him.

(5a) In a simplified review procedure, the court of second instance shall proceed in a panel session to decide on an appeal, proceed in a public session to interview the prosecutor, the defendant or his defence counsel, or proceed in a trial to take other evidence.

(6) A court of second instance shall set aside a first instance decision passed in a simplified review procedure, and dismiss the respective motion, if conducting the proceeding is excluded by an Act. The court shall also proceed the same way if a motion is filed by an ineligible person and a simplified review procedure may not be conducted *ex officio*.

(7) A third-instance court proceeding may not be conducted in a simplified review procedure.

Section 675 All criminal costs shall be borne by the State if it is established during a proceeding that a decision does not include any provision regarding the subject matter of a simplified review procedure, or includes any such provision that is not in compliance with the legal requirements. If a motion for a simplified review procedure is dismissed, the criminal costs shall be borne by the person filing the motion; if the motion was filed by the prosecution service, the criminal costs shall be borne by the State.

PART TWENTY

SPECIFIC PROCEDURES

Chapter XCV

JUVENILE CRIMINAL PROCEDURE

Section 676 In a juvenile criminal proceeding, the provisions of this Act shall apply subject to the derogations laid down in this Chapter.

The objectives of juvenile criminal procedure

Section 677 A juvenile criminal proceeding shall be conducted with a view to ensuring that the juvenile concerned is integrated into society and that he does not commit any other criminal offence by fostering his education and promoting his intellectual, moral, and emotional development.

Scope of the procedure

Section 678 (1) A juvenile criminal proceeding may be conducted against a person if he has attained the age of twelve years but has not attained the age of eighteen years when committing the criminal offence.

(2) If a proceeding is conducted against a juvenile for more than one criminal offence, including criminal offences committed before and after he has attained the age of fourteen years, the provisions on juveniles who have attained the age of fourteen years shall apply to the juvenile criminal proceeding.

(3) A juvenile criminal proceeding may not be conducted if a proceeding is conducted against a defendant or a person reasonably suspected of having committed a criminal offence for more than one criminal offence, and at least one of those criminal offences was committed after he has attained the age of eighteen years. This provision shall also apply if a juvenile was released on probation for a criminal offence committed after he has attained the age of eighteen years, and that case had to be joined, pursuant to section 486, to a proceeding conducted regarding a criminal offence committed as a juvenile.

(4) If there is more than one defendant, the case of an adult defendant shall be adjudicated together with the case of a juvenile defendant by the court, provided that it relates to the case of the juvenile defendant.

(5) In juvenile criminal proceedings public prosecution shall be mandatory; the prosecution service shall proceed with regard to any criminal offence subject to private prosecution.

Protection of juveniles

Section 679 In the course of a proceeding, the court, prosecution service, and investigating authority shall monitor continuously whether any circumstance concerning a juvenile triggers a duty of indication, or of initiating an authority proceeding, as defined in the Act on the protection of children and guardianship administration.

Court

Section 680 (1) In a juvenile criminal proceeding, a court of first instance shall sit as a panel if

a) the criminal offence is punishable by law by imprisonment for up to eight years or more, or

b) the case was referred to a court panel by a single judge.

(2) In a juvenile criminal proceeding, a court panel proceeding at first instance shall be composed of one professional judge and two lay judges.

(3) Only a professional judge may serve as a single judge or the chair of a panel.

(4) In a court proceeding conducted against a juvenile,

a) before the indictment, the investigating judge at first instance or the chair of the panel at second instance

b) after the indictment, the proceeding single judge or the chair of the panel at first instance, or a member of the panel at second or third instance, with the exception of the Curia,

shall be a judge designated by the National Office for the Judiciary.

(5) In a juvenile criminal proceeding, a person may serve as lay judge only if he is

a) a pedagogue,

b) a psychologist, or

c) a person who works, or used to work, in a position, for which a university or college degree is required, that directly facilitates the provision of healing, treatment, employment, development, assistance, upbringing, care, or social support to a care recipient, or the settlement of the circumstances of a child, within the framework of a family, child or youth protection service or the guardianship administration.

(6) When administering justice, professional judges and lay judges shall have the same rights and obligations. The provisions on the disqualification of judges shall also apply to lay judges.

Prosecutor

Section 681 In a juvenile criminal proceeding, a prosecutor designated by a superior prosecution office shall proceed.

Defence counsel

Section 682 (1) In a proceeding against a juvenile, the participation of a defence counsel shall be mandatory.

(2) The attendance of a defence counsel shall be mandatory at the following events involving a juvenile before the indictment:

a) interrogation as a suspect,

b) confrontation,

c) presentation for identification,

d) on-site interrogation,

e) reconstruction of the criminal offence, and

f) a court session in a proceeding relating to a coercive measure affecting personal freedom subject to judicial permission.

(3) In a situation other than those specified in paragraph (2), the defence counsel shall be notified *ex post* of any procedural act carried out with the participation of the juvenile concerned, provided that the defence counsel did not attend, nor was notified of, the procedural act.

The taking of evidence

Section 683 (1) In a juvenile criminal proceeding, evidence shall also be taken concerning circumstances that are relevant to learning about the particular needs and environment of a juvenile (hereinafter "individual assessment of a juvenile"). The means used for the individual assessment of a juvenile shall include, in particular,

a) home studies,

b) opinion by a probation officer or summary opinion by a probation officer,

c) expert opinions,

d) witness testimony by a probation officer,

e) witness testimony by the statutory representative of, or another person caring for, the juvenile concerned.

(2) A statutory representative of, or another person caring for, a juvenile shall be obliged to cooperate in the course of an individual assessment of the juvenile concerned.

(3) The court, prosecution service, or investigating authority may order an expert examination regarding the maturity and level of understanding of a juvenile who had attained the age of fourteen years at the time of committing a criminal offence.

(4) Before passing a conclusive decision at the latest, arrangements shall be made to carry out the individual assessment of a juvenile repeatedly if any data arises during a proceeding suggesting any significant change in the circumstances underlying the individual assessment of the juvenile concerned or if over two years passed since a means of evidence was obtained for the purpose of carrying out the individual assessment of the juvenile concerned.

Section 684 (1) After a juvenile is interrogated as a suspect, a home study shall be obtained without delay that provides information as specified by law and on the examination of factors specified in section 683 (1). A home study shall also include the risk assessment of the vulnerability of a juvenile in the context of crime prevention.

(2) A home study shall be produced by a probation officer.

(3) A probation officer shall be obliged and entitled to access any data that is necessary to produce a home study.

(4) A probation officer shall interview the juvenile concerned, as well as the statutory representative of, or another person caring for, the juvenile; he shall also obtain the opinion of a pedagogue and establish a child protection history.

(5) A probation officer may inspect case documents and request information from a defendant, aggrieved party, witness, aide, other interested party, guardianship authority, child welfare service, or preventive probation officer.

(6) For the purpose of producing a home study, a probation officer may make use of the assistance of the police organ established to carry out general policing tasks.

(7) The provisions on experts shall also apply to probation officer producing a home study, with the proviso that sections 194 to 195, section 197 (2) to (5), and sections 199 to 200 may not apply to a probation officer.

Summary opinion by a probation officer

Section 685 (1) If preventive probation of a juvenile was ordered in the context of the juvenile being taken under protection, the prosecution service before the indictment or the court after the indictment, shall order obtaining a summary opinion by a probation officer.

(2) In addition to the items required under section 203 (1) to (2), a summary opinion by a probation officer shall also include summary statements regarding the outcome of the enforcement of any preventive probation ordered for a juvenile by a guardianship authority.

(3) In his summary opinion, a probation officer shall make recommendations regarding any individual rule of behaviour, or obligation, to be imposed on the defendant and, even in the absence of any instruction by the court or prosecution service, he shall cover whether the defendant is willing and capable of complying with any foreseen rule of behaviour, or obligation, and if the aggrieved party consents to any reparation foreseen.

(4) A probation officer who oversees or oversaw any preventive probation concerning a juvenile shall not be disqualified from the production of a summary opinion by a probation officer.

(5) If the conditions laid down in section 683 (4) are met, the court or prosecution service may interrogate a preventive probation officer as a witness. If a summary opinion by a probation officer is produced by a preventive probation officer, he shall be interviewed pursuant to section 196 (2).

(6) Subject to the derogations laid down in paragraphs (1) to (5), the provisions on an opinion by a probation officer shall apply to a summary opinion by a probation officer.

Examining the soundness of a person's mind

Section 686 After the communication of reasonable suspicion, arrangements shall be made without delay for the appointment of an expert, pursuant to statutory provisions, to examine the capacity to be held liable for his acts, and the soundness of the mind necessary for recognising the consequences of the criminal offence, of a juvenile, who has attained the age of twelve years but has not attained the age of fourteen years at the time of committing his criminal offence. More than one expert shall produce a joint expert opinion.

The period of investigation

Section 687 (1) An investigation shall be concluded within one year after a juvenile is interrogated as a suspect, provided that the proceeding was instituted against the juvenile concerned for a criminal offence punishable by imprisonment for not more than five years.

(2) If an investigation is in progress against a juvenile for a criminal offence punishable by imprisonment for more than five years, the time limit for the investigation may not be extended beyond two years after the juvenile concerned is interrogated as a suspect.

Pre-trial detention

Section 688 (1) Pre-trial detention may not be imposed on a juvenile even for a reason specified in section 276 (2), unless doing so is necessary due to the particular material gravity of the criminal offence.

(2) A pre-trial detention shall terminate if its period reaches

a) one year, provided that the juvenile concerned has not attained the age of fourteen years at the time of committing the criminal offence,

b) two years, provided that the juvenile concerned has attained the age of fourteen years at the time of committing the criminal offence,

with the exception of a pre-trial detention ordered, or maintained, after the announcement of a conclusive decision, or a situation where a proceeding is pending for the adjudication of an appeal against a setting aside order passed by the court of second or third instance, or a proceeding repeated on the ground of setting aside is pending.

(3) A court shall decide, as provided for by an Act, on the place of enforcing the pre-trial detention of a juvenile in light of his personality and the nature of the criminal offence held against him.

(4) A court shall decide on the temporary placement of a juvenile, as provided for by an Act, upon a motion from the prosecution service; no appeal shall lie against a decision on this matter. A juvenile who has not attained the age of fourteen years may not be placed temporarily.

(5) During the period of pre-trial detention, the court may change the place of enforcing the pre-trial detention upon a motion from the prosecution service, the defendant, or the defence counsel or, after the indictment, *ex officio*.

Ordering a coercive measure before the indictment

Section 689 (1) An adult person caring for a juvenile concerned, if other than his statutory representative, shall be notified about a court session held in a proceeding relating to a coercive measure affecting personal freedom subject to judicial permission.

(2) A statutory representative, or an adult person caring for a juvenile concerned, may address the court during a court session.

(3) A decision on a coercive measure affecting personal freedom subject to judicial permission shall also be communicated to an adult person caring for a juvenile concerned.

Applying supervision for the purpose of crime prevention concerning a juvenile

Section 689/A Supervision for the purpose of crime prevention shall not be ordered concerning a juvenile if

a) the preventive probation of the juvenile was ordered, or

b) ordering it is not justified in light of the development of the juvenile in an appropriate direction.

Conditional suspension by the prosecutor

Section 690 (1) Conditional suspension by the prosecutor, as defined in section 416, may be applied concerning a juvenile if

a) the investigation is being conducted for a criminal offence punishable by imprisonment for not more than eight years, and

b) the juvenile can be expected to develop in an appropriate direction as a result of conditional suspension by the prosecutor, having regard to the nature of the criminal offence, the manner of its commission, and the personal circumstances of the suspect.

(2) If conditional suspension by the prosecutor may be applied concerning a juvenile, the prosecution service may suspend the proceeding for a period between one year and three years within the penalty range specified in the Special Part of the Criminal Code.

(3) The prosecution service shall order obtaining an opinion from a probation officer before applying conditional suspension by the prosecutor if it intends to impose any individual rule of behaviour or obligation to facilitate the achievement of the objective of supervision by a probation officer.

(4) In his opinion, a probation officer shall make recommendations regarding any individual rule of behaviour, or obligation, to be imposed on the defendant, and, even in the absence of any instruction by the prosecution service, he shall cover whether the defendant is willing and capable of complying with any foreseen rule of behaviour or obligation, and if the aggrieved party consents to any reparation foreseen.

(5) Even if all other conditions are met, an obligation specified in section 419 (2) *c)* may be imposed only if the juvenile concerned has attained the age of sixteen years at the time of passing a decision on conditional suspension by the prosecutor.

Preparatory session and trial

Section 691 (1) If the interests of the juvenile concerned make it necessary, the public shall be excluded from a preparatory session or a trial even in the absence of the reasons for doing so specified in section 436 (4).

(2) If a part of a trial may have a detrimental impact on the development in the right direction of a juvenile, the court may order that part of the trial to be held in the absence of the juvenile concerned. A summary of a trial conducted this way shall be presented to the juvenile concerned before the evidentiary procedure is declared to be concluded at the latest.

Section 692 (1) In a juvenile criminal proceeding, the prosecution may not be represented by a trainee prosecutor or a junior prosecutor.

(2) As a defence counsel for a juvenile in court, an attorney-at-law may not be substituted by a junior attorney-at-law.

Section 693 (1) The attendance of a juvenile concerned at a preparatory session and at the trial shall be mandatory.

(2) If a conclusive decision may be passed during a preparatory session, the home study, opinion by a probation officer, and summary opinion by a probation officer shall be presented at the preparatory session.

(3) In his closing argument delivered at a trial, a prosecutor may not move for a specific period of special education in a juvenile correctional institution applied as a measure.

(4) If a court panel proceeds at first instance, the chair of the panel shall inform all lay judges before voting about the decisions that may be passed, the pieces of legislation that are necessary for decision making, the types and ranges of penalties, and the measures.

(5) A court may order special education in a juvenile correctional institution only in a judgment of guilt.

(6) A decision on a coercive measure affecting personal freedom subject to judicial permission, and a conclusive decision, shall be communicated also to an adult person caring for a juvenile concerned.

Section 693/A If the court finds a juvenile accused guilty in committing an intentional criminal offence or establishes his liability for committing an infringement, then it may impose the obligation to bear criminal costs also on an adult person providing care for the juvenile accused at the time of the commission of the criminal offence.

Derogation from the provisions concerning specific procedures and special procedures

Section 694 (1) In a proceeding for a punishment order, also a statutory representative may file a motion for trial.

(2) In the absence of the juvenile concerned, a preparatory session or a trial may not be held pursuant to the provisions laid down in Chapter CI to CII.

(3) The provisions laid down in sections 839 to 840 shall apply accordingly when applying a consolidated measure in place of applying special education in a juvenile correctional institution multiple times.

(4) In a special proceeding specified in section 841 or 842, the court may order special education in a juvenile correctional institution for a juvenile in place of imposing a penalty.

Chapter XCVI

MILITARY CRIMINAL PROCEDURE

Section 695 The provisions of this Act shall apply to military criminal procedure subject to derogations laid down in this Chapter.

The scope of military criminal procedure

Section 696 (1) A military criminal proceeding shall be conducted concerning

a) a criminal offence committed by a soldier,

b) a military offence committed, or any other criminal offence committed at his place of service, or in relation to his service, by a professional member of the police, the Parliamentary Guard, the prison service, a professional civil defence organisation, or a civil national security service during his period of active service.

c) unless an international treaty promulgated in an Act provides otherwise, a criminal offence, falling within Hungarian criminal jurisdiction, committed by a member of an allied armed force in Hungary, or on a vessel, or aircraft, flying the flag of Hungary outside the borders of Hungary.

(2) A military criminal proceeding shall be conducted with regard to all criminal offences committed by a defendant if a military criminal proceeding is to be conducted with regard to at least one of his criminal offences and the cases cannot be separated.

(3) In case there is more than one defendant, a military criminal proceeding shall be conducted if the criminal offence committed by any of the defendants is subject to military criminal procedure, and the cases cannot be separated as the facts of the cases are closely related. This provision shall also apply to an accessory after the fact and a perpetrator of a criminal offence specified in section 399 (3) and (4) of the Criminal Code, a qualified form of those criminal offences as set out in section 399 (5) to (8) of the Criminal Code, and a criminal offence specified in section 400 (1) and (2) of the Criminal Code.

(4) If there is more than one defendant, the case of a juvenile and the case of a soldier shall be adjudicated together by the proceeding court in a military criminal proceeding, provided that the cases are related. In this event, the provisions on juvenile criminal proceedings shall apply as appropriate with regard to the juvenile defendant.

(5) If the cases have to be joined pursuant to section 486 (1), the court that conducted the military criminal proceeding shall proceed, except where the case was referred to military criminal procedure under paragraph (3).

Court

Section 697 (1) In a case subject to military criminal procedure, the military panel of the regional court designated by the Act on the name, seat, and area of jurisdiction of courts shall proceed as the court of first instance.

(2) Unless otherwise provided in this Act, the military panel of the Budapest-Capital Regional Court of Appeal shall proceed as court of second instance in a case subject to military criminal procedure. Other panels of the Budapest-Capital Regional Court of Appeal may also proceed concerning the admissibility of a retrial or, if a retrial is ordered, in the course of revising a judgment passed in a retrial, at second instance.

(3) A military judge may also proceed in cases not subject to military criminal procedure.

Composition of the court

Section 698 (1) A military panel of a regional court, as court of first instance, shall sit

a) as a panel of one professional judge and two lay judges

aa) if the criminal offence is punishable by law by imprisonment for up to eight years or more, or

ab) regarding a criminal offence specified in section 20 (1) 2 to 18, or

ac) if the case was referred to a panel by a single judge,

b) as a single judge in situations other than those specified in point *a)*.

(2) A court of first instance may also sit as a panel of one professional judge and two lay judges if it establishes that the criminal offence specified in the indictment document may constitute a criminal offence of greater gravity.

(3) In a military criminal proceeding, only a military judge may act as a professional judge at first and second instance; only a military lay judge may act as a lay judge at first instance. If a lay judge is included in a panel, the panel shall be chaired by a military judge.

(4) If a juvenile defendant is involved in a military criminal proceeding, and the court sits as a panel at first instance, one member of the panel shall be a military lay judge who meets also the conditions laid down in section 680 (5).

(5) In a military criminal proceeding, a lay judge may not hold a rank that is lower than that of the accused, with the exception specified in paragraph (6). As a general rule, a panel shall include lay judges from the organ, specified in section 127 (1) of the Criminal Code, where the defendant served at the time of committing his criminal offence. Derogations from this rule in the interest of the administration of justice shall be permitted.

(6) In a proceeding conducted against an accused holding the rank of a general, any military lay judge holding the rank of a general may proceed, provided that a panel could not be formed in line with paragraph (5) from military lay judges selected to the proceeding court.

(7) With regard to passing a decision, professional judges and military lay judges shall have the same rights and obligations. The provisions on the disqualification of judges shall also apply to military lay judges.

Territorial jurisdiction of a court of first instance

Section 699 (1) The area of jurisdiction of a military panel of a regional court designated for military criminal proceedings shall be determined by the Act on the name, seat, and area of jurisdiction of courts.

(2) A criminal offence committed outside the borders of Hungary shall fall within the territorial jurisdiction of the military panel of the Budapest-Capital Regional Court.

(3) The ground for jurisdiction specified in section 21 (3) shall not apply to a military criminal proceeding.

The prosecution service

Section 700 (1) In a military criminal proceeding, the tasks of the prosecution service shall be carried out by a prosecution office designated by the Prosecutor General. In a military criminal proceeding, a military prosecutor or a prosecutor designated by the Prosecutor General for military criminal proceedings shall proceed.

(2) The investigation shall be carried out by the prosecution service if

a) a soldier commits

aa) a military felony,

ab) a military misdemeanour, provided that he committed any other criminal offence in relation to the military misdemeanour, or there is more than one defendant and the cases cannot be separated,

ac) a non-military offence,

b) the chief or deputy chief of the National Defence Staff, the director-general or a deputy director-general of the Military National Security Service, the national chief police commissioner or a deputy national chief police commissioner, the director-general or a deputy director-general of the Counter-Terrorism Centre, the director-general or a deputy director-general of the National Protective Service, the commander or deputy commander of the Parliamentary Guard, the national chief or a deputy chief of the prison service, the director-general or a deputy director-general of the National Directorate-General for Disaster Management, a director-general or a deputy director-general of a civilian national security service, a soldier serving at another organ, with the exception of soldiers deployed or transferred by and between organs other than those specified in section 696 (1) *b)*, or a dual-status student of an institute of higher education of law enforcement holding a scholarship commits a military misdemeanour,

c) a criminal offence, falling within Hungarian criminal jurisdiction, is committed by a member of an allied armed force in Hungary, or on a vessel or aircraft flying the flag of Hungary outside the borders of Hungary,

d) a ground for disqualification exists with regard a commander,

e) the service relationship of the soldier concerned is terminated in the meantime.

(3) The prosecution service may also proceed in cases not subject to military criminal procedure.

(4) If a criminal offence subject to military criminal procedure is detected by an investigating authority other than a military investigating authority, or an investigating authority other than a military investigating authority becomes aware of such a criminal offence, it shall inform the prosecution service without delay about performing any procedural act specified in section 375 (4).

(5) In a military criminal proceeding, public prosecution shall be mandatory; the prosecution service shall proceed with regard to any criminal offence subject to private prosecution.

(6) In a military criminal proceeding, the prosecution may not be represented by a junior prosecutor or a trainee prosecutor.

Military investigating authorities

Section 701 (1) If an investigation is not conducted by the prosecution service, a commander exercising employer's rights over the military personnel (hereinafter "commander") shall proceed as the investigating authority. The commander shall not conduct a preparatory proceeding.

(2) A commander may exercise his powers as an investigating authority acting through also an investigating organ or an investigating officer authorised for the performance of this task.

(3) If an organ under the command of a commander does not have an investigating organ or investigating officer, or if the investigating organ or investigating officer is prevented from discharging its or his task or is disqualified from a proceeding, the commander shall carry out the investigation in person or request his superior commander to designate an investigating organ or investigating officer.

(4) A person may not act as an investigating officer if the defendant or the person reasonably suspected of having committed a criminal offence is his military superior.

Section 702 (1) An investigation shall be carried out by the commander who was the service superior of the defendant or the person reasonably suspected of having committed a criminal offence at the time of instituting the criminal proceeding.

(2) If the place of service of a defendant or the person reasonably suspected of having committed a criminal offence changes after the act serving as ground for the proceeding was committed, the investigation shall be carried out by the commander who was the service superior of the defendant or the person reasonably suspected of having committed a criminal offence at the time the criminal offence was committed.

(3) If a commander establishes during his investigation that the criminal offence or, if more than one criminal offence was committed, a criminal offence committed by the defendant or the person reasonably suspected of having committed a criminal offence does not fall within his investigating competence, he shall transfer the case to the prosecution service, or a military investigating authority with subject-matter competence over the case, within three days.

Section 703 (1) If there is a conflict of territorial competences, the commander conducting the investigation shall be designated by the prosecution office supervising the investigation.

(2) If the commander of the place where the criminal offence was committed is conducting an investigation against an unknown perpetrator, and the identity of the perpetrator is revealed during the investigation, the investigating commander shall transfer the case to the commander of the defendant or the person reasonably suspected of having committed a criminal offence for further action, and he shall inform the prosecution service at the same time.

Protection of witnesses

Section 704 (1) In a particularly justified case, a witness in military service may request to be deployed or transferred to another place of service. The request shall be decided by the prosecution service before the indictment or a court after the indictment. If a request is dismissed, the witness may seek legal remedy.

(2) A deployment or transfer shall be implemented by the personnel affairs organ within seventy-two hours after service of a corresponding decision.

Coercive measures

Section 705 (1) If custody of a soldier is ordered by an investigating authority other than a military investigating authority for a criminal offence subject to military criminal procedure, the defendant or the person reasonably suspected of having committed a criminal offence shall be handed over to the prosecution office with territorial competence over the case within twenty-four hours.

(2) A custody ordered during an investigation conducted by a commander shall be enforced in a police detention facility.

(3) The pre-trial detention of a soldier may also be ordered if a proceeding is conducted against him for a military offence or any other criminal offence punishable by imprisonment and committed at his place of service or in relation to his service, and the defendant may not be left at liberty for a service or disciplinary reason.

(4) A pre-trial detention ordered for a reason specified in paragraph (3) shall be terminated when the service relationship of the defendant is terminated.

(5) If criminal supervision of a soldier is ordered, so that he is prohibited by a court from leaving a designated area, compliance with this restriction shall be monitored by the commander or, if he is prevented from doing so, by another military superior.

(6) Supervision for the purpose of crime prevention shall not be ordered in respect of a soldier.

Guaranteeing the right of defence

Section 706 A defendant or the person reasonably suspected of having committed a criminal offence shall be excused from service during the period of his active service if he participates in a procedural act where his attendance is permitted, or required, by this Act.

Investigation by a commander

Section 707 (1) An investigation shall be directed and supervised by a commander.

(2) In the course of an investigation, an investigating officer shall follow the instructions given by the commander.

(3) If a commander arranged for another proceeding to be conducted, he shall inform the prosecution service accordingly.

(4) In the course of an investigation by a commander, only the commander or the proceeding investigating officer may release information to the press.

Section 708 (1) A commander shall have exclusive subject-matter competence to decide on the following matters:

1. disqualifying an investigating officer,
2. ordering an investigation,
3. ordering a crime report to be supplemented,
4. transferring a crime report,
5. dismissing a crime report,
6. suspending a proceeding,
7. terminating a proceeding,
8. appointing a defence counsel, withdrawing the appointment of a defence counsel, discharging an appointed defence counsel,
9. determining the fee and costs of an appointed defence counsel,
10. appointing, disqualifying, discharging an expert,
11. determining the fee of an expert,
12. assessing an exemption invoked by a witness or expert,
13. assessing an application for excuse,
14. taking a defendant or the person reasonably suspected of having committed a criminal offence into custody, and terminating custody,
15. ordering a search or body search,
16. ordering or terminating a seizure,
17. ordering the preservation of electronic data,
18. applying or lifting sequestration not subject to a court decision,
19. ordering forced attendance,
20. initiating a measure falling within the subject-matter competence of the prosecution service,
21. granting a complaint, or referring a complaint for assessment, within eight days after the filing of the complaint,
22. suspending the enforcement of a decision under section 367 (2).

(2) A measure specified in section 31 (4) shall be taken by a commander.

Section 709 (1) A commander shall notify the prosecution service without delay if he considers it necessary

a) to apply a coercive measure that falls outside his subject-matter competence,

b) to terminate pre-trial detention, preliminary compulsory psychiatric treatment, or criminal supervision.

(2) Any complaint submitted against a decision passed in the course of an investigation, or against casting suspicion, shall be referred by the commander to the prosecution service, provided that it is not granted by the commander.

(3) A complaint made orally during an investigation shall be recorded in writing.

Assessing a criminal offence in a disciplinary proceeding

Section 710 (1) A prosecution office shall dismiss a crime report or terminate a proceeding, and send all case documents to an entity with disciplinary powers, if the objective of punishment for a military misdemeanour can also be achieved by disciplinary punishment. The decision on dismissing a crime report shall be served also on the person subject to crime report.

(2) If a military investigating authority considers it possible to assess a criminal offence in a disciplinary proceeding, it shall immediately refer all case documents to the prosecution service for passing a decision pursuant to paragraph (1). Within three days after receipt of the case documents, the proceeding prosecution office shall pass a decision, and take a measure, pursuant to paragraph (1), or send back the case documents to the commander with a view to continuing his investigation.

(3) An investigation shall be ordered, or a proceeding shall be continued, if a complaint is filed by a person subject to crime report against a decision on dismissing a crime report, or by a suspect or his defence counsel against a decision on terminating a proceeding, and there is no other reason for dismissing the crime report or terminating the proceeding. A person subject to crime report or a suspect shall be advised about this provision in the decision concerned.

(4) If a criminal offence is referred to a disciplinary proceeding by the prosecution service, the person with disciplinary powers may impose a disciplinary punishment pursuant to, and in a proceeding conducted in line with, the Act regulating the given service relationship.

(5) A decision on imposing disciplinary punishment shall also be served on the prosecution service.

Section 711 (1) A person subject to disciplinary punishment, or his defence counsel, may move for a court review of a decision or order, which may not be challenged in a complaint, or is passed on the basis of a complaint, imposing a disciplinary punishment for a criminal offence referred to a disciplinary proceeding. A motion for court review may be submitted within three days after the given decision or order is communicated. A disciplinary punishment may not be enforced until the motion is adjudicated.

(2) A motion shall be filed with the person with disciplinary powers who imposed a disciplinary punishment, and that person shall send the motion, together with all case documents, to the military panel of a regional court with territorial jurisdiction over the case within one day. A motion may be withdrawn until the trial commences.

(3) A court shall

a) sit as a single judge,

b) adjudicate a motion in a trial,

c) notify the person with disciplinary powers who imposed the disciplinary punishment concerned, and the prosecution service, about the date and time of a trial.

(4) A person with disciplinary powers and a prosecutor may address the court in a trial. If they wish to make a statement in writing, their statement shall be filed to the proceeding court before the commencement of the trial.

(5) A court shall adjudicate a motion by passing an order.

(6)

(7) A court shall

a) uphold the challenged decision or order if a motion is groundless,

b) reduce a disciplinary punishment or impose a less detrimental disciplinary punishment,

c) annul the decision or order imposing a disciplinary punishment, provided that an acquittal or termination of the proceeding would be in order if the case was adjudicated in a criminal proceeding.

(8) To appeals against a court decision under paragraph (7), the provisions pertaining to appeals against an order specified in section 579 (2) shall apply.

Mediation procedure

Section 712 In a military criminal proceeding, a mediation procedure may not be conducted regarding any criminal offence against property committed against an organ specified in section 127 (1) of the Criminal Code.

Proceeding of a court before the indictment

Section 713 In a military criminal proceeding before the indictment, the tasks of a court shall be carried out by a military judge of a regional court as an investigating judge. An appeal filed against a decision passed by a military judge as investigating judge shall be adjudicated by a second instance panel of a regional court.

Terminating a proceeding

Section 714 A proceeding may be terminated by the prosecution service, before the indictment, or the proceeding court, after the indictment, if a reason for terminating liability to punishment, as specified in section 131 of the Criminal Code, exists.

Rules on court procedure

Section 715 (1) If a proceeding court panel includes any lay judge, the chair of the panel shall inform all lay judges before voting about the decisions that may be passed, the pieces of legislation that are necessary for decision making, the types and ranges of penalties, and the measures.

(2) In a military panel, a judge of lower rank shall vote before a judge of higher rank. If two judges hold the same rank, the judge promoted to that rank later shall vote first. If both judges were promoted at the same time, the younger judge shall vote first. The chair of the panel shall cast the last vote.

(3) Section 427 (5) *a)* shall not apply to the participation of a defence counsel in a military court proceeding.

Section 716 (1) If a court believes, in light of the outcome of a trial, that an act stated in an indictment document constitutes an infraction committed at the place of, or in relation to, service and, as a consequence, it acquits the accused, it shall send all case documents to the person with disciplinary powers with a view to conducting a disciplinary proceeding, with the exception of infractions that may also be punished by confinement for an infraction.

(2) If the service relationship of a soldier is terminated before the case documents are sent to an entity with disciplinary powers, his infraction shall be adjudicated by the proceeding court.

(3) In a situation described in paragraphs (1) or (2), the proceeding court may order confiscation and adjudicate the merits of a civil claim.

Section 717 The court of second instance shall also set aside the first instance judgment with a non-conclusive order, and instruct the court of first instance to conduct a new proceeding, if the court proceeded pursuant to this Chapter in a case that is not subject to military criminal procedure.

Interpretative provision

Section 718 For the purposes of this Chapter, a commander proceeding as an investigating authority shall also mean a senior officer entitled by law to conduct an investigation by a commander.

Chapter XCVII

PROCEDURE APPLICABLE TO PERSONS WITH IMMUNITY

Immunity arising from public office

Section 719 (1) If a person is afforded immunity by law due to his public office, he may not be interrogated as a suspect, subject to a coercive measure, or indicted without lifting his immunity. If a person with immunity arising from his public office is caught in the act, a coercive measure specified in this Act may be applied against him.

(2) If data discovered during a criminal proceeding indicate that the suspect interrogation of, the application of a coercive measure against, or the indictment of a person with immunity arising from his public office would be in order, a motion for a decision shall be filed with the entity authorised to lift his immunity. The motion for lifting immunity shall be filed, before the indictment, by the Prosecutor General or, after the indictment or in a private prosecution or substitute private prosecution proceeding, by the court. If the person concerned is caught in the act, the motion shall be filed without delay.

(3) The criminal proceeding shall be suspended at the time of filing the motion.

(4) If the motion is dismissed by the entity authorised to lift immunity, the proceeding shall be terminated without delay by a decision of the prosecution service or a non-conclusive order of the court.

(4a) The court of second instance shall set aside a decision by the court of first instance that was adopted in violation of immunity arising from public office and terminate the proceeding if the entity authorised to lift immunity arising from public office dismissed the motion for lifting immunity arising from public office.

(5) Unless otherwise provided by an Act, the termination of the proceeding on such grounds shall not prevent the criminal proceeding from being conducted after the immunity arising from public office is terminated.

(6) The Curia may uphold a decision challenged by a motion for review in a non-conclusive order if the entity authorised to lift immunity lifted immunity arising from public office.

(7) The Curia shall set aside a decision challenged by a motion for review and terminate the proceeding in a non-conclusive order if the court adopted its decision in the main case in violation of immunity arising from public office and the entity authorised to lift immunity arising from public office dismissed the motion for lifting immunity arising from public office.

Immunity based on international law

Section 720 (1) The provisions laid down in section 719 shall apply to cases of persons with immunity based on international law subject to the derogations laid down in this section.

(2) Establishing the criminal liability of a person with immunity based on international law shall be governed by an international treaty or, in the absence of an international treaty, by international practice. As for international practice, a position shall be obtained from the Minister responsible for justice in agreement with the Minister responsible for foreign policy.

(3) No procedural act may be carried out regarding a person with immunity based on international law until his immunity is lifted.

(4) A motion to lift immunity based on international law shall be forwarded to the Minister responsible for foreign policy by the proceeding court, acting through the Minister responsible for justice, or by the Prosecutor General directly.

Section 721 (1) If a person with immunity acts as a private prosecuting party or a substitute private prosecuting party, the proceeding court shall suspend its proceeding until a decision is made on his immunity based on international law, and it shall send a submission, acting through the Minister responsible for justice, to the Minister responsible for foreign policy. If immunity is established by a court on the basis of the position of the Minister responsible for foreign policy, it shall terminate its proceeding.

(2) If the participation of a person with immunity based on international law becomes necessary in a criminal proceeding in a situation other than those specified in section 720 or paragraph (1), the Prosecutor General, before the indictment, or the proceeding court acting through the Minister responsible for justice, after the indictment or in private prosecution or substitute private prosecution proceeding, shall send a submission to the Minister responsible for foreign policy without suspending its proceeding.

(3) A submission under paragraph (1) or (2) shall be aimed at obtaining a position regarding the existence of immunity based on international law, and taking the measures necessary to waive immunity from criminal jurisdiction. If immunity could not be established based on the position of the Minister responsible for foreign policy, or a statement of waiver of immunity by the sending State is available, the person concerned may participate in the criminal proceeding.

Immunity based on the rule of speciality

Section 721/A (1) A person who arrived to Hungary due to surrender, extradition or other assistance in criminal matters cannot be interrogated as a suspect, cannot be subjected to a coercive measure and cannot be indicted for a criminal offence committed before his entry into Hungary, unless an Act or an international treaty promulgated in an Act enables conducting a criminal proceeding against the perpetrator.

(2) If doing so is enabled by an Act or an international treaty promulgated by an Act, the obstacle to conducting a criminal proceeding under paragraph (1) can be eliminated by a waiver of the person reasonably suspected of having committed a criminal offence or the defendant or the consent of the State with the relevant power. To acquire such statement

a) the court, before the indictment only upon a motion by the prosecution service, shall ask for a statement from the person reasonably suspected of having committed a criminal offence or the defendant whether he waives his right to the application of the rule of speciality as provided for by an Act or in international treaty promulgated in an Act, or

b) the court or the prosecution service shall request the State authorised to give consent to the conduct of the criminal proceeding.

(3) The court or the prosecution service shall terminate the criminal proceeding if there is an obstacle to conducting the criminal proceeding under paragraph (1) and it could not be eliminated pursuant to paragraph (2).

(4) The court of second instance may interview the accused in a public session to eliminate an obstacle to conducting the criminal proceeding under paragraph (1).

(5) The attendance of the prosecutor and the accused at the public session shall be mandatory.

(6) If there is an obstacle to conducting the criminal proceeding under paragraph (1) and the accused fails to appear at the public session despite having been summoned, he shall be regarded as not having waived his right to the application of the rule of speciality as provided for by an Act or an international treaty promulgated in an Act. The accused shall be advised accordingly in the summons to the public session.

(7) The court of second instance shall set aside a decision adopted in violation by immunity based on the rule of speciality by the court of first instance and terminate the proceeding if there is an obstacle to conducting the criminal proceeding under paragraph (2) and it could not be eliminated pursuant to paragraph (2).

(8) The Curia shall uphold, by way of a non-conclusive decision, a decision challenged by a motion for review if the obstacle to conducting the criminal proceeding under paragraph (1) was eliminated pursuant to paragraph (2).

(9) The Curia shall set aside a decision challenged by a motion for review and terminate the proceeding in a non-conclusive order if the court proceeding in the main case adopted its final and binding conclusive decision in violation of immunity based on the rule of speciality and there is an obstacle to conducting the criminal proceeding under paragraph (1) and it could not be eliminated pursuant to paragraph (2).

Chapter XCVIII

IMMEDIATE SUMMARY PROCEDURE

Section 722 In an immediate summary procedure, the provisions of this Act shall apply subject to the derogations laid down in this Chapter.

Conditions for immediate summary procedure

Section 723 The prosecution service may bring a defendant before the court in accordance with the immediate summary procedure within two months after a criminal offence is committed, provided that

a) the criminal offence is punishable by imprisonment for up to ten years under an Act,

b) the evaluation of the case is simple,

c) the evidence is available, and

d) the defendant was caught in the act when he committed the criminal offence or the defendant confessed to the commission of the criminal offence.

Section 724

Coercive measures

Section 725 (1) If the defendant was caught in the act and the conditions specified in section 723 *a)* to *c)* are met, custody may also be ordered for the purpose of an immediate summary procedure.

(2) if ordered before an immediate summary proceeding, a coercive measure affecting personal freedom subject to judicial permission shall last until the trial that is held on the day the defendant is brought before the court in accordance with the immediate summary procedure is concluded.

(3) If the court returns the case documents to the prosecution service, it shall decide, pursuant to the general rules, upon a motion on extending, ordering, or terminating a coercive measure affecting personal freedom subject to judicial permission.

(4) If the court adjourns trial, it shall decide pursuant to the general rules on maintaining, ordering, or terminating a coercive measure affecting personal freedom subject to judicial permission.

Investigation and indictment

Section 726 (1) The prosecution service shall inform the suspect if it intends to bring him before the court in accordance with the immediate summary procedure.

(2) If the defendant does not wish to authorise a defence counsel, the prosecution service shall appoint a defence counsel without delay.

(3) In order to comply with the provisions laid down in paragraphs (1) to (2), the prosecution service may also make use of the investigating authority.

(4) The prosecution service shall prepare a memorandum containing personal data suitable for the identification of the suspect, a description, and the classification under the Criminal Code, of the act serving as ground for the immediate summary proceeding, and a list of all means of evidence.

(5) The prosecution service shall ensure the inspection of the case documents for the defendant and his defence counsel and, at the same time, shall serve the memorandum specified in paragraph (4) on them after the trial date is set, at a time and in a way adequate for preparing the defence, but one hour before the commencement of the trial at the latest.

(6)

Preparation of the trial

Section 727 (1) The provisions laid down in Chapters LXXV to LXXVII shall not apply to the immediate summary procedure.

(2) If a prosecution office intends to bring a suspect before the court in accordance with the immediate summary procedure, it shall inform the court accordingly by sending to it the memorandum under section 726 (4) together with the case documents of the investigation.

(2a) The court shall examine, within three working days of receipt of the case documents of the investigation, whether the conditions for immediate summary procedure as set out under section 723 are met. If the court finds that there is no impediment to conducting the immediate summary procedure, it shall set the date for trial immediately. Otherwise, the court shall send the case documents back to the prosecution office. No appeal shall lie against the court's sending back the case documents to the prosecution office.

(3) The prosecution office shall bring the suspect before the court, summon the defence counsel, and ensure that the means of evidence are available at the trial.

(4) The prosecution office shall ensure that a detained suspect can consult his defence counsel before trial.

(5) The prosecution office shall also make arrangements to ensure that the persons the attendance of whom is required are attending, and the persons the attendance of whom is permitted under this Act are allowed to attend, the trial.

(6) In order to comply with the provisions laid down in paragraphs (3) to (5), the prosecution office may also make use of the investigating authority.

Trial before a court of first instance

Section 728 (1) In an immediate summary procedure, the participation of a defence counsel in the court proceeding shall be mandatory.

(2) The prosecution office shall provide the court also with all other means of physical evidence before the commencement of a trial, provided that it did not do so previously.

(3) The prosecutor shall present the indictment orally.

(4) After the presentation of indictment, the court shall return the case documents to the prosecution office if

a) more than two months passed between the commission of the criminal offence and the immediate summary proceeding,

b)

c) the criminal offence is punishable by imprisonment for over ten years under an Act, or

d) the means of evidence are not available.

Section 729 (1) A court may adjourn a trial once for up to fifteen days.

(2) If further means of evidence need to be discovered in addition to the evidence taken during a trial and, as a consequence, the trial could not be continued within fifteen days, or without another adjournment, the court shall send back the case documents to the prosecution office.

(3) The prosecution office may modify an indictment if the conditions for immediate summary procedure are also met with regard to the criminal offence stated in the modified indictment. Otherwise, the court shall send back the case documents to the prosecution office.

(4) No appeal shall lie against the court's sending back the case documents to the prosecution office.

Court procedure at second instance

Section 730 An appeal against a judgment or conclusive order of the court of first instance shall be adjudicated by the court of second instance within three months after receipt of the case.

Chapter XCIX

PLEA AGREEMENT PROCEDURE

Section 731 (1) In a court proceeding conducted on the basis of a plea agreement specified in Chapter LXV, the provisions of this Act shall apply subject to the derogations laid down in this Chapter.

(2) The participation of a defence counsel in a court proceeding conducted on the basis of a plea agreement shall be mandatory.

Preparatory session

Section 732 (1) On a preparatory session, the prosecutor shall present the essence of the indictment and every motion filed under section 424 (2).

(2) After the presentation of the indictment and the motions, the court shall inform the accused about the consequences of the approval of a plea agreement, in particular the provisions laid down in sections 735 (2) and 738 (1) and (3).

(3) Subsequently, the court shall call upon the accused to state whether he admits his guilt pursuant to the plea agreement and waives his right to trial.

(4) The court shall allow the accused to consult his defence counsel before making the statement.

(5) If the accused admits his guilt pursuant to the plea agreement and waives his right to trial, the court shall examine, on the basis of this fact, the case documents, the interrogation of the accused and, if necessary. the responses to questions asked from the defence counsel, whether the conditions of approving the plea agreement are met.

(6) The prosecutor and the defence counsel may address the court before a decision is passed on the matter of approving the plea agreement.

The conditions for approving a plea agreement

Section 733 A court shall approve a plea agreement if

a) the plea agreement was concluded in line with sections 407 to 409,

b) the content of the plea agreement are in line with sections 410 to 411,

c) the accused understands the nature of the plea agreement and the consequences of its approval,

d) there is no reasonable doubt regarding the capacity of the accused to be responsible for his acts, and the voluntary nature of his confession,

e) the accused person's confession of guilt is clear and supported by the case documents.

Refusal of approving a plea agreement

Section 734 (1) A court shall refuse to approve a plea agreement if

a) the indictment, or the motions filed under section 424 (2), differ from the content of the plea agreement as recorded in the minutes,

b) the accused does not admit his guilt in line with the plea agreement or does not waive his right to a trial during the preparatory session,

c) the conditions for approving the plea agreement are not met,

d) the defendant failed to perform his obligations undertaken pursuant to section 411 (1) *e)*,

e) it seems that an assessment different from that in the indictment can be established.

(2) No appeal shall lie against a court's order on refusing to approve a plea agreement.

(3) If a court refuses to approve a plea agreement, the proceeding shall be continued pursuant to sections 506 to 508. In such a situation, neither the prosecution service nor the defendant shall be bound by the plea agreement.

Procedure in the case of the approval of a plea agreement

Section 735 (1) If the conditions for approving a plea agreement are met and there is no ground for refusing the approval, the court shall approve the plea agreement during the preparatory session.

(2) No appeal shall lie against a court's order on approving a plea agreement.

Section 736 (1) If a court approved a plea agreement, a proceeding shall be continued pursuant to sections 504 to 505, subject to the derogations laid down in paragraphs (2) to (7).

(2) A court shall hold an accused guilty on the basis of his confession of guilt, the approval of the plea agreement, and the case documents.

(3) With the exception of a situation under paragraph (3a), in its judgment, a court may not deviate from the facts and the classification specified in the indictment and from the motions specified in section 424 (2) *b)* and *c)*.

(3a) The court shall adopt a provision in compliance with the law on a question subject to simplified review procedure that is not regulated in the plea agreement or is regulated in a manner that is not in compliance with the law.

(4) A court may not dismiss any civil claim.

(5) In the statement of reasons for a judgment, in addition to the content required under section 561 (3) *b)* to *c)* and *f)*, it shall be sufficient to refer to the indictment pursuant to the plea agreement, the approval of the plea agreement, and the applied laws.

(6) If not all accused persons entered into a plea agreement with the prosecution service, or not all plea agreements concluded by and between the prosecution service and the accused persons were approved by the court, the court shall pass a single decision on the indictment on the basis of a trial and, regarding any plea agreement approved, within the limits specified in paragraphs (2) to (5).

(7) If all other conditions for separation are met in a case conducted against multiple accused persons, the court, with a view to announcing a judgment, may separate cases pending before it as regards the accused affected by the approved plea agreement.

Section 737 (1) If it is necessary to hold a trial after a plea agreement is approved, the court shall present the essence of the plea agreement after opening the trial.

(2) A court may set aside its order on approving a plea agreement after obtaining a statement by the prosecutor service and the accused if, in light of the outcome of the taking of evidence, it finds that the refusal of the plea agreement would have been in order on the ground of changes to the facts of the case or the classification.

(3) If a court set aside its order on approving the plea agreement,

a) neither the prosecution service nor the defendant shall be bound by the plea agreement,

b) the court, upon a motion filed by the prosecution service, the accused, or the defence counsel, shall decide on repeating the taking of any evidence already taken in the absence of the accused, and

c) the prosecution service, the accused, and the defence counsel may file any motion within fifteen days without the limitations specified in section 520 (1) to (3).

Court procedure at second instance

Section 738 (1) No appeal shall lie against the following:

a) the establishment of guilt,

b) the facts of the case established and assessed in line with the indictment under section 736 (2) to (3),

c) the nature, amount, or period of any penalty or measure imposed pursuant to section 736 (3),

d) any other provision laid down in a judgment pursuant to section 736 (3).

(2) In an appeal, new facts may be stated, and new evidence may be presented, within the limits specified in paragraph (1).

(3) In a second instance proceeding, evidence may be taken within the limits specified in paragraphs (1) to (2).

(4) A court of second instance may not change the provisions of the challenged judgment with regard to the establishment of guilt, unless it can be established without holding a trial that acquitting the defendant, or terminating the proceeding, would be in order.

(5) A court of second instance shall set aside the judgment of the court of first instance, and instruct the court of first instance to conduct a new proceeding, if

a) the court of first instance approved the plea agreement even though a ground specified in section 734 (1) existed,

b) the court of first instance failed to proceed in line with section 732 (1) to (4),

c) the acquittal of the defendant, or the termination of the proceeding, would be in order and paragraph (4) shall not apply.

(6) A court of second instance shall set aside the judgment of the court of first instance, and send the case documents to the prosecution service, if the prosecution service initiated the proceeding without the statutory conditions laid down in Chapter LXV being met.

(7) No appeal shall lie against an order passed by a court of second instance pursuant to paragraph (6).

(8) The provisions of this Chapter shall not apply to a repeated proceeding.

Chapter C

PROCEDURE FOR PASSING A PUNISHMENT ORDER

Section 739 (1) In a procedure for passing a punishment order, the provisions of this Act shall apply subject to the derogations laid down in this Chapter.

(2) A punishment order shall constitute a conclusive decision. Unless otherwise provided in this Act, the provisions on judgments shall apply to punishment orders.

The conditions of passing a punishment order

Section 740 (1) In the case of a criminal offence punishable by up to three years of imprisonment, a court, acting upon a motion from the prosecution service or *ex officio*, shall pass a punishment order without holding a trial and on the basis of case documents if

a) passing a decision in the case is simple,

b) the accused is at liberty, or in detention in another case, and

c) the objective of punishment could be achieved without a trial.

(2) In a punishment order, the proceeding court may

a) impose an imprisonment the enforcement of which is suspended, community service, a financial penalty, disqualification from a profession, disqualification from driving a vehicle, a ban on entering certain areas, a ban on visiting sports events, or expulsion,

b) also impose, on a soldier, demotion, discharge from service, reduction in rank, an extension of waiting period, or

c) apply reparation work, release on probation, or reprimand.

(3) A court shall pass a punishment order also regarding a criminal offence punishable by up to five years of imprisonment if

a) the conditions specified in paragraph (1) *a)* to *c)* are met, and

b) the accused confessed to the commission of the criminal offence.

(4) At a request of the prosecution service, the court shall pass a punishment order also regarding a criminal offence punishable by up to eight years of imprisonment if the other conditions specified in paragraph (3) are met.

Passing a punishment order

Section 741 (1) A punishment order shall be passed by a court within one month after receipt of the case.

(2) In addition to imposing a penalty, or applying a measure, specified in section 740 (2), the proceeding court may also

a) apply supervision by a probation officer when imposing an imprisonment, the enforcement of which is suspended or reparation work, or applying release on probation,

b) order confiscation, forfeiture of assets, or rendering electronic data permanently inaccessible,

c) grant a civil claim or order a civil claim to be enforced by other legal means,

d) set aside a provision granting release on probation,

e) decide on the joining or separation of cases, and suspending or terminating the proceeding.

(3) The operative part of a punishment order shall contain

a) the elements specified in section 561 (2), and

b) advice regarding the provisions laid down in sections 742 and 744.

(4) A statement of reasons for a punishment order shall describe the facts established, refer to the indictment and the fact that the conditions of passing a punishment order are met, and specify the laws applied.

(5) If a motion for passing a punishment order is submitted by the prosecution service, a punishment order may also be passed by a junior judge, except if section 740 (4) applies.

Motion for holding a trial

Section 742 (1) No appeal shall lie against a punishment order.

(2) Within eight days after receipt of the punishment order, the prosecution service, accused, defence counsel, civil party, party with a pecuniary interest, or other interested party may move for holding a trial.

(3) If a motion for passing a punishment order is submitted by the prosecution service, the prosecution service may not move for holding a trial on the ground that the court proceeded pursuant to this Chapter.

(4) A civil party may request holding a trial regarding a provision on adjudicating his civil claim; a party with a pecuniary interest or an other interested party may move for holding a trial only with regard to a provision of a decision that affects him directly.

(5) With the exception specified in section 746 (3), a motion for holding a trial shall have suspensory effect on the enforcement of a penalty imposed, or measure applied, in a punishment order, and on the performance of its provisions.

Preparatory session and trial

Section 743 (1) Upon a motion for holding a trial filed by the prosecution service or an accused, defence counsel, civil party, or other interested party, the court shall hold a preparatory session pursuant to Chapter LXXVI, and, subject to the exceptions specified in sections 744 to 746, it shall continue its proceeding in line with the general rules.

(2) If the punishment order cannot be duly served, it shall be deemed as if the accused filed a motion for holding a trial.

(3) For the service of a punishment order, section 132 (2) and 135 (1) shall not apply.

Section 744 (1) The person filing a motion for holding a trial may withdraw the motion until the preparatory session commences.

(2) The person filing a motion for holding a trial to the benefit of an accused may withdraw the motion only if the accused consents thereto; this provision shall not apply to a motion filed by the prosecution service.

(3) The attendance of the person who moved for a trial to be held shall be mandatory at a preparatory session. If he fails to appear at the preparatory session and fails to provide a well-grounded excuse for his absence in advance and without delay, his motion shall be deemed withdrawn.

Section 745 (1) Before the commencement of a preparatory session, the proceeding court shall ask the person filing the motion if he maintains his motion for holding a trial.

(2) If an accused attending a preparatory session maintains a motion for holding a trial filed by the defence counsel, section 744 (3) shall not apply to the defence counsel being absent.

(3) The proceeding court shall call on the person filing the motion for holding a trial to supplement his motion if it cannot establish why he considers the punishment order injurious.

(4) A motion filed by the accused or the defence counsel only for a payment moratorium, payment in instalments, or a rectification of a punishment order shall not be considered a motion for holding a trial.

Section 746 (1) Before the commencement of a preparatory session, the proceeding court shall present the essence of the punishment order and the motion for holding a trial.

(2)

(3) If a motion for trial challenges a provision on a civil claim only, the proceeding court shall set aside the provision concerned and order the civil claim to be enforced by other legal means.

(4) In a situation other than those specified in paragraph (3), a punishment order shall be set aside by the proceeding court during the preparatory session. No appeal shall lie against this order.

(5) In the absence of a motion filed to the detriment of an accused, a court may impose a more severe penalty, or apply a more severe measure, if new evidence arises during a trial and, on the basis of that evidence, the proceeding court establishes a new fact in light of which the act is to be classified as one of greater gravity, or a considerably more severe penalty is to be imposed, penalty is to be imposed in place of applying a measure, or a measure is to be applied that is considerably more severe than the measure applied in place of a penalty.

Chapter CI

PROCEEDING AGAINST AN ABSENT DEFENDANT

Section 747 (1) A defendant, or a person reasonably suspected of having committed a criminal offence, becoming unavailable shall not constitute an obstacle to a criminal proceeding.

(2) In a proceeding conducted against an absent defendant, the provisions of this Act shall apply subject to the derogations laid down in this Chapter.

(3) An absent defendant may be indicted, and subsequently subjected to a court proceeding, if

a) a defendant or a person reasonably suspected of having committed a criminal offence escapes or hides during a proceeding, or it is reasonable to assume that he became otherwise unavailable to avoid a criminal proceeding,

b) the measures taken to locate the defendant or the person reasonably suspected of having committed a criminal offence were not successful within a reasonable time, and

c) it is justified by the material gravity or the criminal offence or the evaluation of the case.

(4) The condition specified in paragraph (3) *b)* shall be deemed as met if

a) any evidence is taken, activity for data acquisition is performed, or, where the relevant conditions are met, covert means are used for locating the defendant or the person reasonably suspected of having committed a criminal offence,

b) a wanted notice or, where the relevant conditions are met, an arrest warrant is issued by an investigating authority, prosecution office, or court, and

c) the wanted notice or arrest warrant remains unsuccessful for a period of fifteen days after it is issued.

(5) If the conditions for conducting a proceeding against an absent defendant are not met, the proceeding court or prosecution office shall suspend its proceeding.

(6) The participation of a defence counsel shall be mandatory in a proceeding conducted against an absent defendant.

Investigation and indictment

Section 748 (1) If the whereabouts of a person reasonably suspected of having committed a criminal offence, or a suspect, are unknown, and the conditions of conducting a proceeding against an absent defendant are met, the prosecution service shall declare the suspect, or the person reasonably suspected of having committed a criminal offence, to be an absent defendant. No complaint shall lie against such a decision.

(1a) If the prosecution service declares the person reasonably suspected of having committed a criminal offence to be an absent defendant, but does not conclude the investigation, the rules on examination shall apply to the continuation of the investigation.

(2) If an absent defendant does not have a defence counsel, the proceeding prosecution office shall appoint a defence counsel for him at the time of adopting its decision under paragraph (1).

(3) A prosecution office or investigating authority shall serve to an absent defendant only

a) a decision under paragraph (1),

b) a decision on suspending or terminating the proceeding,

c) a notification about the indictment.

(4) If the conditions specified in paragraph (1) are met, any failure to communicate the suspicion shall not constitute an obstacle to indictment. If the prosecution service, in its indictment document, moves for conducting a proceeding in the absence of the defendant, the indictment document shall contain, in addition to the elements required under section 422, a detailed description of the circumstances specified in section 747 (3) and (4).

Court proceedings in the absence of a defendant

Section 749 (1) A court shall proceed against an absent defendant upon a corresponding motion from the prosecution service.

(2) In a proceeding conducted against an absent defendant, a preparatory session may not be held.

Section 750 (1) If the prosecution service brings an indictment against an absent defendant, and the whereabouts of the defendant become known before the commencement of the trial, the court shall inform the prosecution service accordingly. To the subsequent proceedings of the court, the provisions laid down in Parts Thirteen to Fourteen shall apply.

(2) If a defendant becomes unavailable after he is indicted, and the conditions for proceeding against an absent defendant are met, the proceeding court shall notify the prosecution service accordingly.

(3) A single judge, or the chair of a panel, shall suspend a proceeding, unless a motion to proceed in the absence of a defendant is filed by the prosecution service within fifteen days after receipt of a notification. The suspension of a proceeding shall not be an obstacle for the prosecution service to filing a motion subsequently.

(4) If a court appoints a defence counsel for an absent accused, the trial shall be continued by presenting the materials already covered earlier during the trial.

(4a) In a proceeding against an absent defendant, the provisions of section 562 (2) and (3) shall not apply and the court of second instance shall revise the first instance judgment regardless of who filed the appeal and for what reason.

(5) The provisions laid down in paragraphs (1) to (4) shall apply, as appropriate, also to a second- or third-instance court proceeding.

Section 751 (1) If the measures taken to locate an accused succeed before a conclusive decision is passed by a court of first instance, the proceeding court shall continue the trial by presenting the materials already covered earlier during the trial and reopen the taking of evidence pursuant to section 547, if necessary.

(2) If the measures taken to locate an accused succeed after a conclusive decision is passed by a court of first instance, the accused may submit an appeal within the time limit open for appeals.

Section 752 (1) If the measures taken to locate an accused succeed during a second-instance court proceeding, the court of second instance shall set a trial; during the trial, the court of second instance shall interrogate the accused, present the essence of the materials covered during a trial held in the absence of the accused, and, if necessary, take further evidence proposed in a motion by the accused or the defence counsel.

(2) If the measures taken to locate an accused succeed in a third-instance court proceeding, the court of third instance shall set aside the second instance judgment and instruct the court of second instance to conduct a new proceeding, provided that the provisions laid down in section 625 (3) shall not apply.

(3) If the measures taken to locate an accused succeed in the course of adjudicating a legal remedy submitted against an order of the third instance on setting aside, the Curia shall set aside the third instance decision and instruct the court of third instance to conduct a new proceeding. Subsequently, the provisions laid down in paragraph (2) shall apply to the third-instance court proceeding as appropriate.

(4) If the place of residence of a defendant becomes known after a final and binding conclusive decision is passed, a motion for retrial may be submitted to the benefit of the defendant.

Section 753 (1) The provisions laid down in Part Eighteen shall apply, as appropriate, to a proceeding repeated under this Chapter.

(2) If an accused moves to an unknown location during a proceeding repeated under this Chapter, the court decision passed in a proceeding conducted in the absence of the accused shall remain effective without any examination as to its merits. A proceeding court shall advise an accused of this provision.

(3) In a situation specified in paragraph (2), the proceeding shall be conducted by the court during the proceeding of which the measures taken to locate the accused succeeded.

Chapter CII

PROCEEDING IN THE ABSENCE OF A DEFENDANT STAYING ABROAD

Section 754 In a proceeding conducted in the absence of a defendant staying abroad, the provisions of this Act shall apply subject to the derogations laid down in this Chapter.

Section 755 (1) A proceeding may be conducted in the absence of a defendant or a person reasonably suspected of having committed a criminal offence staying abroad at a known location if

a) a European or international arrest warrant may not be issued, or it was not issued because in the indictment document, the prosecution service did not move for imposing imprisonment to be served or applying special education in a juvenile correctional institution, and

aa) the defendant or the person reasonably suspected of having committed a criminal offence failed to appear despite being duly summoned, or

ab) the defendant or the person reasonably suspected of having committed a criminal offence is detained in another country,

b) a European or international arrest warrant was issued, but neither the defendant or the a person reasonably suspected of having committed a criminal offence is surrendered or extradited within twelve months after his apprehension, nor the criminal proceeding is transferred,

c) a European or international arrest warrant was issued, but the surrender or extradition of the defendant or the person reasonably suspected of having committed a criminal offence was refused, and the criminal proceeding was not transferred,

d) a European or international arrest warrant was issued, and the surrender or extradition of the defendant or the person reasonably suspected of having committed a criminal offence was ordered to be postponed.

(2) Even if the conditions specified in paragraph (1) are met, a proceeding may not be conducted in the absence of a defendant or person reasonably suspected of having committed a criminal offence staying abroad, unless

a) it is justified by the material gravity or the criminal offence or the evaluation of the case, and

b) the participation or attendance of the defendant or the person reasonably suspected of having committed a criminal offence in the proceeding or a procedural act cannot be ensured by issuing a request for international legal assistance in a criminal matter or using a telecommunication device, or the application of any of these methods is not justified by the material gravity of the criminal offence or the evaluation of the case.

(3) A proceeding conducted in the absence of a defendant staying abroad may be subject to also a revision under section 590 (3) and (4).

Section 756 (1) If it is established after the indictment that a defendant is staying abroad, and that the conditions specified in section 755 (1) are met, the proceeding court shall notify the prosecution service accordingly. A single judge or the chair of a panel shall suspend a proceeding, unless a motion to proceed in the absence of a defendant is filed by the prosecution service within fifteen days after receipt of a notification. The suspension of a proceeding shall not be an obstacle for the prosecution service to filing a motion subsequently.

(2) If it is established after the indictment that an absent defendant is staying abroad, and that the conditions specified in section 755 (1) are met, the proceeding court shall continue its proceeding without notifying the prosecution service.

(3) If a defendant is detained in another country, after the indictment, the proceeding may be conducted against the defendant staying abroad only with consent from the defendant concerned. If the defendant does not consent to conducting the proceeding, the court shall suspend the proceeding.

Chapter CIII

PROCEEDING SUBJECT TO THE DEPOSITING OF SECURITY

Section 757 (1) Subject to the derogations laid down in this Chapter, the provisions of this Act shall apply to criminal proceedings subject to the depositing of security.

(2) Upon a motion from a defendant habitually residing in a foreign country or his defence counsel, the prosecution service before the indictment, or the court after the indictment, may permit a security to be deposited, provided that

a) the criminal offence is punishable by imprisonment for up to five years under an Act,

b) it is foreseeable that a financial penalty will be imposed on, or forfeiture of assets will be applied against, the defendant,

c) the absence of the defendant from the trial and any procedural act is not against the interests of the proceeding, and

d) the defendant mandated his defence counsel to act as an agent for service of process.

(3) Depositing a security may not be permitted if the criminal offence caused death.

(4) A motion for permission for depositing a security may be submitted by a defendant or his defence counsel to the proceeding court or prosecution office.

(5) In his motion, the defendant shall agree to return to Hungary if necessary for the enforcement of any imprisonment or confinement that may be imposed on him.

(6) The court or prosecution office shall assess such a motion as a matter of priority.

(7) The court or prosecution office shall decide on the motion on the basis of case documents and shall interview the defendant or his defence counsel if necessary. The court shall also interview the proceeding prosecutor if necessary.

(8) The security amount shall be determined by a court or prosecution office, as necessary for the enforcement of any financial penalty that may be imposed on, or forfeiture of assets that may be applied against, the defendant, and any criminal cost that may arise.

(9) A legal remedy sought against a decision on such a motion shall have suspensory effect.

Section 758 (1) If a court or prosecution office permits depositing a security, and the defendant deposits the security, the procedural acts may be carried out, and the trial may be conducted, in the absence of the defendant and the court may conclude the proceeding against a defendant who failed to appear.

(2) After a security is deposited, the proceeding court, prosecution office, and investigating authority shall notify the defendant, through his agent for service of process, about the trial and any procedural act.

(3) The participation of a defence counsel in the criminal proceeding shall be mandatory.

(4) If a defendant who deposited a security leaves the territory of Hungary, the provisions on proceeding against an absent defendant, or in the absence of a defendant staying abroad, shall not apply to the criminal proceeding.

(5) If a defendant who deposited a security leaves the territory of Hungary, the proceeding may not be suspended on the ground that the defendant is abroad.

Section 759 (1) Conducting a proceeding subject to the depositing of security shall not prevent the proceeding court or prosecution office from sending a request for procedural assistance to another country, if necessary, pursuant to the Act on cooperation with the Member States of the European Union in criminal matters or the Act on international legal assistance in criminal matters. Procedural assistance may include, in particular, performing procedural acts, locating means of evidence, interrogating a defendant, or carrying out an inspection, search, body search, or seizure.

(2) If it is discovered before the indictment that a defendant can be reasonably suspected of having committed a criminal offence different from, or in addition to, the criminal offence with regard to which the prosecution service permitted depositing a security, and regarding the criminal offence thus discovered, depositing a security is not to be permitted under an Act, the prosecution service shall order the security already deposited to be released to the defendant. Subsequently, the criminal proceeding shall be conducted in line with the general rules.

(3) If, after the indictment,

a) the prosecution service modifies the indictment, or

b) the proceeding court establishes that the act serving as ground for the indictment may be assessed differently than that in the indictment,

and depositing a security is not to be permitted, under an Act, regarding that criminal offence, the proceeding court shall order the security already deposited to be released to the defendant. The subsequent criminal proceeding shall be conducted in line with the general rules.

Section 760 (1) A security shall be acquired by the State when a conclusive decision becomes final and binding if

a) the court finds the accused guilty,

b) the court orders forfeiture of assets in a judgment of acquittal,

c) the court or the prosecution service terminates the proceeding, and the court orders forfeiture of assets, or

d) the court passes a punishment order imposing a penalty or applying a measure.

(2) If a court imposes a financial penalty, applies forfeiture of assets, or obliges a defendant to bear the criminal costs, any security acquired by the State shall be used for the enforcement thereof.

(3) Measures may be taken within the framework of legal assistance, in accordance with the Act on cooperation with the Member States of the European Union in criminal matters or the Act on international legal assistance in criminal matters, to enforce any penalty or measure other than those referred to in paragraph (2).

(4) If the amount of a financial penalty imposed, forfeiture of assets applied, or criminal costs determined, exceeds the amount of the deposited security, the provisions laid down in paragraph (3) shall apply also to the enforcement of any remaining amount of the financial penalty, forfeiture of assets, or criminal costs.

(5) If a penalty or measure referred to in paragraph (3) has been enforced, any security shall be returned to the convict after the conclusion of enforcement, unless the court imposed financial penalty or applied forfeiture of assets, or obliged the defendant to bear criminal costs, in addition to the given penalty or measure. In that event, the provisions laid down in paragraph (2) shall apply.

(6) If a civil claim is granted by a court, the amount of the security or, if paragraph (2) applies, any remainder of the security after deducting the cost items specified there shall be used to satisfy the civil claim.

Section 761 (1) A security shall be released to a defendant if

a) the proceeding was terminated by the prosecution service or the time limit for an investigation expired,

b) the defendant was acquitted or the proceeding against him was terminated by the proceeding court,

provided that the court did not order forfeiture of assets.

(2) If a proceeding was terminated because of the death of the defendant, any security shall be released to his heir.

(3) If the security amount exceeds the amount of any financial penalty imposed, forfeiture of assets applied, or criminal costs determined, the difference shall be released to the defendant, unless the remainder is to be used to satisfy a civil claim pursuant to section 760 (6).

(4) Any amount remaining from a security after all civil claims are satisfied shall be released to the defendant.

Chapter CIV

PRIVATE PROSECUTION PROCEDURE

General rules

Section 762 (1) The provisions of this Act shall apply to private prosecution proceedings subject to the derogations laid down in this Chapter.

(2) A private prosecution proceeding may not be conducted if

a) the person subject to a crime report or the defendant is a juvenile,

b) the criminal offence is subject to military criminal proceeding, or

c) at the time of his commission of the criminal offence subject to private prosecution, the person subject to a crime report or the defendant committed also a criminal offence subject to public prosecution, and the cases cannot be separated.

(3) In addition to the rights of an aggrieved party, a private prosecuting party may also exercise the rights attached to representing the prosecution. A private prosecuting party may exercise the rights attached to representing the prosecution only with regard to the indictment he brought. In the absence of any counter-indictment, a private prosecuting party may be interviewed as a witness.

(4) Proving that the accused is guilty shall be the obligation of a private prosecuting party.

(5) In a private prosecution proceeding, a mediation procedure may not be conducted.

Counter-indictment

Section 763 (1) If causing minor bodily harm, defamation, or insult was committed mutually, the accused may also bring an indictment against the private prosecuting party (hereinafter "counter-indictment"). The accused may also request the proceeding court to adjudicate, within the framework of counter-indictment, any insult that constitutes an infraction and was committed mutually in relation to the above criminal offences.

(2) A counter-indictment may be brought before a conclusive decision is passed, even if the time limit for filing a private motion expired, provided that liability to punishment did not become time-barred.

(3) If a counter-indictment is brought, the private prosecuting party may exercise the rights, and shall perform the obligations, of an accused.

(4) With regard to a counter-indictment, the representative of the private prosecuting party shall have the status of defence counsel, and the defence counsel of the accused shall have the status of a representative, provided that this is covered by their authorisation.

(5) A counter-indictment may be brought, even if the prosecution service took over the representation of the prosecution.

(6) If a counter-indictment is brought, the prosecution service may take over the representation of the counter-indictment, provided that it did not take over, or withdrew from, representing prosecution.

The prosecution service

Section 764 (1) The prosecution service may inspect the case documents, and the prosecutor may be attend the trial, even in a private prosecution proceeding.

(2) The prosecution service may take over the representation of the prosecution one time during a proceeding. This restriction shall not apply if the prosecution service intends to take over the representation of a counter-prosecution where it took over, and subsequently withdrew from, representing the prosecution. If the prosecution service took over the representation of a prosecution, it shall notify the aggrieved party accordingly.

(3) If the prosecution service took over the representation of a prosecution, the rules of private prosecution procedures shall apply, including the rules on holding a personal interview.

(4) If the prosecution service took over the representation of a prosecution, the private prosecuting party may exercise the rights, and shall perform the obligations, of an aggrieved party, with the proviso that he may abandon the indictment at any time.

(5) If the prosecution service took over the representation of a prosecution, it may not abandon the indictment but may withdraw from representing the prosecution.

(6) If the prosecution service took over the representation of a prosecution, a failure of the prosecutor to appear at a personal interview or trial shall be deemed as withdrawal from representing the prosecution.

(7) If pursuant to section 762 (2) *c)*, no private prosecution proceeding may be conducted, the prosecution service shall, as regards the criminal offence subject to private prosecution, terminate the proceeding subject to public prosecution or abandon the indictment if the aggrieved party states the he does not wish the defendant to be punished.

Basis for instituting a proceeding

Section 765 (1) A proceeding shall be instituted on the basis of a crime report. In a crime report, the aggrieved party shall specify the person against whom, as well as the act for and the evidence on the basis of which, he moves for a criminal proceeding to be conducted.

(2) A crime report shall be made at a court.

(3) If a crime report is filed by a private prosecuting party, the provisions laid down in section 21 (3) *b)* shall not apply.

Tasks of a court after a crime report is filed

Section 766 (1) A court

a) shall send the crime report and all case documents to the prosecution service if it seems that a criminal offence could be established as regards which the prosecution is to be represented by the prosecution service,

b) shall send the crime report and all case documents to the prosecution service if it finds it necessary that the prosecution service consider the possibility of taking over the representation of the prosecution,

c) may call on the aggrieved party to clarify his crime report in writing if the identity of the person subject to a crime report or the criminal offence cannot established based on the crime report,

d) may order an investigation on the basis of the crime report.

(2) The proceeding court shall decide on transferring the case, or suspending or terminating the proceeding, if doing so is possible on the basis of the crime report and the case documents.

(2a) The court may suspend the proceeding if it sent the case documents to the prosecution service pursuant to paragraph (1) *a)*.

(2b) The court shall decide on terminating the proceeding in accordance with paragraph (2) for a reason specified in section 492 (1) or (2) or if a further reason can be established that excludes the liability to punishment of the person subject to crime report or the punishability of the act.

(3) If a crime report is filed with an investigating authority or prosecution office, the provisions laid down in paragraph (1) *a)* and *b)* shall not apply.

(4) In a situation specified in paragraph (1) *a)*, the prosecution service shall order an investigation if the criminal offence is subject to public prosecution. Ordering an investigation shall not be required if any of the circumstances specified in section 381 (1) *a)* to *f)* and *h)* exists. The prosecution service shall terminate a proceeding if no criminal offence subject to public prosecution is established as a result of an investigation ordered.

(5) In a situation specified in paragraph (1) *b)*, the prosecution service may decide, within eight days after receipt of the case documents, if it takes over the representation of the prosecution of the criminal offence subject to private prosecution. If the prosecution service takes over the representation of the prosecution, it shall notify the aggrieved party accordingly. If the prosecution service does not take over the representation of the prosecution, it shall send back the case documents to the proceeding court within eight days.

(5a) The court shall terminate the proceeding if the prosecution service ordered an investigation pursuant to paragraph (4).

(6) A court may order an investigation if

a) taking a measure specified in paragraph (1) *a)* or *b)* is not justified, or such a measure may not be applied pursuant to paragraph (3),

b) the court received the case documents in a situation specified in paragraph (4) or (5).

(7) The provisions laid down in paragraphs (1) to (6) shall also apply as appropriate regarding a counter-indictment.

Investigation in a private prosecution proceeding

Section 767 (1) A court may order an investigation if the identity, personal data, or whereabouts of the person subject to a crime report are unknown, or a means of evidence needs to be discovered.

(2) For an investigation, a time limit not longer than two months shall be set by a court; this time limit may be extended twice for up to two months each time. The court shall send its order on ordering an investigation, with other case documents, to the investigating authority. An investigation shall be carried out, but may not be terminated or suspended, by the general investigating authority.

(2a) In the course of the investigation, the court shall exercise the control powers specified in section 26 (3) *a)* to *c)*, *g)* and *h)*.

(3) After concluding an investigation, the general investigating authority shall send back all case documents to the court. If the identity of an unknown perpetrator could not be established on the basis of data discovered during an investigation, the general investigating authority shall notify the court accordingly. In that event, the court shall terminate the proceeding.

(4) If an aggrieved party withdraws his crime report during an investigation ordered by a court, the case documents produced up until the withdrawal shall be send back by the general investigating authority to the proceeding court.

(5) If the prosecution service takes over the representation of a prosecution before a summons to personal interview is issued, it may order an investigation to which the provisions laid down in paragraphs (1) to (4) shall apply as appropriate.

Tasks of a court before a court proceeding at first instance

Section 768 (1) If a measure specified in sections 766 to 767 is not justified, or was carried out by the proceeding court or prosecution office, the court shall hold a court session for the purpose of interviewing the persons concerned in person (hereinafter "personal interview"); unless provided otherwise by an Act, in such a court session, the attendance of the aggrieved party, the person subject to a crime report and, if the representation of the prosecution was taken over by the prosecution service, the prosecutor shall be mandatory. If there is more than one aggrieved party in a case, the attendance of all aggrieved parties shall be mandatory at a personal interview. The representative of an aggrieved party may attend a personal interview.

(1a) The rules on the rights and the obligations of a person reasonably suspected of having committed a criminal offence shall apply accordingly to a person subject to a crime report. The attendance of a defence counsel shall not be mandatory at a personal interview.

(2) If causing minor bodily harm, defamation, or insult was committed mutually and both persons concerned file a crime report, each person concerned shall participate in the personal interview in his capacity both as an aggrieved party and a person subject to a crime report.

(3) In the summons to or notification of a personal interview, the court shall advise the aggrieved party also of the legal consequences specified in section 771 (1).

(3a) An aggrieved party and, if the attendance of the legal representative of the aggrieved party is mandatory, the legal representative of the aggrieved party may not be expelled or removed from a personal interview even in the event of repeated or gravely disruptive conduct.

(4) A person subject to a crime report shall be summoned indicating the name of the aggrieved party and the essence of the criminal offence.

(5) If a person subject to a crime report is a foreign national, a consular representative of his State of citizenship shall be allowed to attend his personal interview.

Section 769 (1) At the beginning of a personal interview, the proceeding court shall establish the identity of the aggrieved party and the person subject to a crime report, present the essence of the crime report and, provided that the relevant conditions are met, advise the person subject to a crime report of the possibility of filing a counter-indictment. Then, unless if section 769/A (7) applies, the court shall attempt to reconcile the aggrieved party and the person subject to a crime report.

(2) If the attempt at reconciliation fails, the aggrieved party and the person subject to a crime report shall continue to participate in the proceeding as a private prosecuting party and an accused, respectively.

(3)

(4) If an accused brings a counter-indictment, the proceeding court shall, unless if section 769/A (8) applies, also interview the private prosecuting party as an accused. In a situation described in section 768 (2), a crime report filed by the accused shall be considered a counter-indictment.

(5) The proceeding court shall call on the private prosecuting party and, if a counter-indictment was filed, the accused to specify their means of evidence and to state the facts each means of evidence is intended to prove. Upon the call by the court, both the accused and his defence counsel may specify the means of evidence that support his defence. For these purposes, the court may set a time limit of fifteen days.

(6) If there is more than one aggrieved party in a case, the party acting as the private prosecuting party shall be agreed on by the aggrieved parties. In the absence of an agreement, the party acting as the private prosecuting party shall be designated by the court.

Section 769/A (1) If the aggrieved party makes a statement in his crime report or before the commencement of the personal interview that he does not wish reconciliation to be attempted and waives his attendance at the personal interview, then the party reporting the crime may be replaced by a legal representative at the personal interview. In a situation under section 768 (2), the aggrieved party may waive his right to attend the personal interview in accordance with the rules set out in paragraph (6).

(2) If the aggrieved party made a statement under paragraph (1), after such a statement is made, his legal representative shall act in place of the aggrieved party in a private prosecution proceeding. In such a situation, the attendance of the legal representative of the aggrieved party shall be mandatory at the personal interview.

(3) If the attendance of the legal representative of the aggrieved party is mandatory at the personal interview, and

a) he fails to appear at the personal interview without providing a well-grounded excuse in advance and without delay, or

b) he does not cease his disruptive conduct at the personal interview and, by his conduct, he makes it impossible to continue the personal interview in his presence,

the court shall postpone or adjourn the personal interview at the expense of the legal representative, and may impose a disciplinary fine on the legal representative. The court shall advise the legal representative of this provision in the summons.

(4) If the attendance of the legal representative of the aggrieved party is mandatory at the personal interview, and the legal representation of the aggrieved party in the proceeding terminates, the court shall invite the aggrieved party, within eight days of becoming aware of such a termination, to arrange for legal representation within fifteen days.

(5) If the aggrieved party made a statement under paragraph (1) and appears at the personal interview, or makes a statement that he wishes to attend the personal interview, from then on, the attendance of the aggrieved party in the proceeding shall be mandatory, and during the proceeding, he may not waive his attendance again subsequently.

(6) If the person subject to crime report makes a statement before the commencement of the personal interview that he does not wish reconciliation to be attempted, he may waive his right to attend the personal interview applying the provisions of sections 430 to 431 as appropriate.

(7) If the aggrieved party or the person subject to crime report made a statement that he does not wish reconciliation to be attempted, the court shall consider reconciliation to have failed without attempting it. If both the aggrieved party and the person subject to crime report made a statement that they do not wish reconciliation to be attempted, and there is no obstacle to holding the trial, the court may hold the trial immediately.

(8) It shall not be an obstacle to bringing a counter-indictment if the private prosecution party does not attend the personal interview in person. In such a situation, the court shall refrain from interviewing the private prosecuting party as an accused.

Section 770 (1) Subject to the exceptions specified in paragraph (2), a junior judge may carry out the tasks of a court, as set out in sections 766 to 769) and shall have the right also to pass a decision under section 771 (1).

(2) A junior judge may not

a) suspend a proceeding for a reason other than those specified in section 512 (3) *d)*,

b) terminate a proceeding on the basis of section 492 (1) *a)* or *h)* or, on the basis of section 492 (1) *c)*, for another statutory reason terminating liability to punishment.

Section 771 (1) A court shall terminate a proceeding by a conclusive order if

a) the aggrieved party withdraws his crime report,

b) the attendance of the aggrieved party is mandatory at the personal interview, and

ba) he fails to appear without providing a well-grounded excuse in advance and without delay, or becomes unavailable,

bb) due to his own fault, he appears at a trial in a condition rendering him unable to perform his procedural obligations, or leaves the place of the procedural act without permission, or

bc) he does not cease his disruptive conduct and, by his conduct, he makes it impossible to continue the trial in his presence,

c) the attempt to reconcile the aggrieved party and the person subject to a crime report at the personal interview succeeds,

d) the procedural fee is not paid within the time limit set by the Act on duties,

e) the attendance of the legal representative of the aggrieved party is mandatory at the personal interview, and the aggrieved party fails to arrange for legal representation within the time limit set in accordance with section 769/A (4) and the aggrieved party fails to appear at the personal interview,

f) in a situation referred to in section 53 (4), the private prosecution party is not replaced by a representative and

fa) the private prosecuting party does not arrange for representation within one month of the service of the call by the court, or

fb) the private prosecuting party fails to comply with his obligation to attend the personal interview, despite having been summoned.

(2) In the course of a personal interview, the proceeding court may decide on any matter it is authorised to decide on before the personal interview.

(3) In a situation described in paragraph (1), a proceeding instituted on the basis of a counter-indictment shall also be terminated, provided that the time limit open for submitting a private motion expires before the date of the personal interview.

Section 772 (1) No appeal shall lie against the following:

a) ordering an investigation,

b) a summons to, or notification about, a personal interview,

c) the designation of a private prosecuting party, or

d) a measure specified in section 766 (1).

(2) The prosecution service shall not be entitled to file an appeal against the termination of a proceeding pursuant to section 771 (1) *c)*.

Court procedure at first instance

Section 773 (1) In a private prosecution proceeding, a preparatory session may not be held.

(2) With the exception under paragraph (2a), the attendance of a private prosecuting party at trial shall be mandatory.

(2a) A legal representative may replace the private prosecuting party at trial if the private prosecuting party makes a statement that he does not wish to attend the trial in person. If the private prosecuting party was replaced by a legal representative, after such a statement is made, the legal representative shall proceed in place of the private prosecuting party in a private prosecution proceeding. In such a situation, the attendance of the legal representative of the private prosecuting party shall be mandatory at trial.

(2b) If a counter-indictment was filed, the private prosecuting party may waive his attendance at trial pursuant to the provisions of sections 430 to 431, regardless of any previous statement made by him.

(2c) The court may oblige a private prosecuting party who waived his attendance at trial to attend the trial if it is necessary for carrying out an evidentiary act or interviewing an expert.

(2d) In the summons to or notification of the trial, the court shall advise the private prosecuting party also of the legal consequences specified in section 776 (2).

(2e) If the attendance of the legal representative of the private prosecuting party is mandatory at trial, and

a) he fails to appear at trial without providing a well-grounded excuse in advance and without delay,

b) he does not cease his disruptive conduct at the trial and, by his conduct, he makes it impossible to continue the trial in his presence,

the court shall postpone or adjourn the trial at the expense of the legal representative, and may impose a disciplinary fine on the legal representative. The court shall advise the legal representative of this provision in the summons.

(2f) If a private prosecuting party waived his attendance at trial appears at trial, or makes a statement that he wishes to attend the trial, from then on, the attendance of the private prosecuting party at trial shall be mandatory, and he may not waive his attendance again subsequently.

(3) If a private prosecuting party has a representative and his attendance is not mandatory under paragraph (2a), he shall be notified by the court about the trial.

(4) When issuing a summons, or sending a notification, the proceeding court shall also inform the private prosecuting party and his legal representative about the evidence planned to be taken on a due date set.

(5) If the attendance of the legal representative of the private prosecuting party is mandatory at the trial and the legal representation of the private prosecuting party in the proceeding terminates, the court shall invite the private prosecuting party, within eight days of becoming aware of such termination, to arrange for his legal representation within fifteen days.

(6) A private prosecuting party and, if the legal representation of the private prosecuting party is mandatory, the legal representative of the private prosecuting party may not be expelled or removed from a trial even in the event of repeated or gravely disruptive conduct.

Section 774 (1) After a personal interview is conducted, the pending private prosecution proceeding may not be joined with another private prosecution proceeding.

(2) If a new criminal proceeding is instituted on the basis of private prosecution against an accused who was released on probation in another public prosecution proceeding, the cases may be joined, provided that the prosecution service took over the representation of the prosecution. It that event, the court shall send all case documents to the prosecution service for the purpose of considering the possibility of taking over the representation of the prosecution.

Section 775 (1) If a private prosecuting party does not have a representative, his representative is not present, or an accused does not have a defence counsel, the court shall present the essence of the indictment and the counter-indictment at trial.

(2) At trial, the court shall interrogate the accused and the witnesses, and it shall interview the experts.

(3) If interrogating a private prosecuting party as a witness is necessary, the taking of evidence shall be commenced by interrogating the private prosecuting party.

(4) If the court establishes, after the closing arguments, addresses, and last words are delivered, that the acts stated in the indictment may be assessed differently from their assessment presented in the indictment document, it may adjourn the trial to facilitate preparations for the defence, and it shall also obtain the opinion of the private prosecuting party on this matter.

Section 775/A (1) The court shall send to the prosecution service the crime report and the case documents if, on the basis of a new fact or circumstance that arose during a personal interview or a trial,

a) it seems that a criminal offence could be established as regards which the prosecution is to be represented by the prosecution service,

b) it finds it necessary that the prosecution service consider the possibility of taking over the representation of the prosecution.

(2) The court may suspend the proceeding if it sent the case documents to the prosecution service pursuant to paragraph (1) *a)*.

(3) The prosecution service shall proceed pursuant to section 766 (4) in a situation under paragraph (1) *a)*, and pursuant to section 766 (5) in a situation under paragraph (1) *b)*.

(4) The court shall terminate the proceeding if the prosecution service orders and investigation in accordance with paragraph (3). Section 771 (3) shall apply also to this situation.

Section 776 (1) A private prosecuting party may abandon an indictment at any time. No reasons need to be provided for abandoning an indictment.

(2) A court shall terminate its proceeding by a conclusive decision if

a) a private prosecuting party abandons the indictment,

b) the attendance of a private prosecuting party is mandatory at trial and

ba) he fails to appear without providing a well-grounded excuse in advance and without delay, or becomes unavailable,

bb) due to his own fault, he appears at a trial in a condition rendering him unable to perform his procedural obligations, or leaves the place of the procedural act without permission, or

bc) he does not cease his disruptive conduct and, by his conduct, he makes it impossible to continue the trial in his presence,

c) the attendance of the legal representative of a private prosecuting party is mandatory at trial and the private prosecuting party fails to arrange for legal representation within the time limit set in accordance with section 773 (5) and the private prosecuting party fails to appear at the trial,

d) in a situation referred to in section 53 (4), the private prosecution party is not replaced by a representative and

da) the private prosecuting party does not arrange for representation within one month of the service of the call by the court, or

db) the private prosecuting party fails to comply with his obligation to attend the personal interview, despite having been summoned.

(2a) The provisions laid down in section 771 (3) shall apply to a situation referred to in paragraph (2) also.

(3) If the prosecution service withdrew from representing a prosecution and the aggrieved party is present, the court shall continue the trial. Otherwise, the court shall adjourn the trial and set, at the same time, a new trial date, and inform the aggrieved party that he represents the prosecution again.

Section 777 (1) With the exception of decisions passed in the context of administering a trial and keeping its order, all decisions shall be communicated to the private prosecuting party.

(2) The conclusive decision shall be served on the prosecution service if it took over the representation of the prosecution.

Appeals

Section 778 (1) A private prosecuting party shall be entitled to file an appeal against the judgment of the court of first instance.

(2) If a private prosecuting party represents the prosecution when an appeal is submitted, the statements for legal remedy may be made in the following order: statement by the private prosecuting party, the private party, other interested party, the accused, and the defence counsel.

(3) A private prosecuting party may file an appeal only to the detriment of the accused.

(4) A court of first instance shall notify the accused and his defence counsel about any appeal filed by a private prosecuting party pursuant to section 582 (4).

(5) A private prosecuting party shall provide a written statement of reasons for his appeal.

(6) If a private prosecuting party represents the prosecution when an appeal is submitted, the court of first instance shall refer the case documents to the court of second instance directly.

(7) The court shall serve a final and binding conclusive decision passed in a private prosecution proceeding also on the prosecution office that proceeded in the case previously.

(8)

Court procedure at second instance

Section 779 (1) A court of second instance shall summon the private prosecuting party to the trial; and the representative of the private prosecuting party, if any, shall be notified by the court. If the private prosecuting party waives his attendance at trial, the court shall summon the legal representative of the private prosecuting party to the trial.

(1a) In the summons to or notification of the trial, the court shall advise the private prosecuting party also of the legal consequences specified in paragraph (2).

(1b)

(1c)

(1d)

(2) A court of second instance shall set aside a first instance judgment and terminate the proceeding by a conclusive decision

a) if a motion to that end is filed by the private prosecuting party before a conclusive decision is passed;

b) if the procedural fee for the appeal is not paid within the time limit set by the Act on duties;

c) in a situation referred to in section 776 (2) *b)* to *d)*.

(2a) Section 771 (3) shall apply to also a situation referred to in paragraph (2).

(3) A private prosecuting party shall be entitled to file an appeal against the conclusive decision of a court of second instance to the court of third instance.

(4) A private prosecuting party may file an appeal only to the detriment of the accused.

(5) If a private prosecuting party did not submit an appeal to the detriment of the accused against the conclusive decision of the court of first instance, he may not submit an appeal against the conclusive decision of the court of second instance, unless the accused is acquitted or the proceeding is terminated.

(6) A private prosecuting party shall provide a written statement of reasons for his appeal. The statement of reasons shall be filed with the court of second instance within the time limit open for appeals.

(7) If a private prosecuting party represent the prosecution when an appeal is submitted, the chair of the panel of the court of second instance shall refer the case documents to the court of third instance directly.

Court procedure at third instance

Section 780 (1) If no appeal was submitted against a judgment to the detriment of the accused, the private prosecuting party may motion the court to set a public session.

(2) A court of third instance shall summon the private prosecuting party to the public session, and the representative of the private prosecuting party, if any, shall be notified by the court. If the private prosecuting party waived his appearance at a public session, the court shall summon the legal representative of the private prosecuting party to the public session.

Adjudicating an appeal filed against an order passed by a court of second or third instance on setting aside

Section 781 A private prosecuting party shall be entitled to submit an appeal against an order passed by a court of second or third instance on setting aside, unless he submitted an appeal against the judgment for setting aside the judgment and instructing the court to conduct a new proceeding, and the judgment was set aside for a reason stated in the appeal.

Criminal costs

Section 782 (1) If an accused was acquitted or the proceedings against an accused were terminated by the court, the private prosecuting party shall bear the criminal costs specified in sections 145 (1) and 576 (1) *b)*.

(2) If a private prosecuting party represented the prosecution and the accused was acquitted, in a situation other than that specified in section 566 (3), or the proceedings against the accused were terminated by the court in accordance with section 771 (1), 776 (2) or 779 (2), the private prosecuting party shall reimburse the fee and costs of the authorised defence counsel of the accused that were incurred in the proceeding with private prosecution, up to the amount specified by law, within one month after the conclusive decision becomes final and binding.

(3) The court of second instance shall oblige the private prosecuting party to bear the criminal costs, and the fee and costs specified in paragraph (2) that were incurred in the second instance proceeding, if only the private prosecuting party filed an appeal against the decision of the court of first instance, and the court of second instance upheld the decision.

(4) The court of third instance shall oblige the private prosecuting party to bear the criminal costs, and the fee and costs specified in paragraph (2) that were incurred in the third instance proceeding, if only the private prosecuting party filed an appeal against the decision of the court of second instance, and the court of third instance upheld the decision.

(5) If a counter-indictment was filed, the proceeding court may also decide that the private prosecuting party and the counter-prosecuting party shall bear the criminal costs advanced by the respective party.

Derogation from the provisions concerning extraordinary legal remedies

Section 783 (1) A private prosecuting party shall not file a motion for retrial, unless the defendant was acquitted or the proceeding was terminated for a reason other than those referred to in sections 771 (1), 776 (2) and 779 (2).

(2) The motion for retrial shall be filed with, or recorded in minutes at, the court that is authorised to decide on the possibility of granting a retrial.

(3) The proceeding court shall send the motion for retrial to the prosecution service if it seems that a criminal offence could be established as regards which the prosecution is to be represented by the prosecution service. The prosecution service may order a retrial investigation regarding a criminal offence subject to public prosecution.

(4) If the procedural fee for retrial is not paid within the time limit set by the Act on duties, the motion shall be considered withdrawn.

Section 784 (1) A private prosecuting party may not file a motion for review.

(2) If a motion for review may not be dismissed, and a private prosecuting party represented the prosecution in the main case, the Curia shall send the motion to the private prosecuting party for the purpose of obtaining his statement.

(3) The private prosecuting party shall send his statement to the Curia within one month.

(4) The Curia shall send the statement of the private prosecuting party to the person who filed the motion for review, to the defendant and to the defence counsel.

(5) The persons referred to in paragraph (4) may make their observations regarding the statement of the private prosecuting party within fifteen days of service.

(6) In a public court session, the appearance of the private prosecuting party shall be mandatory.

Section 785 (1) If a legal remedy is submitted on the ground of legality, the private prosecuting party shall be notified about the public court session.

(2) A private prosecuting party may make observations and, in a public session, address the court regarding the legal remedy submitted on the ground of legality.

(3) A uniformity decision shall also be communicated to a private prosecuting party.

(4) A private prosecuting party may not move for a simplified review procedure.

Derogation from the provisions concerning specific proceedings and special proceedings

Section 786 (1) A private prosecuting party may not bring the accused before the court in accordance with the immediate summary procedure.

(2) A private prosecuting party may not enter into a plea agreement with an accused.

(3) A private prosecuting party may not file a motion for conducting a procedure for passing a punishment order.

(4) In a procedure for passing a punishment order

a) the time limit of one month open for passing an order shall be calculated from the date of the personal interview,

b) the private prosecuting party may move for trial within eight days after receipt of the punishment order,

c) the court, on the basis of a motion for trial filed by the private prosecuting party, shall continue the proceeding pursuant to Chapter C, subject to the derogations laid down in this Chapter.

(5) A private prosecuting party may not move for a court proceeding to be conducted against an absent defendant or in the absence of a defendant staying abroad.

(6) A private prosecuting party may not file a motion for conducting a special proceeding.

Chapter CV

SUBSTITUTE PRIVATE PROSECUTION PROCEDURE

General rules of substitute private prosecution procedure

Section 787 (1) The provisions of this Act shall apply to substitute private prosecution proceedings subject to the derogations laid down in this Chapter.

(2) An aggrieved party may act as a substitute private prosecuting party pursuant to this Act if

a) the prosecution service or the investigating authority dismissed the crime report,

b) the prosecution service or the investigating authority terminated the proceeding,

c) the prosecution service abandoned the indictment.

(3) A substitute private prosecuting party may not proceed if

a) the person subject to crime report or the defendant is a juvenile,

b) the perpetrator is not liable to punishment or his act is not punishable due to infancy or a mental disorder,

c) the criminal offence did not violate or endanger a right or legitimate interest of the aggrieved party directly,

d) the aggrieved party is the State or an organ exercising public authority,

e) an undercover investigator, a member of an organ authorised to use covert means, or a person cooperating in secret is reasonably suspected of having committed the criminal offence, and the prosecution service dismissed the crime report, or terminated the proceeding, under section 224 (1),

f) the prosecution service dismissed the crime report under section 382 (1) or terminated the proceeding under section 399 (1),

g) the prosecution service terminated the proceeding under section 398 (2) *e)* because it entered into a plea agreement with the defendant pursuant to section 411 (3), or

h) the prosecution service terminated the proceeding pursuant to section 764 (7) or abandoned the indictment.

Section 788 (1) Legal representation shall be mandatory for the aggrieved party in a substitute private prosecution proceeding.

(2) The participation of a defence counsel in a substitute private prosecution proceeding shall be mandatory.

(3) In a substitute private prosecution proceeding, the aggrieved party may file a civil claim in the motion for prosecution at the latest.

(4) In a substitute private prosecution proceeding, a mediation procedure may be in order if the prosecution service took over the representation of the prosecution.

(5) If there is more than one aggrieved party in a case, the party acting as the substitute private prosecuting party shall be agreed on by the aggrieved parties. In the absence of an agreement, the party acting as the substitute private prosecuting party shall be designated by the court.

(6) For the purposes of this Act, indictment document shall also mean a motion for prosecution that is accepted by the court.

Section 789 (1) The prosecution service may take over the representation of a prosecution from a substitute private prosecuting party once during a proceeding. If the prosecution service takes over the representation of a prosecution, it shall notify the aggrieved party accordingly.

(2) If the prosecution service takes over the representation of a prosecution, the substitute private prosecuting party may exercise the rights, and shall be bound by the obligations, of an aggrieved party, with the proviso that he may abandon the indictment at any time.

(3) If the prosecution service takes over the representation of a prosecution, it may not abandon the indictment but may withdraw from representing the prosecution.

(4) If the prosecution service takes over the representation of a prosecution, the failure of the prosecutor to appear at trial shall be deemed as withdrawal from representing the prosecution.

Action by a substitute private prosecuting party if the crime report is dismissed or the proceeding is terminated

Section 790 (1) If a crime report is dismissed, the aggrieved party may act as a substitute private prosecuting party, provided that

a) the crime report filed by the aggrieved party is dismissed by the prosecution service or the investigating authority under section 381 (1) *a)* to *c)* or *g)*,

b) the aggrieved party filed a complaint against the decision on dismissing his crime report, and that complaint is dismissed by the prosecution service, and

c) no ground for exclusion specified in section 787 (3) exists.

(2) If the proceeding is terminated, the aggrieved party may act as a substitute private prosecuting party, provided that

a) the proceeding was terminated by the prosecution service or the investigating authority under section 398 (1) *a)* to *d)* or *i)*, or paragraph (2) *a)* or *e)*, or for another reason terminating liability to punishment set out in an Act,

b) the aggrieved party filed a complaint against the decision on terminating the proceeding, and that complaint is dismissed by the prosecution service, and

c) no ground for exclusion specified in section 787 (3) exists.

Section 791 (1) If the aggrieved party may act as a substitute private prosecuting party under section 790, the aggrieved party may take action as a substitute private prosecuting party within two months after the decision on dismissing his complaint is communicated.

(2) After the dismissal of his complaint, the aggrieved party shall be allowed to inspect the case documents pertaining to the criminal offence committed against him. The aggrieved party may not inspect case documents that are kept separate from other case documents and handled confidentially.

Section 792 (1) The aggrieved party may file an application for legal aid within one month after the decision on dismissing his complaint is communicated.

(2) If the aggrieved party filed an application under paragraph (1), the two-month time limit open for taking action as a substitute private prosecuting party shall be calculated from the communication of the decision with administrative finality, or the final and binding decision, passed in the administrative case launched with regard to granting legal aid.

(3) If the aggrieved party filed an application under paragraph (1), he shall notify the prosecution service accordingly within eight days after filing the application. In case of a failure to provide notification, the provisions laid down in paragraph (2) concerning the calculation of the time limit shall not apply.

Section 793 (1) If the aggrieved party intends to take action as a substitute private prosecuting party, he shall file a motion for prosecution with the prosecution service that dismissed his complaint.

(2) The motion for prosecution shall include the following:

a) the items specified in section 422 (1) *a)* to *c)* and paragraph (2) *a)*,

b) any civil claim by an aggrieved party,

c) a motion for persons to be summoned to, and persons to be notified about, the trial, and

d) a motion to read out the testimony of any witness the testimony of whom is necessary for the taking of evidence, but the personal appearance of whom at trial is not necessary, would involve disproportional difficulties, or is not possible.

(3) The motion for prosecution shall be signed by also the legal representative, or he shall affix to it his qualified electronic signature, or advanced electronic signature based on a qualified certificate.

(4) The prosecution service shall forward the motion for prosecution, together with the case documents, to the court with subject-matter and territorial jurisdiction over the case within fifteen days of receipt.

(5) If a motion for prosecution is filed, the provisions laid down in section 21 (3) *b)* shall not apply.

Section 794 (1) The court shall dismiss the motion for prosecution in a non-conclusive order if

a) the aggrieved party filed the motion for prosecution after the expiry of the statutory time limit,

b) the aggrieved party does not have a legal representative,

c) under an Act, a substitute private prosecuting party may not take action,

d) the motion for prosecution does not have the content required under section 793 (2) to (3),

e) the entity authorised to lift immunity refused to lift the immunity where the crime report was dismissed or the proceeding was terminated.

(2) The aggrieved party may file the motion for prosecution again within fifteen days after receipt of the non-conclusive order dismissing the motion for prosecution, provided that it was previously dismissed by the court under paragraph (1) *b)* or *d)* and the ground for dismissal does not exist any longer.

(3) The court shall not dismiss the motion for prosecution on the ground that it does not include all the personal data specified in section 184 (2) of the defendant, and such data cannot be established from the case documents either, provided that the defendant may be identified beyond a reasonable doubt even in the absence of such data.

(4) If any data discovered during the examination of the motion for prosecution suggests that the defendant has immunity, the court shall first consider if any other ground for dismissing the motion for prosecution under paragraph (1) *a)* to *d)* exists. If there is no ground for dismissing the motion for prosecution under paragraph (1) *a)* to *d)*, the court shall request a decision from the entity authorised to lift the immunity without suspending the proceeding. If the entity authorised to lift the immunity lifts the immunity, the court shall consider the grounds for the motion for prosecution in accordance with paragraphs (5) to (9). Otherwise, the court shall dismiss the motion for prosecution pursuant to paragraph (1) *e)*.

(5) If no ground under paragraphs (1) to (4) for the dismissal of the motion for prosecution exists, the court shall examine, within two months of the filing of the motion for prosecution or, if paragraph (4) applies, of the decision lifting immunity being taken by the entity authorised to lift immunity, whether the person specified as accused in the motion for prosecution can be reasonably suspected of having committed the criminal offence subject to the motion for prosecution.

(6) When assessing the grounds for the motion for prosecution, the court shall comprehensively examine the case documents and the data, documents and statements attached by the aggrieved party.

(7) The court shall, by a non-conclusive order,

a) dismiss the motion for prosecution if the person specified as accused in the motion for prosecution cannot be reasonably suspected of having committed the criminal offence subject to the motion for prosecution;

b) dismiss the motion for prosecution in part if one or more of the persons specified as accused in the motion for prosecution cannot be reasonably suspected of having committed the criminal offence subject to the motion for prosecution, or the person specified as accused in the motion for prosecution cannot be reasonably suspected of having committed one or more of the criminal offences subject to the motion for prosecution.

(8) No court session shall be held in the course of examining the grounds for a motion for prosecution.

(9) If the court dismisses a motion for prosecution in part, the aggrieved party shall file again with the court the motion for prosecution excluding the dismissed parts of the motion for prosecution within fifteen days of the service of the decision. Should the aggrieved party fail to do so, the court shall terminate the proceeding by a conclusive order. The person entitled to present the motion for prosecution shall be advised accordingly in the non-conclusive order.

Section 795 (1) If the court accepted the motion for prosecution,

a) it shall notify the aggrieved party that he may proceed as a substitute private prosecuting party,

b) it shall send the motion for prosecution to the defendant and the defence counsel without delay,

c) it shall make arrangements to have the means of evidence available at trial,

d) it may order the use of coercive measures.

(2) If taking action as a substitute private prosecuting party is based on the termination of the proceeding, the defendant and the defence counsel, after the motion for prosecution is accepted, shall be eligible to inspect the case documents of the investigation and the means of evidence.

(3) If the defendant used a language other than the Hungarian language in the proceeding, the court shall make arrangements to have the parts of the motion for prosecution pertaining to the defendant translated into the language used by him during the proceeding.

Action by a substitute private prosecuting party if the indictment is abandoned

Section 796 (1) If the prosecution service abandoned the indictment, the aggrieved party may take action as a substitute private prosecuting party, provided that the grounds for exclusion specified in section 787 (3) *a)* to *d)* do not exist.

(2) The aggrieved party may take action as a substitute private prosecuting party within fifteen days after receipt of the statement specified in section 539 (3).

(3) After the abandonment of the indictment, the aggrieved party shall be allowed to inspect the case documents pertaining to the criminal offence committed against him. The aggrieved party may not inspect case documents that are kept separate from other case documents and handled confidentially.

Section 797 (1) The aggrieved party may file an application for legal aid within one month after receipt of the statement containing the abandonment of the indictment.

(2) If the aggrieved party filed an application under paragraph (1), the fifteen-day time limit open for taking action as a substitute private prosecuting party shall be calculated from the communication of the decision with administrative finality, or the final and binding decision, passed in the administrative case launched with regard to granting legal aid.

(3) If the aggrieved party filed an application under paragraph (1), he shall notify the court accordingly within eight days after filing the application. In case of a failure to provide notification, the provisions laid down in paragraph (2) concerning the calculation of the time limit shall not apply.

Section 798 (1) If the aggrieved party intends to take action as a substitute private prosecuting party, he shall submit a written notice to the court proceeding in his case that he intends to represent the prosecution as a substitute private prosecuting party as regards the indictment abandoned by the prosecution service.

(2) The written notice shall be signed by also the legal representative, or he shall affix to it his qualified electronic signature, or advanced electronic signature based on a qualified certificate.

Section 799 (1) The court shall dismiss the written notice with a non-conclusive order if

a) the aggrieved party submitted the notice after the expiry of the statutory time limit,

b) the aggrieved party does not have a legal representative,

c) under an Act, a substitute private prosecuting party may not take action,

d) the notice does not have the content required under section 798.

(2) The aggrieved party may submit the written notice again within fifteen days after receipt of the non-conclusive order on dismissing the written notice, provided that it was previously dismissed by the court under paragraph (1) *b)* or *d)* and the ground for dismissal does not exist any longer.

(3) If the court accepts the notice, it shall notify the aggrieved party that he may proceed as a substitute private prosecuting party.

(4) If a substitute private prosecuting party acts in the proceeding, the trial shall be continued. The provisions laid down in section 518 shall apply to the continuity of the trial.

Section 800 (1) If the criminal proceeding is conducted because of more than one criminal offence, and the prosecution service abandons the indictment regarding any of the criminal offences, a substitute private prosecuting party may take action only if the case in which the prosecution service abandoned the indictment can be separated.

(2) If the criminal proceeding is conducted against more than one defendant because of the same criminal offence, and the prosecution service abandons the indictment against any of the defendants, the provisions laid down in paragraph (1) shall apply as appropriate.

(3) If the court accepts the written notice submitted by the aggrieved party, it shall separate the case in which the substitute private prosecuting party takes action.

(4) With regard to the separated case, the criminal proceeding shall be continued, on the basis of the indictment document filed by the prosecution service, by the court that proceeded until the separation.

Preparation of the trial

Section 801 (1) The attendance of the substitute private prosecuting party and his legal representative at the preparatory session shall be mandatory.

(2) If the legal representative of the substitute private prosecuting party fails to appear at the preparatory session without providing a well-grounded excuse in advance and without delay, the court shall postpone the preparatory session at the expense of the legal representative and may impose a disciplinary fine on the legal representative. The court shall advise the legal representative of this provision in the summons.

(2a) If the legal representation of the substitute private prosecuting party is terminated during the proceeding, the court shall invite the substitute private prosecuting party, within eight days of becoming aware of such termination, to arrange for his legal representation within fifteen days.

(3) The court shall advise the substitute private prosecuting party of also the legal consequences referred to in paragraph (5) in the summons to the preparatory session.

(3a) A substitute private prosecuting party may not be expelled or removed from a preparatory session even in the event of repeated or gravely disruptive conduct.

(4) During the preparatory session, members of the court, the accused, and the defence counsel may ask questions from the substitute private prosecuting party.

(5) The court shall terminate the proceeding by a conclusive order if

a) the substitute private prosecuting party abandoned the indictment,

b) the substitute private prosecuting party

ba) fails to appear at the preparatory session without providing a well-grounded excuse in advance and without delay, or becomes unavailable,

bb) due to his own fault, appears at the preparatory session in a condition rendering him unable to perform his procedural obligations, or leaves the place of the procedural act without permission, or

bc) does not cease his disruptive conduct and, by his conduct, he makes it impossible to continue the preparatory session in his presence,

c) the substitute private prosecuting party fails to arrange for legal representation within the time limit set in accordance with paragraph (2a), or

d) in a situation referred to in section 54 (2), the substitute private prosecuting party is not replaced by a representative, and

da) the substitute private prosecuting party does not arrange for representation within one month of the service of the call by the court, or

db) the substitute private prosecuting party fails to comply with his obligation to attend the preparatory session, despite having been summoned.

Court procedure at first instance

Section 802 Unless otherwise provided in this Act, the substitute private prosecuting party may exercise the rights of an aggrieved party and the prosecution service, and he shall carry out the tasks of the prosecution service during the court procedure, including filing a motion for ordering any coercive measure affecting the personal freedom of the defendant or for issuing an arrest warrant. A substitute private prosecuting party may not file a motion for terminating the parental custody rights of an accused and may not extend the indictment.

Section 803 (1) The attendance of the substitute private prosecuting party and his legal representative at trial shall be mandatory.

(2) When issuing a summons, the court shall also inform the substitute private prosecuting party and his legal representative about the evidence planned to be taken on a due date set.

(3) If the legal representative of the substitute private prosecuting party fails to appear at trial without providing a well-grounded excuse in advance and without delay, the court shall postpone the trial at the expenditure of the legal representative and may impose a disciplinary fine on the legal representative. The court shall advise the legal representative of this provision in the summons.

(4) The court shall advise the substitute private prosecuting party of also the legal consequences specified in section 806 (2) in the summons to the trial.

(5) If legal representation of the substitute private prosecuting party is terminated during the proceeding, the court shall invite the substitute private prosecuting party, within eight days of becoming aware of such termination, to arrange for his legal representation within fifteen days.

(6) The substitute private prosecuting party may file an application for legal aid within eight days calculated from the invitation referred to in paragraph (5).

(7) If the substitute private prosecuting party filed an application under paragraph (6), the fifteen-day time limit specified in paragraph (5) shall be calculated from the communication of the decision with administrative finality, or the final and binding decision, passed in the administrative case launched with regard to granting legal aid.

(8) If the substitute private prosecuting party filed an application under paragraph (6), he shall notify the court accordingly within eight days after filing the application. In the absence of a notification, the provisions laid down in paragraph (7) concerning the calculation of the time limit may not be applied.

Section 804 (1) The substitute private prosecuting party may not be expelled or removed from a trial even in the event of repeated or gravely disruptive conduct.

(2) The legal representative of the substitute private prosecuting party may not be expelled or removed from a trial even in the event of repeated or gravely disruptive conduct. If the legal representative does not cease his disruptive conduct and, by his conduct, he makes it impossible to continue the trial in his presence, the court shall interrupt the trial. In such an event, the substitute private prosecuting party may authorise another legal representative or request the legal aid service to appoint another legal aid lawyer. If this is not possible immediately, the court shall adjourn the trial at the cost of the disrupting legal representative.

Section 805 (1) After the motion for prosecution, or the written notice specified in section 798 (1), is accepted by the court, the pending substitute private prosecution proceeding may not be joined with another substitute private prosecution proceeding.

(2) It shall not form an obstacle to joining the cases if the accused was released on probation earlier in a case subject to either private or public prosecution, and a substitute private prosecuting party represents the prosecution in the more recent criminal proceeding.

Section 806 (1) The substitute private prosecuting party may abandon the indictment at any time. No reasons need be provided for abandoning an indictment.

(2) The court shall terminate the proceeding by a conclusive decision if

a) the substitute private prosecuting party abandoned the indictment,

b) the substitute private prosecuting party

ba) fails to appear at trial without providing a well-grounded excuse in advance and without delay, or becomes unavailable,

bb) due to his own fault, appears at trial in a condition rendering him unfit for interrogation, is unable to perform his procedural obligations, or leaves the place of the procedural act without permission, or

bc) does not cease his disruptive conduct and, by his conduct, he makes it impossible to continue the trial in his presence,

c) the substitute private prosecuting party fails to arrange for legal representation within the time limit set in accordance with section 803 (5), or

d) in a situation referred to in section 54 (2), the substitute private prosecuting party is not replaced by a representative, and

da) the substitute private prosecuting party does not arrange for representation within one month of the service of the call by the court, or

db) the substitute private prosecuting party fails to comply with his obligation to attend the trial, despite having been summoned.

(3) If the prosecution service withdrew from representing the prosecution and the aggrieved party and the legal representative are present, the court shall continue the trial. Otherwise, the court shall adjourn the trial and set a new trial date, and it shall inform the aggrieved party that he represents the prosecution again.

Section 807 If the court establishes, after the closing arguments, addresses, and last words are delivered, that the acts stated in the indictment maybe assessed differently from the assessment presented in the indictment document, it may adjourn the trial to facilitate preparations for the defence, and it shall also obtain the opinion of the substitute private prosecuting party on this matter.

Section 808 (1) With the exception of decisions passed in the context of administering the trial and keeping its order, all decisions shall be communicated to the substitute private prosecuting party.

(2) The conclusive decision shall only be served on the prosecution service if it took over representing the prosecution.

Appeals

Section 809 (1) The substitute private prosecuting party and, with the consent of the substitute private prosecuting party, his legal representative shall be entitled to file an appeal against the judgment of the court of first instance.

(2) If a substitute private prosecuting party represents the prosecution when the appeal is submitted, the statements for legal remedy may be made in the following order: statement by the substitute private prosecuting party, the civil party, other interested party, the accused, and the defence counsel.

(3) A substitute private prosecuting party may file an appeal only to the detriment of the accused.

(4) The court of first instance shall notify the accused and the defence counsel about any appeal filed by the substitute private prosecuting party pursuant to section 582 (4).

(5) A substitute private prosecuting party shall provide a written statement of reasons for his appeal.

(6) If a substitute private prosecuting party represents the prosecution when the appeal is submitted, the court of first instance shall refer the case documents to the court of second instance directly.

(7) The court shall send a final and binding conclusive decision passed in a substitute private prosecution proceeding also to the prosecution office that proceeded in the case previously.

Court procedure at second instance

Section 810 (1) The court of second instance shall summon the substitute private prosecuting party and his legal representative to the trial.

(1a) In a situation referred to in 806 (2) *b)* to *d)*, the court of second instance shall set aside the judgment of the court of first instance in a panel session, and terminate the proceeding by a conclusive order.

(1b)

(2) The substitute private prosecuting party and, with the consent of the substitute private prosecuting party, his legal representative shall be eligible file an appeal against the conclusive decision of the court of second instance to the court of third instance.

(3) A substitute private prosecuting party may file an appeal only to the detriment of the accused.

(4) If the substitute private prosecuting party did not submit an appeal to the detriment of the accused against the conclusive decision of the court of first instance, he may not submit an appeal against the conclusive decision of the court of second instance, unless the accused is acquitted or the proceeding is terminated.

(5) The substitute private prosecuting party shall provide a written statement of reasons for his appeal. The statement of reasons shall be filed with the court of second instance within the time limit open for appeals.

(6) If a substitute private prosecuting party represents the prosecution when the appeal is submitted, the chair of the panel of the court of second instance shall refer the case documents to the court of third instance directly.

Court procedure at third instance

Section 811 (1) If no appeal was submitted to the detriment of the accused against the judgment, the substitute private prosecuting party may motion the court to set a public session.

(2) The court of third instance shall summon the substitute private prosecuting party and his legal representative to the public session.

Adjudicating an appeal filed against an order passed by a court of second or third instance on setting aside

Section 812 The substitute private prosecuting party shall be eligible to submit an appeal against an order on setting aside by the court of second or third instance, unless he submitted an appeal against setting aside the judgment and instructing the court to conduct a new proceeding, and the judgment was set aside for a reason stated in the appeal.

Criminal costs

Section 813 (1) If the accused was acquitted or the proceedings against the accused were terminated by the court, the substitute private prosecuting party shall bear the costs, from among the criminal costs specified in section 145 (1) and section 576 (1) *b)*, that were incurred after the substitute private prosecuting party took action.

(2) If a substitute private prosecuting party represented the prosecution and the accused was acquitted, in a situation other than that specified in section 566 (3), or the proceedings against the accused were terminated by the court in accordance with section 801 (5), 806 (2) or 810 (1a), the substitute private prosecuting party shall reimburse the fee and costs of the authorised defence counsel of the accused that were incurred after the substitute private prosecuting party took action, up to the amount specified by law, within one month after the conclusive decision becomes final and binding.

(3) The substitute private prosecuting party may be obliged to bear only the criminal costs that are related to that act or those elements of the facts of the case, and to reimburse only that part of the fees and costs referred to in paragraph (2), regarding which he filed a motion for prosecution or submitted a written notice and the court passed a judgment of acquittal, with the exception of the situation specified in section 566 (3), or terminated the proceeding.

(4) The court of second instance shall oblige the substitute private prosecuting party to bear the criminal costs, and the fee and costs specified in paragraph (2), that were incurred in the second instance proceeding if only the substitute private prosecuting party filed an appeal against the decision of the court of first instance, and the court of second instance upheld the.

(5) The court of third instance shall oblige the substitute private prosecuting party to bear the criminal costs, and the fee and costs specified in paragraph (2), that were incurred in the third instance proceeding if only the substitute private prosecuting party filed an appeal against the decision of the court of second instance, and the court of third instance upheld the decision.

Derogation from the provisions concerning extraordinary legal remedies

Section 814 (1) A substitute private prosecuting party may file a motion for retrial only if the defendant was acquitted or the proceeding was terminated for a reason other than those referred to in sections 801 (5), 806 (2) and 810 (1a).

(2) The motion for retrial shall be filed with, or recorded in minutes at the court that is authorised to decide on the possibility of granting a retrial.

Section 815 (1) A substitute private prosecuting party may not file a motion for review.

(2) If a motion for review may not be dismissed and a substitute private prosecuting party represented the prosecution in the main case, the Curia shall send the motion to the substitute private prosecuting party for the purpose of obtaining his statement.

(3) The substitute private prosecuting party shall send his statement to the Curia within one month.

(4) The Curia shall send the statement of the substitute private prosecuting party to the person who filed the motion for review, to the defendant and to the defence counsel.

(5) The persons referred to in paragraph (4) may make their observations regarding the statement of the substitute private prosecuting party within fifteen days of service.

(6) The attendance of the substitute private prosecuting party and the legal representative at the public court session shall be mandatory.

Section 816 (1) If legal remedy is submitted on the ground of legality, the substitute private prosecuting party and his legal representative shall be notified about the public court session.

(2) The substitute private prosecuting party may make observations, and address the court in a public session, regarding the legal remedy submitted on the ground of legality.

(3) The uniformity decision shall also be communicated to the substitute private prosecuting party.

(4) A substitute private prosecuting party may not move for a simplified review procedure.

Derogation from the provisions concerning specific proceedings and special proceedings

Section 817 (1) A substitute private prosecuting party may not bring an accused before the court in accordance with the immediate summary procedure.

(2) A substitute private prosecuting party may not file a motion for conducting a procedure for passing a punishment order.

(3) In a proceeding for passing a punishment order,

a) the substitute private prosecuting party may move for trial within eight days after receipt of the punishment order,

b) the court, on the basis of a motion for trial filed by the substitute private prosecuting party, shall continue the proceeding pursuant to Chapter C, subject to the derogations laid down in this Chapter.

(4) A substitute private prosecuting party may not move for a court proceeding to be conducted against an absent defendant or in the absence of a defendant staying abroad.

(5) The substitute private prosecuting party shall not file a motion for conducting a special proceeding.

Chapter CV/A

PROCEDURE RELATING TO A SPECIAL CRIMINAL OFFENCE RELATED TO THE EXERCISE OF PUBLIC AUTHORITY OR THE MANAGEMENT OF PUBLIC PROPERTY

Section 817/A (1) For the purposes of this Act, the following shall constitute a special criminal offence related to the exercise of public authority or the management of public property:

a) corruption criminal offences (Chapter XXVII of the Criminal Code), except for

aa) less severe forms of active bribery [section 290 (1) and (6) of the Criminal Code],

ab) a less severe form of passive bribery [section 291 (1) of the Criminal Code],

b) abuse of office (section 305 of the Criminal Code) except if committed by a public officer holding a non-executive position at a law enforcement organ, a national security service, the Parliamentary Guard, a capital or county government office, a local government administration organ or statutory professional body,

c) the following criminal offences against property if committed against national assets or assets managed by a public interest asset management foundation performing public duty, or causing damage to such assets:

ca) aggravated forms of embezzlement [section 372 (4) to (6) of the Criminal Code],

cb) aggravated forms of fraud [section 373 (4) to (6) of the Criminal Code],

cc) aggravated forms of economic fraud [section 374 (4) to (6) of the Criminal Code],

cd) aggravated forms of information system fraud [section 375 (2) to (4) of the Criminal Code]

ce) misappropriation (section 376 of the Criminal Code),

d) the following criminal offences damaging the budget (Chapter XXXIX of the Criminal Code):

da) aggravated forms of budget fraud [section 396 (3) to (6) of the Criminal Code],

db) failure to comply with the supervisory or control obligation related to budget fraud (section 397 of the Criminal Code),

e) agreement restricting competition in a public procurement and concession procedure (section 420 of the Criminal Code),

f) if committed in connection with a criminal offence referred to in points *a)* to *e)*:

fa) participation in a criminal organisation (section 321 of the Criminal Code), and

fb) money laundering (sections 399 and 400 of the Criminal Code).

(2) In a criminal proceeding instituted for a special criminal offence related to the exercise of public authority or the management of public property, the provisions of this Act shall apply subject to the derogations laid down in this Chapter.

(3) In a proceeding under this Chapter, legal representation shall be mandatory for a person filing a motion for revision, a person filing a repeated motion for revision, a person filing a motion for designation as a person entitled to present the motion for prosecution in accordance with section 817/J (9) if section 817/J (3) applies, and a person entitled to present the motion for prosecution. A person filing a motion for revision, a person filing a repeated motion for revision, a person filing a motion for designation as a person entitled to present the motion for prosecution in accordance with section 817/J (9) if section 817/J (3) applies, and a person entitled to present the motion for prosecution shall submit his written notice, observation and motion through his legal representative.

(4) In a proceeding under this Chapter, a person filing a motion for revision, a person filing a repeated motion for revision, and a person filing a motion for designation as a person entitled to present the motion for prosecution in accordance with section 817/J (9) if section 817/J (3) applies shall not file a request for legal aid.

(5) In a proceeding under this Chapter, no application for excuse may be accepted for failing to meet a time limit set for a procedural act by a person filing a motion for revision, a person filing a repeated motion for revision, a person filing a motion for designation as a person entitled to present the motion for prosecution in accordance with section 817/J (9) if section 817/J (3) applies, and a person entitled to present the motion for prosecution.

(6) Conditional suspension by a prosecutor shall not be applied

a) in a criminal proceeding conducted for a criminal offence referred to in paragraph (1) *a)* if the criminal offence is committed in connection with a public procurement proceeding or budget or fund managed by or on behalf of the European Union, and

b) in a criminal proceeding conducted for a criminal offence of agreement restricting competition in a public procurement and concession procedure (section 420 of the Criminal Code).

Dismissing a crime report and terminating a proceeding

Section 817/B (1) If the prosecution service or the investigating authority dismisses a crime report for a special criminal offence related to the exercise of public authority or the management of public property in accordance with section 381 (1) *a)* to *c)* or *g)*, or terminates a proceeding for such a criminal offence in accordance with section 398 (1) *a)* to *d)* or *i)* or (2) *a)*, a motion for revision may be submitted.

(2) A motion for revision shall not be submitted if

a) the reported person, or the defendant, is a juvenile,

b) the perpetrator is not liable to punishment or his act is not punishable due to infancy or a mental disorder,

c) a covert investigator, a member of an organ authorised to use covert means, or a person cooperating in secret can be reasonably suspected of having committed the criminal offence, and the prosecution service dismissed the crime report, or terminated the proceeding, under section 224 (1), or

d) the prosecution service dismissed the crime report under section 382 (1) or terminated the proceeding under section 399 (1).

Revision

Section 817/C (1) If the submission of a motion for revision is permissible in a situation referred to in section 817/B (1) and (2), the aggrieved party and the party reporting a crime may, by way of derogation from section 369 (1) and (2), submit a motion for revision within one month of the service of the decision dismissing the crime report or terminating the proceeding, in place of submitting a complaint.

(2) The prosecution service or the investigating authority shall, within five working days of

a) the expiry of the period set in paragraph (1) if neither the aggrieved party nor the party reporting a crime submits a motion for revision, or

b) the decision under paragraph (1) being taken if neither an aggrieved party nor a party reporting a crime participates in the proceeding or can submit a motion for revision in accordance with paragraph (7),

publish for a month its decision referred to in section 817/B (1) and the case document list applying pseudonymisation within the meaning of point 29 of section 3 of Act CXII of 2011 on the right to informational self-determination and on the freedom of information (hereinafter “anonymised decision” and “anonymised case document list”).

(3) An anonymised decision and an anonymised case document list shall be published

a) on the central electronic information website of the prosecution service or the investigating authority, and

b) on the publication platform specified in a decree by the Government.

(4) Anonymised decisions and anonymised case document lists shall be published in a manner that

a) they are continuously available and accessible via the Internet using the widespread browsers, and

b) they can be searched on the website by, at least,

ba) the designation of the issuing prosecution office or investigating authority,

bb) the number of the case on which the public notice is based,

bc) the date of the publication of the public notice, and

bd) the designation of the criminal offence subject to the proceeding or, if there is more than one criminal offence, the designation of each criminal offence.

(5) In the course of publication, information shall be provided about the conditions for submitting a motion for revision against the decision, the rights and obligations of the person who submits the motion for revision, the time limit for the submission of the motion for revision, and the organ to which the motion for revision is to be submitted.

(6) Any natural or non-natural person other than a suspect, a defence counsel, an aggrieved party or a party reporting a crime may submit a motion for revision within one month of the publication of an anonymised decision on the central electronic information website of the prosecution service or the investigating authority.

(7) The State and an organ exercising public authority other than the Integrity Authority shall not be entitled to submit a motion for revision, even if they participate in the proceeding as a party reporting a crime or an aggrieved party.

(8) Before the submission of a motion for revision, the person who submits the motion for revision other than an aggrieved party or a party reporting a crime may access, from among the case documents, only the anonymised decision and the anonymised case document list.

(9) A complaint submitted by a suspect, a defence counsel, a party with a pecuniary interest, an other interested party as well as the State or an organ exercising public authority qualifying as an aggrieved party or a party reporting a crime shall be assessed following the assessment of the motion for revision by the court, taking into account the outcome of the assessment of the motion for revision. In such a situation, the period between terminating the proceeding and setting aside *ex officio* the decision terminating the proceeding or serving the court decision on the prosecution service shall not be calculated into the time limit for assessing the complaint.

(10) The submission of a motion for revision shall have suspensory effect on the provisions of the decision under section 817/B (1) other than the provisions relating to coercive measures affecting personal freedom.

Section 817/D (1) A motion for revision shall be submitted to the prosecution office or investigating authority that passed the decision. For a motion for revision, reasons shall be given, and the person filing a repeated motion for revision may attach the data, documents and statements available that the person filing the motion considers capable of proving a fact to be proved in the case.

(2) The prosecution office or investigating authority that passed the decision shall examine a motion for revision after the expiry of the time limit for submission, and, if the complaint is considered well-grounded, it shall set aside the decision, and order the investigation or the continuation of the proceeding. Otherwise, a motion, the attached documents and the case documents shall be referred to, for a decision that was passed by an investigating authority, the prosecution office or, for a decision that was passed by a prosecution office, the superior prosecution office within three days of the expiry of the time limit for submission of the motion for revision.

(3) If the motion referred in accordance with paragraph (2) if well founded, for a decision that was passed by an investigating authority, the prosecution office or, for a decision passed by a prosecution office, the superior prosecution office shall set aside the decision, and order the investigation or the continuation of the proceeding. Otherwise, the motion, the attached documents and the case documents, together with any observations relating to the motion, shall be sent to the court within eight days of receipt of the motion.

Section 817/E (1) For assessing a motion for revision, an investigating judge of the Investigating Judge Group of the Buda Central District Court shall proceed with jurisdiction over the entire country.

(2) The court shall decide on a motion for revision within one month of receipt by the court.

(3) Where a motion for revision is submitted against a decision terminating a proceeding and

a) the volume of case documents and attached documents is significant, or

b) a significant number of motions for revision have been submitted,

the court may extend the time limit for up to two months. The court shall serve its relevant decision on the person who submitted the motion for revision.

(4) Section 476 (2) shall not apply to the assessment of a motion for revision.

(5) The court shall assess all motions for revision jointly.

(6) The court shall decide on a motion for revision on the basis of case documents, with the proviso that no session shall be held in accordance with section 467.

Section 817/F (1) The court shall revise the challenged decision without regard to the reasons of the motion for revision; to this end, it shall fully examine the case documents and the data, documents and statements attached by the person filing the motion that the person filing the motion considers capable of proving a fact to be proved in the case.

(2) If the assessment of a motion is not prevented by any obstacle, the court shall decide by passing a non-conclusive order either

a) dismissing the motion, or

b) setting aside the challenged decision.

(3) A setting-aside decision by the court shall be without prejudice to a provision on a coercive measure affecting personal freedom in the decision subject to revision.

(4) The court shall set aside the challenged decision if

a) the challenged decision is groundless,

b) the prosecution service or the investigating authority applied a law incorrectly in the challenged decision, or

c) the statement of reasons for the challenged decision is inconsistent with its operative part,

and this had a material impact on dismissing the crime report or terminating the proceeding.

(5) A challenged decision is groundless if

a) in the decision, the prosecution office or the investigating authority failed to establish any or all facts of the case,

b) some or all facts of the case remain undetected,

c) the established facts of the case are inconsistent with the content of the case documents referred to in paragraph (1), or

d) the prosecution office or the investigating authority reached incorrect conclusions regarding any fact on the basis of the facts established in the decision.

(6) The statement of reasons of a court decision shall include the following:

a) short description of the material elements of the challenged decision,

b) short summary of the objections specified in the motion for revision,

c) a reference to the fact that the statutory conditions for a motion for revision are met or to their absence, and

d) in case of setting aside, presentation of circumstances based on which the challenged decision is to be set aside and, in case of groundlessness, also circumstances, based on which the institution or continuation of the proceeding can be expected to yield results; or, in case of the dismissal of the decision, presentation of circumstances, based on which the motion for revision is to be dismissed.

(7) The court shall serve

a) the decision

aa) on the prosecution office that passed the challenged decision,

ab) on the prosecution office that sent the motion for revision if the challenged decision was adopted by an investigating authority, and

ac) on a person subject to a provision of the decision,

b) a decision anonymised in accordance with section 817/C (2) on the person who submitted the motion for revision, except if point *c)* applies, and

c) the decision on the aggrieved party or the party reporting a crime if the motion for revision was submitted by him.

Procedure after the challenged decision is set aside

Section 817/G (1) If the court

a) set aside a decision dismissing a crime report, the investigation shall be instituted upon the passing of the decision, without a separate decision to that effect,

b) set aside a decision terminating the proceeding, the proceeding shall continue upon the passing of the decision, without a separate decision to that effect.

(2) The provisions of section 400 shall not apply to the continuation of the proceeding. If suspicion was communicated previously in the case and the statutory conditions for the communication of suspicion are met, the suspicion shall be repeatedly communicated to the previous suspect. In such a situation, the period between the termination of the proceeding and the repeated communication of the suspicion shall not be calculated into the time limit for investigation under section 351.

(3) If the investigation is instituted or the proceeding is continued, the prosecution office or the investigating authority shall continue the proceeding relying on the elements of the statement of reasons for the court decision and, in case of undetected facts, striving to eliminate the specified deficiencies.

(4) If investigation is instituted or the proceeding is continued,

a) the prosecution service shall exercise the control powers specified in section 26 (3),

b) a decision terminating the proceeding may be adopted subject to a prior approval of the entity exercising control powers,

c) by way of derogation from section 369 (1), an aggrieved party may not submit a complaint against a decision terminating a proceeding, and an aggrieved party that previously submitted a motion for revision may submit a repeated motion for revision in accordance with the provisions of this Chapter,

d) a decision terminating the proceeding may be set aside *ex officio* or in the course of the assessment of a complaint submitted by a suspect, a defence counsel, a party with a pecuniary interest or an other interested party against a decision terminating the proceeding only if no motion for prosecution was submitted.

(5) If the investigation is instituted or the proceeding is continued, the person submitting the motion for revision shall henceforth be entitled to submit evidence and make observations.

Repeated revision

Section 817/H (1) If, in a proceeding conducted in accordance with section 817/G, the prosecution service or the investigating authority terminates the proceeding in accordance with section 398 (1) *a)* to *d)* or *i)* or paragraph (2) *a)*, a repeated motion for revision may be submitted. A repeated motion for revision shall not be submitted in the cases referred to in section 817/B (2).

(2) If a repeated motion for revision may be submitted in accordance with paragraph (1), the prosecution service or the investigating authority shall serve

a) on the aggrieved party and party reporting a crime that submitted the motion for revision its decision,

b) on the person referred to in section 817/C (6) or (7), who submitted the motion for revision, its anonymised decision,

together with the anonymised case document list.

(3) Only a person who previously submitted a motion for revision may submit a repeated motion for revision. A person who previously submitted a motion for revision may submit a repeated motion for revision against the decision within one month of the service of the decision on termination.

(4) Before the submission of a repeated motion for revision, the person who submits the repeated motion for revision other than an aggrieved party or a party reporting a crime may access, from among the case documents, only the anonymised decision and the anonymised case document list.

(5) The submission of a repeated motion for revision shall have suspensory effect on the provisions of the decision under paragraph (1) other than the provisions relating to coercive measures affecting personal freedom.

(6) A repeated motion for revision shall be submitted to the prosecution office or investigating authority that passed the decision. For a repeated motion for revision reasons shall be given, and the person filing a repeated motion for revision may attach the data, documents and statements available that the person filing the motion considers capable of proving a fact to be proved in the case. The prosecution office or the investigating authority that passed the decision shall send the motion and the attached documents to the court within three days of the expiry of the time limit for submission of the motion.

(7) The provisions of sections 817/E and 817/F shall apply to the assessment of a repeated motion for revision. If the decision should be set aside, the court shall establish, in place of setting aside the decision, that the submission of a motion for prosecution may be permissible. If the court finds that the submission of a motion for prosecution is permissible, the suspensory effect of a repeated motion for revision under paragraph (5) shall last until the expiry of the time limit for the submission of the motion for prosecution or, if a motion for prosecution is submitted, until a decision is adopted by the court during the preparation of the trial.

(8) If the court finds that the submission of a motion for prosecution is permissible, and more than one person has submitted a repeated motion for revision in the proceeding, the court shall, when serving the decision, provide information about the name and available contact details of the legal representatives of the other persons who filed a repeated motion for revision.

Submission of a motion for prosecution

Section 817/L (1) If the court finds that the submission of a motion for prosecution is permissible, and only the Integrity Authority submitted a repeated motion for revision, the prosecution office that passed the challenged decision or, if the challenged decision was passed by an investigating authority, the prosecution office that sent the motion for revision shall, within five working days of the service of the decision of the court on the assessment of the repeated motion for revision, publish for one month

a) the anonymised case document list,

b) the anonymised decision challenged by the repeated motion for revision,

c) the court decision adopted in connection with the repeated motion for revision that is anonymised decision in accordance with section 817/C (2),

d) the court decision adopted in connection with the motion for revision that is anonymised in accordance with section 817/C (2).

(2) Section 817/C (3) and (4) shall apply to publishing the anonymised decision, the anonymised case document list and the anonymised court decisions.

(3) In the course of publication, information shall be provided that a motion for prosecution may be submitted, observing the provisions of paragraph (1), against the decision, and about the conditions for submitting a motion for prosecution, the rights and obligations of the person entitled to present the motion for prosecution, the time limit for the submission of a motion for prosecution and the organ to which the motion for prosecution is to be submitted.

(4) The provisions on substitute private prosecution shall not apply if an aggrieved party participated in the proceeding, and the aggrieved party may take action in a proceeding under this Chapter.

(5) Any reference to an indictment document in this Act shall be construed to mean also a motion for prosecution that is admitted by the court.

Section 817/J (1) With the exceptions specified in paragraphs (2) and (3), only a person who filed a repeated motion for revision previously may submit a motion for prosecution.

(2) The Integrity Authority shall not submit a motion for prosecution and shall not act as person entitled to present the motion for prosecution.

(3) If only the Integrity Authority submitted a repeated motion for revision, any natural or non-natural person may submit a motion for prosecution. The State or an organ exercising public authority shall not be entitled to submit a motion for prosecution and shall not act as a person entitled to present the motion for prosecution.

(4) If more than person filed a repeated motion for revision, only one among them shall be entitled to act in the proceeding as person entitled to present the motion for prosecution henceforth. In such a case, the designation of the person acting as person entitled to present the motion for prosecution from among the persons who filed a repeated motion for revision shall be subject to the agreement of the persons who previously filed a repeated motion for revision. The agreement shall be reached within fifteen days of the service of the court decision assessing the repeated motion for revision. If no agreement is reached, the court competent to assess the repeated motion for revision shall designate the person entitled to present the motion for prosecution. The motion for designating a person entitled to present the motion for prosecution shall be submitted to the court that adopted the decision terminating the proceeding within twenty days of service of the court decision assessing the repeated motion for revision.

(5) The prosecution office or the investigating authority through the prosecution office shall send the motions together with the case documents to the court competent to assess the repeated motion for revision immediately upon expiry of the time limit set in paragraph (4). The court shall decide on the designation of the person entitled to present the motion for prosecution within eight days.

(6) Where the party reporting a crime submitted a motion to be designated as person entitled to present the motion for prosecution, the court shall designate the party reporting a crime as such.

(7) Where the party reporting a crime did not submit a motion to be designated as person entitled to present the motion for prosecution, but the aggrieved party did submit a motion to be designated as person entitled to present the motion for prosecution, the court shall designate the aggrieved party as such.

(8) If more than one person submitted a motion for prosecution, the court shall decide on the designation of the person entitled to present the motion for prosecution by considering the designation of which person filing a motion is supported by the majority of the persons filing a motion for revision.

(9) If, in a situation referred to in paragraph (3), a person entitled to do so intends to submit a motion for prosecution, the person entitled to present the motion for prosecution shall be designated by the court competent to assess the repeated motion for revision. A motion for designating a person entitled to present the motion for prosecution shall be submitted to the authority that adopted the decision terminating the proceeding within one month of the publication referred to in section 817/I (1). The prosecution office or the investigating authority through the prosecution office shall send the motion together with the case documents to the court competent to assess the repeated motion for revision immediately upon expiry of the time limit. The court shall decide on the designation of the person entitled to present the motion for prosecution within eight days.

(10) No legal remedy shall lie against the decision of the court.

Section 817/K (1) Where the person entitled to present the motion for prosecution is designated by the court, the time limit for the submission of the motion for prosecution shall be calculated from the service of the court decision.

(2) If the person entitled to present the motion for prosecution dies during the proceeding or cannot participate in it due to his permanent and serious illness,

a) the other persons who filed a repeated motion for revision previously shall be entitled to agree upon a new person acting as person entitled to present the motion for prosecution or move for designation by the court in accordance with section 817/J (4) to (8), or

b) if section 817/J (3) applies, the person filing a motion for designation as person entitled to present the motion for prosecution in accordance with section 817/J (9) shall be entitled to move for designation by the court in accordance with section 817/J (9).

(3) Where the person entitled to present the motion for prosecution was designated by the court and this person does not submit a motion for prosecution within the relevant time limit,

a) the other persons who filed a repeated motion for revision previously shall be entitled to agree upon a new person entitled to present the motion for prosecution once, within fifteen days following the expiry of the time limit for the submission of the motion for prosecution, or

b) if section 817/J (3) applies, the person filing a motion for designation as person entitled to present the motion for prosecution in accordance with section 817/J (9) shall be entitled to move for designation by the court in accordance with section 817/J (9).

(4) The new person entitled to present the motion for prosecution referred to in paragraph (3) shall submit the motion for prosecution within fifteen days of the agreement or the service of the court order on designation.

Section 817/L A person entitled to present the motion for prosecution shall be given the opportunity to access the case documents other than those processed confidentially. The person entitled to access the case documents and his legal representative may use the case documents exclusively for the purposes of the proceeding under this Chapter. The case documents accessed shall not be disclosed to the public.

Section 817/M (1) The person entitled to present the motion for prosecution shall submit the motion for prosecution within two months of

a) the service of the court decision assessing the repeated motion for revision, or

b) if section 817/J (3) applies, the service of the court order designating the person entitled to present the motion for prosecution in accordance with section 817/J (9).

(2) A motion for prosecution shall be submitted to the prosecution office or investigating authority that passed the decision referred to in section 817/H (1). The prosecution office or the investigating authority through the prosecution office shall forward the motion for prosecution together with the case documents to the court with subject-matter and territorial jurisdiction over the case under sections 19 to 22 within eight days of receipt. The territorial jurisdiction of the court shall not be established pursuant to section 21 (3).

(3) The motion for prosecution shall include the following:

a) elements referred to in section 422 (1) *a)* to *c*,

b) elements referred to in section 422 (2) *a)*, and

c) motions for evidence relating to proving certain acts or partial acts.

(4) Data, documents and statements available to the person entitled to present the motion for prosecution that he considers capable of proving a fact to be proved in the case may be attached to a motion for prosecution.

Preliminary examination of a motion for prosecution

Section 817/N (1) The court shall dismiss the motion with a non-conclusive order if

a) the person entitled to present the motion for prosecution filed it after the expiry of the statutory time limit;

b) the person entitled to present the motion for prosecution does not have a legal representative;

c) the person filing the motion for prosecution is not entitled to file the motion for prosecution under this Act;

d) the act subject to the motion for prosecution does not constitute a special criminal offence related to the exercise of public authority or the management of public property;

e) the motion for prosecution does not include the elements referred to in section 817/M (3) *a)* and *b)*, or

f) the motion for prosecution was not submitted through a legal representative.

(2) The party entitled to present the motion for prosecution may file the motion for prosecution again within fifteen days after receipt of the non-conclusive order dismissing the motion for prosecution, provided that it was dismissed by the court under paragraph (1) *b)*, *e)* or *f)*, and the ground for dismissal no longer exists.

(3) The court may not dismiss the motion for prosecution on the ground that it does not include all the personal data specified in section 184 (2) of the person specified as accused in the motion for prosecution, and such data cannot be established from the case documents either, provided that the defendant may be identified beyond any doubt even in the absence of such data.

(4) Paragraph (1) *d)* shall not apply if the act subject to the motion for prosecution constitutes a criminal offence that is closely related to the special criminal offence related to the exercise of public authority or the management of public property subject to the motion for prosecution.

(5) No court session shall be held in the course of the preliminary examination of a motion for prosecution.

(6) If it dismisses a motion for prosecution with a non-conclusive order, the court shall serve its decision on the person entitled to present the motion for prosecution.

(7) No appeal shall lie against dismissing a motion for prosecution.

Examination of the grounds of a motion for prosecution

Section 817/O (1) If no grounds exist to dismiss the motion for prosecution, the court shall examine, within two months of the submission of the motion for prosecution, whether the person specified as accused in the motion for prosecution can be reasonably suspected of having committed the criminal offence subject to the motion for prosecution

(2) When assessing whether a motion for prosecution is well-grounded, the court shall fully examine the case documents and the data, documents and statements attached by the person entitled to present the motion for prosecution.

Section 817/P (1) With a non-conclusive order, the court shall

a) dismiss a motion for prosecution if the person specified as accused in the motion for prosecution cannot be reasonably suspected of having committed the criminal offence subject to the motion for prosecution,

b) dismiss in part a motion for prosecution, if one of the persons specified as accused in the motion for prosecution cannot be reasonably suspected of having committed the criminal offence subject to the motion for prosecution, or the person specified as accused in the motion for prosecution cannot be reasonably suspected of having committed one of the criminal offences subject to the motion for prosecution.

(2) If any data discovered during the examination of the motion for prosecution suggests that the person specified as accused in the motion for prosecution has immunity and the dismissal of the motion for prosecution with respect to the person concerned is not in order, the court shall request a decision by the entity authorised to lift immunity. Should the entity authorised to lift immunity not lift immunity, the court shall dismiss the motion for prosecution in whole or in part.

(3) No court session shall be held in the course of the examination of the grounds of a motion for prosecution.

(4) If it dismisses, in whole or in part, a motion for prosecution with a non-conclusive order, the court shall serve its decision on the person entitled to present the motion for prosecution.

(5) If the court dismisses a motion for prosecution in part, the person entitled to present the motion for prosecution shall file again with the court the motion for prosecution excluding the dismissed parts of the motion for prosecution, within fifteen days of the service of the decision. Should the person entitled to present the motion for prosecution fail to do so, the court shall terminate the proceeding by a conclusive order. The person entitled to present the motion for prosecution shall be advised accordingly in the non-conclusive order.

Rules of the court procedure after the admission of the motion for prosecution

Section 817/Q (1) If no grounds exist to dismiss the motion for prosecution, the court

a) shall send it to the accused without delay,

b) shall make arrangements to have the means of evidence available at trial,

c) may order the use of coercive measures.

(2) The participation of a defence counsel in the proceeding shall be mandatory after the service of the motion for prosecution on the accused.

(3) The accused and the defence counsel shall be entitled to inspect case documents after the service of the motion for prosecution.

(4) If the accused used a language other than the Hungarian language in the proceeding, the court shall make arrangements to have the parts of the motion for prosecution pertaining to the accused translated into the language used by him during the proceeding.

Section 817/R (1) Unless otherwise provided in this Act, the person entitled to present the motion for prosecution may exercise the rights of the prosecution service, and he shall carry out the tasks of the prosecution service, during the court procedure, including filing a motion for ordering any coercive measure affecting the personal freedom of the accused or for issuing an arrest warrant. The person entitled to present the motion for prosecution shall not extend the indictment.

(2) The person entitled to present the motion for prosecution may abandon the indictment at any time. No reasons need to be provided for abandoning an indictment. If the person entitled to present the motion for prosecution abandons the indictment, the court shall terminate the proceeding.

(3) With the exception of decisions passed in the context of administering the trial and keeping its order, all decisions shall be communicated to the person entitled to present the motion for prosecution.

(4) No other case shall be joined to a case conducted on the basis of a motion for prosecution, except if the accused was released on probation previously in a private prosecution case or a public prosecution case.

Section 817/S (1) With the exceptions specified in paragraph (2), the attendance of the legal representative of the person entitled to present the motion for prosecution shall be mandatory at trial. If the person entitled to present the motion for prosecution does not attend the trial, his legal representative shall have the right to ask questions of the persons participating in the criminal proceeding and submit motions, without prejudice to the rights of the person entitled to present the motion for prosecution specified in section 817/R (1) and (2).

(2) If the legal representative of the person entitled to present the motion for prosecution fails to appear at trial without providing a well-grounded excuse in advance and without delay, but the person entitled to present the motion for prosecution is present, the court shall hold the trial; however, a disciplinary fine shall be imposed on the legal representative. The court shall advise the legal representative of this provision in the summons.

(3) If neither the person entitled to present the motion for prosecution, nor his legal representative appear at trial without providing a well-grounded excuse in advance and without delay, or both persons appear, due to their own fault, at trial in a condition making them unable to perform their procedural obligations, or if both persons leave the place of the procedural act without permission, the court shall terminate the proceeding with a conclusive order. Advice of this provision shall be provided to the person entitled to present the motion for prosecution in the notification, and to the legal representative in the summons.

(4) The legal representative of the person entitled to present the motion for prosecution may not be expelled or removed from a trial even in the event of repeated or gravely disruptive conduct. If the legal representative of the person entitled to present the motion for prosecution does not cease his disruptive conducts and, by his conduct, he makes it impossible to continue the trial in his presence, a disciplinary fine shall be imposed on the legal representative, and the person entitled to present the motion for prosecution may authorise another legal representative. If this is not possible immediately, the court shall adjourn the trial at the cost of the disrupting legal representative.

(5) If the legal representation of the person entitled to present the motion for prosecution is terminated during the proceeding and he fails to arrange for legal representation by the next trial date, the court shall terminate the proceeding with a conclusive order.

(6) If the person entitled to present the motion for prosecution dies during the proceeding or cannot participate in it due to his permanent and serious illness, the court shall inform accordingly the other persons filing a repeated motion for revision as well as the other persons filing a motion for designating a person entitled to present the motion for prosecution in accordance with section 817/J (9). The other persons filing a repeated motion for revision shall be entitled to agree upon a new person to act as person entitled to present the motion for prosecution, within 15 days of information provision. The other persons filing a motion for designation as person entitled to present the motion for prosecution in accordance with section 817/J (9) shall be entitled to move for designation by the court conducting the proceeding in accordance with section 817/J (9), within 15 days of information provision.

(7) If the person entitled to present the motion for prosecution was designated by the court and he abandoned the indictment or the court terminates the proceeding in accordance with section 817/P (5) or paragraphs (3) or (5), the court shall serve its decision terminating the proceeding on the other persons filing a repeated motion for revision as well as on the other persons filing a motion for designating a person entitled to present the motion for prosecution in accordance with section 817/J (9).

(8) In a situation referred to in paragraph (7), the other persons who filed a repeated motion for revision shall be entitled to agree upon, once, within fifteen days of service, a new person entitled to present the motion for prosecution, who may withdraw the abandonment of the indictment or remedy the omission. In this event, the proceeding shall be continued.

(9) In a situation referred to in paragraph (7), the other persons filing, a motion for designation as person entitled to present the motion for prosecution in accordance with section 817/J (9) shall be entitled to move, within fifteen days of service, for designation by the court that adopted the decision terminating the proceeding in accordance with section 817/J (9) The new person entitled to represent the prosecution designated by the court may withdraw the abandonment of the indictment or remedy the omission within fifteen days. In this event, the proceeding shall be continued.

Appeals

Section 817/T (1) The person entitled to present the motion for prosecution may not submit an appeal against the court judgment.

(2) If an appeal is submitted, the court shall refer the case documents directly to the court competent to adjudicate the appeal.

(3) The court shall send a final and binding conclusive decision passed in a proceeding under this Chapter also to the prosecution office that proceeded in the case previously.

(4) In a situation described in section 817/S (3) or (5), the court of second instance shall set aside the first instance decision and terminate the proceeding.

Criminal costs

Section 817/U (1) If the accused was acquitted or the proceedings against the accused were terminated by the court, the person entitled to present the motion for prosecution shall bear the costs, from among the criminal costs specified in section 145 (1) and section 576 (1) *b)*, that were incurred in the course of the court proceeding.

(2) If the accused was acquitted, in a situation other than that specified in section 566 (3), or the proceedings against the accused were terminated by the court because of the abandonment of the indictment, the person entitled to present the motion for prosecution shall reimburse the fee and costs of the authorised defence counsel of the accused that were incurred in the course of the court proceeding, up to the amount specified by law, within one month after the conclusive decision becomes final and binding.

(3) The person entitled to present the motion for prosecution may be obliged to bear only the criminal costs that are related to that act or that part of the facts of the case, and to reimburse only that part of the fees and costs referred to in paragraph (2), regarding which the court passed a judgment of acquittal in a situation other than that under section 566 (3), or terminated the proceeding.

Derogation from the provisions concerning extraordinary legal remedies

Section 817/V (1) A person entitled to present the motion for prosecution may not file a motion for retrial and a motion for review.

(2) No legal remedy submitted on the ground of legality shall be permitted against a decision adopted in a proceeding under this Chapter.

(3) Chapters C, CI and CIII shall not apply to a proceeding under this Chapter. A person entitled to present the motion for prosecution shall not move for the conduct of a special proceeding.

Rules relating to adverse legal consequences due to the institution of a criminal proceeding

Section 817/W As regards adverse legal consequences due to the institution of a criminal proceeding, the rules on substitute private prosecution procedure shall apply pertaining to the person against whom a motion for prosecution was submitted in accordance with the provision of this Chapter.

Chapter CVI

PROCEDURE FOR THE REMOVAL OF ASSETS OR THINGS, OR RENDERING DATA INACCESSIBLE

Section 818 In a proceeding for the removal of assets or things, or rendering inaccessible data relating to a criminal offence (hereinafter "proceeding for the removal of assets"), the provisions of this Act shall apply subject to the derogations laid down in this Chapter.

Conditions for conducting a proceeding

Section 819 (1) A proceeding for the removal of assets may be conducted if

a) no investigation was instituted,

b) a criminal proceeding was terminated, or

c) a criminal proceeding was suspended, because

ca) the perpetrator is staying at an unknown location or in another country,

cb) the perpetrator cannot participate in the proceeding due to his permanent and serious illness, or a mental disorder that occurred after the commission of the criminal offence, or

cc) the identity of the perpetrator could not be determined during the investigation,

and confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, termination of hosting service provision, or taking a seized thing into State ownership is necessary.

(2) A proceeding for the removal of assets may be conducted after a final and binding conclusive decision is passed by a court if

a) recovering assets originating from a criminal offence or

b) ordering retrospectively confiscation, forfeiture of assets, the rendering of electronic data permanently inaccessible, or the termination of hosting service provision

is necessary.

(3) A proceeding for the removal of assets may not be conducted

a) on the basis of paragraph (1) *a)* if a crime report was dismissed because the act does not constitute a criminal offence,

b) on the basis of paragraph (1) *b)* if the proceeding was terminated because the act does not constitute a criminal offence, or

c) on the basis of paragraph (2) if a simplified review procedure is in order under point 12 of section 671,

d) in a situation described in paragraph (2) *a)* if five years passed after the conclusive decision of the court became final and binding.

Locating assets, things, or data relating to a criminal offence

Section 820 (1) In a situation described in section 819 (1), the prosecution service or investigating authority shall order assets, things, or data relating to a criminal offence to be located, or the ownership status of a seized thing to be clarified (hereinafter jointly "search for assets") if it is reasonable to assume that the purpose of a proceeding for the removal of assets can be achieved and

a) no investigation was instituted, or

b) it is not possible, on the basis of data of the proceeding, to pass a decision on the merits of the matter of

ba) confiscation, forfeiture of assets, rendering electronic data inaccessible, termination of hosting service provision, or

bb) taking a seized thing into State ownership.

(2) In a situation specified in section 819 (2), the prosecution service shall order a search for assets after a final and binding conclusive decision is passed by a court

a) for the purpose of recovering assets originating from a criminal offence if a forfeiture of assets, expressed as a sum of money, was ordered in a final and binding conclusive decision, and

aa) the enforcement of forfeiture of assets failed, according to the information provided by the state tax and customs authority, or

ab) the assets of a defendant falling within the scope of forfeiture of assets could not be secured before a final and binding conclusive decision is passed,

b) if confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision could be applied retrospectively,

and it is reasonable to assume that the purpose of a proceeding for the removal of assets can be achieved.

(2a) In the case of a forfeiture of assets expressed as a sum of money not exceeding five million forints, a search for assets referred to in paragraph (2) *a)* shall only be ordered if on the basis of data and means of evidence, it is reasonable to assume that the purpose of a proceeding for the removal of assets can be achieved.

(3) In a situation described in paragraph (2) *a) aa)*, the prosecution service shall notify the state tax and customs authority about ordering a search for assets.

(4) In a situation described in paragraph (1), the search for assets shall be conducted by the investigating authority or the prosecution service; in a situation described in paragraph (2), the search for assets shall be conducted by the asset recovery organ of the investigating authority.

(5) In the course of a search for assets ordered under paragraph (1) or paragraph (2) *b)*,

a) data acquisition activities,

b) obtaining means of evidence, and performing evidentiary acts,

c) coercive measures other than coercive measures affecting personal freedom

may be ordered pursuant to the provisions of this Act.

(6) In the course of a search for assets ordered under paragraph (2) *a)*, in addition to those specified in paragraph (5), the use of covert means may also be ordered. To the use of covert means the provisions laid down in Part Six shall apply. The use of covert means subject to permission of a judge may be permitted by the court pursuant to the provisions laid down in Part Twelve. If covert means subject to permission of a judge were used earlier against a person concerned during the investigation, and the use of covert means subject to permission of a judge is permitted again in the course of locating assets or things relating to the criminal offence, the periods of using such covert means shall be added together, and the period specified in section 239 (2) shall be calculated accordingly.

(7) In the course of a search for assets, and with a view to securing the enforcement of a forfeiture of assets ordered in the final and binding conclusive decision and expressed as a sum of money, seizure or sequestration may also be ordered regarding assets or things that may fall within the scope of the forfeiture of assets ordered in the final and binding conclusive decision.

(8) If a party with a pecuniary interest is unknown, is at an unknown location, or does not understand the Hungarian language, a guardian *ad litem* shall be appointed for him.

(9) The rules of investigation shall apply as appropriate to the relationship between an investigating authority, the asset recovery organ of an investigating authority, and the prosecution service, with the proviso that the rules of examination shall apply after seizure or sequestration is ordered for the purpose of securing assets, things, or data relating to a criminal offence.

Section 821 (1) A search for assets may last for up to two years after it is ordered.

(2) The proceeding prosecution office, investigating authority, or the asset recovery organ of the investigating authority shall terminate a proceeding if

a) achieving the purpose of a proceeding for the removal of assets is impossible and cannot be expected, or

b) the time limit for a search for assets, as specified in paragraph (1), expired.

(3) The termination of the proceeding for the removal of assets shall not prevent a search for assets from being ordered again if a new fact or circumstance arises that serves as ground for a proceeding for the removal of assets.

(4) In a situation described in section 820 (2) *a) aa)*, the proceeding prosecution office, or the asset recovery organ of the investigating authority, shall serve on the state tax and customs authority its decision on terminating the proceeding.

(5) No complaint shall lie against a decision on terminating the proceeding.

Section 822 (1) If, on the basis of data of a proceeding or a search for assets, confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, termination of hosting service provision, taking a seized thing into State ownership, or determining if an asset falls within the scope of forfeiture of assets ordered in a final and binding conclusive decision is necessary, the proceeding prosecution office shall submit a motion to that effect to the court.

(2) The motion of the proceeding prosecution office shall contain

a) personal data that are suitable for identifying the defendant, the person reasonably suspected of having committed the criminal offence or the party with a pecuniary interest, affected by a measure specified in the motion, or the defendant or the person reasonably suspected of having committed the criminal offence affected by a coercive measure where a seized thing is taken into State ownership,

b) a specification of the asset, thing, or data affected by the measure or coercive measure,

c) a motion for applying a measure or taking a seized thing into State ownership, including a reference to applicable laws,

d) a description of the facts supporting the motion.

Court procedure

Section 823 (1) If the territorial jurisdiction of a court cannot be determined pursuant to section 21 (1) to (2) or (5), the proceeding court shall be the court with territorial jurisdiction over the location where an authority detected the circumstance serving as ground for a proceeding for the removal of assets.

(2) The court shall decide on the basis of case documents, but it shall hold a trial, if necessary.

(3) In a court proceeding, the proceeding may not be suspended.

(4) If the proceeding court holds a trial, a preparatory session may not be held.

(5) After opening the trial, the chair of the panel shall present the essence of the decision passed in the main case, as necessary, and then the prosecutor shall present the essence of the motion.

Decision of the court

Section 824 (1) In a situation described in section 819 (1) and (2) *b)*, the proceeding court shall order confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision, or, in a situation described in section 819 (1), taking a seized thing into State ownership, provided that the motion is well-grounded; otherwise, it shall dismiss the motion.

(2) In a situation described in section 819 (2) *a)*, the proceeding court shall establish that the assets identified in the motion fall within the scope of forfeiture of assets ordered in the final and binding conclusive decision, provided that the motion is well-grounded. Otherwise, it shall dismiss the motion.

(3) If the court passed its decision on the basis of case documents, no appeal shall lie against its conclusive order, but the prosecution service, a defendant, a person reasonably suspected of having committed a criminal offence, a defence counsel and a party with a pecuniary interest may move for trial within eight days after the order is served.

(4) The court shall notify all persons referred to in paragraph (3) about the trial.

(5) The provisions laid down in sections 743 to 745 shall apply to a trial held on the basis of paragraph (3).

Section 825 (1) Appeals may be filed by the prosecution service, or a person referred to in section 824 (3), against a conclusive order passed by the court in a trial.

(2) With the exception of holding a trial, the tasks specified in section 824 (1) to (4) of a court may also be carried out by a junior judge.

Bearing of criminal costs

Section 826 The proceeding court shall oblige the convict to bear the criminal costs if it establishes that the assets identified in the motion fall within the scope of forfeiture of assets ordered in the final and binding conclusive decision. Otherwise, criminal costs arising in a proceeding for the removal of assets shall be borne by the State.

Chapter CVII

PROCEDURE CONCERNING CRIMINAL OFFENCES RELATED TO THE BORDER FENCE

Section 827 (1) To a criminal proceeding instituted for illegal crossing of the border fence, vandalisation of the border fence, or obstructing construction works related to the border fence (hereinafter jointly "criminal offences related to the border fence"), the provisions of this Act shall apply subject to the derogations laid down in this Chapter.

(2) The scope of this Chapter shall also cover other criminal offences committed by the defendant if adjudicated in the same proceeding as the criminal offence related to the border fence.

The court

Section 828 (1) A single judge may refer a case to a court panel if a proceeding is conducted on the basis of another criminal offence in addition to a criminal offence related to the border fence.

(2) In a case falling within the subject-matter jurisdiction of a district court, the district court located at the seat of a regional court shall proceed with territorial jurisdiction over the entire territory of the county, while within the territory of the Budapest-Capital Regional Court, the Central District Court of Pest, shall proceed with territorial jurisdiction over the entire territory of Budapest.

(3) If the criminal offences committed by a defendant fall within the territorial jurisdiction of different district courts, the court with territorial jurisdiction under paragraph (2) concerning any of the criminal offences shall proceed.

(4) A district court located at the seat of a regional court or, within the territory of the Budapest-Capital Regional Court, the Central District Court of Pest, shall also have territorial jurisdiction for a proceeding if it has territorial jurisdiction over the home address or place of actual residence of the defendant, and the indictment is brought to that court by the prosecution service.

(5) Applying section 100, the prosecution service shall enable that the case documents of the proceeding can be inspected, in a way that the interval specified in section 352 (1) may be shortened or dispensed with.

Defence counsel

Section 829 The participation of a defence counsel in a criminal proceeding shall be mandatory.

Enforcement of coercive measures

Section 830 (1) In the course of ordering and enforcing a coercive measure affecting personal freedom, special attention shall be paid to avoiding the violation of the interests of any person who has not attained the age of eighteen years accompanying the defendant, and the unnecessary separation of a juvenile from his relatives.

(2) The prosecution service, before the indictment, or the proceeding court, after the indictment, may order custody to be enforced in a facility used for the placement of, caring for, and the detention of, a person falling within the scope of the Act on asylum or the Act laying down general rules on the entry and residence of third-country nationals, so that the person concerned is separated from other persons not subject to any criminal proceeding.

(3) If custody is enforced at a facility referred to in paragraph (2), the prosecution service, before the indictment, or the proceeding court, after the indictment, may order custody to be enforced without separating defendants or persons reasonably suspected of having committed a criminal offence who are relatives, provided that it does not violate the interests of the investigation or a juvenile defendant or person reasonably suspected of having committed a criminal offence.

(4) If a court orders criminal supervision concerning a defendant who is not a Hungarian citizen or does not have a home address in Hungary, the court shall designate

a) an accommodation centre or reception centre as defined in the Act on asylum or the Act laying down general rules on the entry and residence of third-country nationals, provided that the relevant statutory conditions are met,

b) otherwise, a facility used for the placement of, caring for, and the detention of, a person falling within the scope of the Act on asylum or the Act laying down general rules on the entry and residence of third-country nationals, provided that it is possible at that facility to separate the defendant from other persons not subject to any criminal proceeding and other persons in pre-trial detention

as residence for the defendant.

(5) The proceeding court may deviate from the provisions laid down in paragraph (4) if the proceeding is conducted against the defendant on the basis of another criminal offence in addition to a criminal offence related to the border fence.

(6) The proceeding court may order the pre-trial detention to be enforced in a facility used for the placement of, caring for, and the detention of, a person falling within the scope of the Act on asylum or the Act laying down general rules on the entry and residence of third-country nationals, so that the person concerned is separated from other persons not subject to any criminal proceeding.

(7) If the pre-trial detention is enforced at a facility referred to in paragraph (6), the prosecution service, before the indictment, or the proceeding court, after the indictment, may order the pre-trial detention to be enforced without separating defendants who are relatives, provided that it does not violate the interests of the investigation or a juvenile defendant.

(8) On the basis of a court order, the pre-trial detention may also be enforced in a police detention facility as an exception.

Notifying the immigration and asylum authority

Section 831 A prosecution office or investigating authority shall notify the immigration or asylum authority with territorial jurisdiction over the seat of the proceeding prosecution office or investigating authority about interrogating, for the first time, a suspect who is not a Hungarian citizen or does not have a home address in Hungary.

Suspending and terminating a proceeding

Section 832 (1) A court may suspend a criminal proceeding on the basis of section 488 (1) *d)* if it establishes that an asylum proceeding is pending based on an asylum application filed by the defendant or the person reasonably suspected of having committed a criminal offence.

(2) A proceeding shall be terminated if a defendant or a person reasonably suspected of having committed a criminal offence, who is not a Hungarian citizen and does not have a home address in Hungary, is at an unknown location. The proceeding court shall decide on this matter by passing a non-conclusive order.

(3) Paragraph (2) shall not apply

a) if the criminal offence is punishable by imprisonment for up to eight years or more, or

b) if the proceeding is conducted against the defendant also on the basis of another criminal offence in addition to a criminal offence related to the border fence, or

c) in a second- or third-instance court proceeding, or a proceeding repeated due to setting aside.

Language use

Section 833 A defendant may waive his right to have the indictment document or judgment translated.

Juvenile criminal proceedings

Section 834 (1) The provisions laid down in section 680 (1) *a)* shall not apply if a proceeding is conducted against a juvenile on the basis of a criminal offence related to the border fence only. In a juvenile criminal proceeding, a single judge proceeding at first instance may refer the case to a panel.

(2) A home study shall not be necessary regarding a juvenile who is not a Hungarian citizen and does not have a home address in Hungary, provided that the proceeding is conducted against the juvenile concerned on the basis of a criminal offence related to the border fence only.

(3) By way of derogation from section 684 (1), if a home study is necessary, it shall not assess the risks the juvenile concerned is exposed to in the context of crime prevention.

(4) If a court orders criminal supervision concerning an unaccompanied juvenile defendant, it may designate a child protection institution as residence for the defendant.

Immediate summary procedure

Section 835 (1) The prosecution office shall bring a defendant before the court in accordance with the immediate summary procedure within fifteen days after a criminal offence is committed.

(2) The court shall send back the case documents to the prosecution office if

a) the criminal offence is punishable by imprisonment for over ten years under an Act, or

b) the means of evidence are not available.

Procedure for passing a punishment order

Section 836 (1) A court may pass a punishment order also as regards a defendant who is subject to criminal supervision under section 830 (4) *b)*.

(2) A punishment order shall be passed by a court within five days after receipt of the case documents.

PART TWENTY-ONE

SPECIAL PROCEDURES

Section 837 (1) To a special proceeding, the provisions of this Act shall apply subject to the derogation laid down in this Part, with the proviso that

a) unless otherwise provided in this Act, an appeal against a first-instance court decision may be filed by the prosecution service, a convict, or a defence counsel,

b) the court shall pass a provision meeting the legal requirements if the motion is well-grounded,

c) the court shall dismiss the motion if it is unsubstantiated,

d) the court shall or may terminate the proceeding if it establishes in a proceeding conducted *ex officio* that the conditions for instituting the proceeding are not met or the person who filed the motion withdrew his motion and the proceeding cannot be conducted *ex officio*,

e) the court of second instance shall decide on an appeal in a panel session; if interviewing a prosecutor, a defendant, or a defence counsel is necessary, it shall hold a public session; if other evidence is taken, it shall hold a trial,

f) no third-instance proceedings can be brought.

(2) The following shall constitute a special procedure:

a) postponing the earliest date of release on parole from life imprisonment,

b) procedure for imposing an accumulative sentence,

c) procedure for *ex-post* setting of the period of expulsion,

d) procedure in case of release on probation,

e) procedure in case of reparation work,

f) granting a payment moratorium, or payment in instalments, for the payment of criminal costs to the State.

(3) A motion excluded in an Act shall be dismissed by a court without stating any reason as to its merits. A motion filed by an ineligible person shall be dismissed by a court without stating any reason as to its merits if the statutory conditions for proceeding *ex officio* are not met.

(4) If a motion can be dismissed without stating any reason as to its merits under this Act, the proceeding court may also decide on the basis of case documents.

Postponing the earliest date of release on parole from life imprisonment

Section 838 (1) If life imprisonment is imposed as penalty with final and binding effect in a main case, the court of first instance in the main case shall decide, *ex officio* or upon a motion from the prosecution service, by passing a non-conclusive order in a public court session or trial on postponing the earliest date of releasing the convict on parole from life imprisonment.

(2) If the court decides to postpone the earliest date of release on parole, the criminal costs shall be borne by the convict. If the court does not postpone the earliest date release on parole, the criminal costs shall be borne by the State.

Procedure for imposing an accumulative sentence

Section 839 (1) In a proceeding for imposing an accumulative sentence, the proceeding court shall be the court that proceeded at first instance in the case that was concluded for last, provided that the proceedings were conducted by courts with identical subject-matter jurisdiction; otherwise, the court of first instance with higher subject-matter jurisdiction shall proceed.

(2) If a military criminal proceeding was conducted in any of the cases, the matter of passing an accumulative sentence shall be decided by the court that conducted the military criminal proceeding, unless military criminal procedure was applied on the basis of section 696 (3).

(3) A proceeding for imposing an accumulative sentence shall be instituted *ex officio* or upon a motion from a prosecution office, convict, or defence counsel. The consent of the convict concerned shall be obtained to conduct a proceeding for imposing an accumulative sentence, unless a motion for such a proceeding was filed by the convict. A convict may withdraw his motion or consent before a first instance judgment is passed; in that event, the court shall terminate its proceeding.

(4) The proceeding court shall determine the period already served by the convict from the sentences of imprisonment serving as ground for an accumulative sentence; if justified, the court shall interrupt the enforcement of imprisonment imposed in the underlying judgments. An appeal filed against interrupting the enforcement of imprisonment shall not have suspensory effect on the interruption.

(5) A court shall decide on the basis of case documents or a public court session; an accumulative sentence shall be imposed by passing a judgment, and a motion for such a sentence shall be dismissed by passing an order.

(6) In its judgment, the proceeding court shall also include provisions on the security level of imprisonment and the earliest date of release on parole.

(7) The scope of an authorisation, or appointment, granted to a defence counsel in the latest proceeding conducted before the court with power to impose an accumulative sentence shall also extend to the proceeding for imposing the accumulative sentence.

(8) If an accumulative sentence is passed, the criminal costs shall be borne by the convict. If an accumulative sentence is not passed, the criminal costs shall be borne by the State.

Section 840 A court, acting *ex officio* or upon a motion from a prosecution office, convict, or defence counsel, may set aside its decision passed in a proceeding for imposing an accumulative sentence, and conduct a proceeding for imposing an accumulative sentence again on the basis of section 839, if it establishes, after concluding the proceeding for imposing an accumulative sentence with final and binding effect, that it failed to adopt a provision concerning the passing, or period, of an accumulative sentence or the provision adopted is not in compliance with the law.

Procedure for *ex-post* setting of the period of expulsion

Section 840/A (1) If, in the main case, the secondary penalty of expulsion was imposed with final and binding effect for an indefinite period pursuant to Act IV of 1978 on the Criminal Code as in force until 28 February 1999, the court that proceeded as court of first instance in the main case shall determine in a conclusive order the period of expulsion *ex officio* or at a motion by the prosecution service, the convict or the defence counsel on the basis of the case documents or in a public session, in accordance with section 2/B of Act CCXXIII of 2012 on transitional provisions in connection with the entry into force of Act C of 2012 on the Criminal Code and amending certain Acts. The court shall decide on the dismissal of the motion to this effect in a non-conclusive order.

(2) The court shall set aside, by way of a judgment, a final and binding judgment provision on imposing the secondary penalty of expulsion for an indefinite period if imposing expulsion is excluded pursuant to section 59 (2) to (4) of the Criminal Code.

(3) The proceeding under paragraph (1) shall not be carried out if

a) the expulsion imposed for an indefinite duration was enforced in accordance with the laws on immigration,

b) ten years have passed since the judgment imposing expulsion for an indefinite duration becoming final and binding, with the proviso that the period of imprisonment served by the defendant shall not be credited to this period.

(4) The criminal costs shall be borne by the State.

Procedure in case of release on probation

Section 841 (1) A court that proceeded at first instance in a main case shall decide, upon a motion from the prosecution service, in a public session, or trial, on extending a probation period, or setting aside a provision on release on probation and imposing a penalty, if a person released on probation violates seriously the rules of behaviour of supervision by a probation officer. If the proceeding court sets aside a provision granting release on probation and imposes a penalty, it shall pass a judgment; otherwise, it shall pass a non-conclusive order.

(2) After beginning a public court session or a trial, the proceeding single judge or the chair of the panel shall present the essence of the decisions passed in the main cases.

(3) The criminal costs shall be borne by the convict if the court extends his probation period, or orders to set aside a provision granting release on probation and imposes a penalty.

Procedure in case of reparation work

Section 842 (1) A court that proceeded at first instance in a main case shall decide, upon a motion from the prosecution service, in a public court session, or trial, on

a) setting aside a provision ordering reparation work, and on imposing a penalty, if the convict failed to provide evidence that he performed his reparation work, or seriously violated the rules of behaviour of supervision by a probation officer;

b) extending the time limit open for providing evidence of the performance of reparation work if the convict provides evidence that he was unable to perform the reparation work ordered for health reasons;

c) establishing that the enforceability of reparation work ceased if any permanent change concerning the health of the convict prevents the enforcement of his reparation work.

(2) A court shall pass a judgment in a situation described in paragraph (1) *a)*, a non-conclusive order in a situation described in paragraph (1) *b)*, or a conclusive order in a situation described in paragraph (1) *c)*.

(3) The criminal costs shall be borne by the convict if the court decides to set aside a provision ordering reparation work, and imposes a penalty.

Granting a payment moratorium or payment in instalments for the payment of criminal costs

Section 843 (1) The proceeding single judge or the chair of the panel may grant a payment moratorium, or allow payment in instalments, regarding the criminal costs payable to the State under the conditions, and within the limits, specified in section 42 (1) of the Sentence Enforcement Act.

(2) An application for a payment moratorium or payment in instalments shall not have suspensory effect.

(3) The court that proceeded at first instance in the main case shall decide on the application on the basis of case documents and without holding a trial. No appeal shall lie against this decision.

PART TWENTY-TWO

OTHER PROCEDURES RELATING TO A CRIMINAL PROCEEDING

Chapter CVIII

RECOMPENSE FOR UNFOUNDED RESTRICTION OF FREEDOM

Legal basis for recompense

Section 844 Subject to the conditions laid down in this Act, recompense shall be provided to a defendant if his freedom was restricted, or he was deprived of his freedom, without foundation in the course, or as a result, of a criminal proceeding. A recompense shall only serve as remedy for disadvantages suffered due to the fact and period of the restriction, or deprivation, of personal freedom.

Section 845 (1) Recompense shall be provided for any pre-trial detention, preliminary compulsory psychiatric treatment, criminal supervision during which, as prescribed by the court, the defendant was not allowed to leave a home, other premises, an institute or a fenced area of it without permission, or custody ordered before ordering any of the above, provided that the proceeding was terminated by a prosecution office or investigating authority because

a) the act does not constitute a criminal offence,

b) the criminal offence was not committed by the suspect,

c) the commission of a criminal offence could not be established on the basis of available data or means of evidence, or a ground excluding the liability to punishment of the perpetrator, or the punishability of his act, could be established,

d) it cannot be established on the basis of available data or means of evidence that the criminal offence was committed by the suspect,

e) the liability to punishment was terminated due to a statute of limitations, active repentance or another reason specified in an Act,

f) the act has already been adjudicated with final and binding effect,

g) a crime report or an act by the Prosecutor General specified in section 4 (9), or in section 3 (3) of the Criminal Code, is missing,

h) a private motion is missing and it may not be rectified any longer pursuant to section 378 (4),

i) the act does not constitute a criminal offence subject to public prosecution, or

j) because it applies reprimand.

(2) Recompense shall be provided for any pre-trial detention, preliminary compulsory psychiatric treatment, criminal supervision as specified in paragraph (1), or custody ordered before ordering any of the above, provided that the court

a) acquitted the defendant with final and binding effect, unless his compulsory psychiatric treatment was ordered;

b) terminated the proceeding in a final and binding conclusive order because

ba) the liability to punishment of the accused terminated due to a statute of limitations or another reason specified in an Act,

bb) the prosecution abandoned the indictment, or

bc) the act has already been adjudicated with final and binding effect;

c) terminated the proceeding in a non-conclusive order with administrative finality, because

ca) a private motion, crime report, or an act by the Prosecutor General under section 4 (9), or under section 3 (3) of the Criminal Code, was missing,

cb) the indictment was brought by an ineligible person, or

cc) the indictment document does not contain the statutory elements required under section 422 (1), or contains only some of those, and as a consequence, the indictment is unsuitable for adjudication on the merits;

d) found the defendant guilty with final and binding effect, and

da) applied only release on probation, reparation work, or reprimand against the defendant, or

db) did not impose any punishment.

(3) Recompense shall be provided for any pre-trial detention, preliminary compulsory psychiatric treatment, criminal supervision as specified in paragraph (1), or custody ordered before ordering any of the above, provided that the court found the defendant guilty with final and binding effect, and the period of any of the above exceeds

a) the period of imprisonment,

b) the period of confinement,

c) the period of community service,

d) the number of daily units of financial penalty,

e) the period of special education in a juvenile correctional institution

imposed with final and binding effect.

(4) Recompense shall be provided for any imprisonment, confinement, special education in a juvenile correctional institution, or compulsory psychiatric treatment enforced on the basis of a final and binding judgment, provided that a court, as a result of extraordinary legal remedy,

a) acquitted the defendant with final and binding effect, unless his compulsory psychiatric treatment was ordered,

b) with final and binding effect,

ba) imprisonment or confinement of the same kind but for a shorter period was imposed on, or special education in a juvenile correctional institution for a shorter period was applied to, the defendant,

bb) imprisonment or confinement of a different kind was imposed on the defendant or special education in a juvenile correctional institution was applied to the defendant in place of a penalty, and after the penalty or the special education in a juvenile correctional institution is credited in accordance with section 92/B (2) of the Criminal Code, there still remains penalty that cannot be credited,

c) released the defendant on probation, ordered the defendant to perform reparation work, or applied reprimand against the defendant, with final and binding effect,

d) terminated the proceeding against the defendant with a final and binding conclusive order for a reason specified in paragraph (2) *c)*, or

e) did not impose a penalty or apply compulsory psychiatric treatment regarding the defendant.

Section 845/A (1) For the purpose of establishing the legal basis and amount of recompense

a) in accordance with section 845 (1) or (2), three days spent under criminal supervision shall be considered equivalent to one day spent in pre-trial detention,

b) in accordance with section 845 (3), criminal supervision shall be considered equivalent to the penalties listed in section 92 (3) of the Criminal Code in accordance with the provisions thereof,

c) one day spent in special education in a juvenile correctional institution shall be considered equivalent to one day spent in pre-trial detention,

d) in accordance with section 845 (4), penalties and measures already enforced shall be credited in accordance with section 92/B (4) of the Criminal Code.

(2) In the case of a pre-trial detention, preliminary compulsory psychiatric treatment or criminal supervision, for establishing the legal basis and amount of recompense, the period of criminal supervision and preliminary compulsory psychiatric treatment shall be recalculated as pre-trial detention or imprisonment in accordance with paragraph (1); subsequently, the period thus established shall be added together, where appropriate.

(3) When establishing the legal basis and amount of recompense, the possibility of suspension of the enforcement of a sentence of imprisonment or release on parole shall not be taken into account.

Section 846 (1) Recompense may not be provided even when the conditions specified in section 845 are met if the person seeking recompense

a) hid, escaped, or attempted to escape from a court, prosecution office, or investigating authority, or did not, or attempted not to, cooperate with a measure aimed at his apprehension,

b) committed a criminal offence, established in a final and binding conclusive decision, in order to prevent the establishment of the facts of the case,

c) sought to mislead a court, prosecution office, or investigating authority after becoming aware of the launch of a criminal proceeding and, by doing so, was at fault for providing a reason for reasonable suspicion against himself and ordering, extending, or maintaining his custody, pre-trial detention, preliminary compulsory psychiatric treatment, or criminal supervision as specified in section 845 (1),

d) was ordered to be subjected to pre-trial detention or criminal supervision as specified in section 845 (1), on the basis of section 293 (3) or (4),

e) was acquitted, subjected to a penalty referred to in section 845 (4) *b)*, released on probation, ordered to perform reparation work, subjected to reprimand, or the proceeding against him was terminated, at a retrial, but in the main case, he withheld facts or evidence that served as ground for the judgment passed at retrial.

(2) Refusal to testify in and of itself shall not exclude the possibility of recompense.

Section 847 (1) Where recompense is sought on a ground specified in section 845 (1), and the proceeding terminated by a prosecution office or investigating authority is subsequently concluded either in a private or a public prosecution proceeding, recompense may be granted in accordance with the provisions of section 845 or 846, on the basis of the decision concluding the proceeding again.

(2) Where recompense is sought on a ground specified in section 845 (3) *a)* or (4) *b)*, recompense shall not be granted if a suspended sentence of imprisonment is to be enforced subsequently.

(3) Where recompense is sought on a ground specified in section 845 (2) *d) da)* or (4) *c)*, recompense shall not be granted if a release on probation is to be terminated, and a penalty is to be imposed, subsequently.

(4) Where recompense is sought on a ground specified in section 845 (2) *d) da)* or (4) *c)*, recompense shall not be granted if reparation work was applied and the court imposes a penalty subsequently.

(5) Where recompense is sought on a ground specified in section 845 (2) *a)*, *b)*, *d)*, or (3), recompense shall not be granted if, in a proceeding for extraordinary legal remedy, a final and binding conclusive decision is passed against the defendant subsequently on the ground of which recompense may not be provided pursuant to section 845 or 846.

(6) In a situation described in paragraphs (1) to (5), any recompense already paid shall be reclaimed by the State.

(7) In a situation described in paragraphs (2) to (4), recompense may be granted for imprisonment to be served, or for a penalty imposed, on the basis of section 844 or 845. In that event, the amount of any recompense paid earlier shall be calculated into the amount to be paid as recompense.

Recompense procedure

Section 848 (1) A claim for recompense may be enforced by way of a simplified recompense procedure or a recompense action, at the discretion of the person seeking recompense. A claim for recompense may not be enforced in an order for payment procedure.

(2) A claim for recompense shall be enforced against the State. The State shall be represented by the Minister responsible for justice.

Section 849 (1) A person seeking recompense may enforce his claim for recompense within one year after the decision serving as ground for recompense is communicated to him. Failing to meet this time limit shall lead to forfeiture of rights.

(2) If a defendant seeking recompense dies in the course of a recompense proceeding, his heir may request the proceeding to be continued within six months after the death of the defendant. Failing to meet this time limit shall lead to forfeiture of rights.

Section 850 (1) In the course of a recompense proceeding, the Minister responsible for justice may request data, in line with the provisions on data requests, with a view to obtaining any data or document referred to in the application or statement of claim or needed to clarify a circumstance that arose in the recompense proceeding. In that event, the provisions laid down in sections 263 and 264 shall apply to a data request accordingly.

(2) In the course of a recompense proceeding, the Minister responsible for justice may request data, falling within a category specified in an Act, from the following registers:

a) the criminal records system,

b) the register of personal data, home address, and contact address of citizens,

c) the central immigration register.

(3) In a recompense proceeding, the tasks of the court that proceeded in a criminal proceeding may also be performed by a junior judge.

Simplified recompense procedure

Section 851 (1) In a simplified recompense proceeding, a person seeking recompense may claim recompense for the unfounded restriction or deprivation of his freedom in an amount calculated pursuant to a government decree. A simplified recompense proceeding shall be aimed at reaching an agreement by and between the person seeking recompense and the Minister responsible for justice, to serve as basis for providing recompense.

(2) If a proceeding was terminated by a prosecution office or investigating authority, an application for a simplified recompense proceeding shall be submitted to the court where the prosecution service submitted its motion for pre-trial detention, preliminary compulsory psychiatric treatment, or criminal supervision as described in section 845 (1). Otherwise, the application shall be submitted to the court that proceeded as court of first instance in the criminal proceeding.

(3) A court shall send an application for a simplified recompense proceeding to the Minister responsible for justice within one month of receipt and without any examination as to its merits, together with the case documents of the criminal proceeding. If the case documents cannot be sent in view of their volume or for any other reasons, the court shall send the decision on terminating the proceeding, the conclusive decisions, the decisions on a coercive measure, the minutes of the interrogation of the person seeking recompense, and any other case documents that are relevant to assessing the claim for recompense.

(4) The Minister responsible for justice shall examine, within two months after receipt of the application, whether a claim for recompense is justified in light of the provisions laid down in section 845 and if there is any ground that would exclude any recompense. If the Minister responsible for justice finds the application well-grounded, he shall determine the recompense amount calculated pursuant to a government decree to be provided for the unfounded restriction or deprivation of freedom, and notify the person seeking recompense in writing accordingly. The notification shall also include that the simplified recompense proceeding is to be concluded by entering into a written agreement if the recompense amount is accepted.

(5) If the Minister responsible for justice finds the application groundless, he shall notify the person seeking recompense in writing accordingly.

(6) An agreement shall be concluded in writing within five months after an application is filed.

(7) If an agreement is concluded with a person seeking recompense, no further claim for recompense may be enforced.

(8) The recompense amount shall be paid within fifteen days after the conclusion of the written agreement.

Section 852 (1) If no agreement is concluded in a simplified recompense proceeding within five months after an application is filed, or if the Minister responsible for justice finds the application groundless, the person seeking recompense may file a recompense action pursuant to sections 853 to 854 within two months after the expiry of the time limit or the receipt of a notification about the ineligibility of his application. This time limit shall be a term of preclusion.

(2) If a recompense action is filed according to paragraph (1), the person seeking recompense shall file his statement of claim with the court with subject-matter and territorial jurisdiction over the recompense action under the Act on the Code of Civil Procedure.

(3) At a request of the court referred to in paragraph (2), all case documents sent under section 851 (3) shall be sent without delay by the Minister responsible for justice.

Recompense action

Section 853 (1) In a recompense action,

a) compensation may be demanded for damage caused and

b) grievance award may be demanded for non-material harm suffered

as a result of the unfounded restriction or deprivation of freedom.

(2) In a recompense action, the provisions laid down in the Act on the Civil Code concerning recompense and grievance awards shall apply to the amount and payment of the recompense subject to the derogations laid down in this Act.

(3) A recompense amount shall become due and payable on the day when

a) the decision on terminating the proceeding is communicated, or

b) the conclusive decision becomes final and binding.

(4) In a recompense action, the fee and expenses of an authorised defence counsel who proceeded in the criminal proceeding may not be enforced.

Section 854 (1) To a recompense action, the provisions laid down in the Act on the Code of Civil Procedure shall apply subject to the derogations laid down in this Act.

(2) A recompense action shall be instituted by filing a statement of claim. A statement of claim shall specify

a) natural identification data of the person seeking recompense,

b) the name, registered address, phone number, and electronic mail address of his legal representative, if any, as well as the name of the legal representative designated to receive official documents, if multiple legal representatives are involved,

c) the amount claimed as recompense,

d) the right to be enforced by specifying the legal basis,

e) the facts supporting the right to be enforced and the claim, and

f) available pieces of evidence, and motions for evidence, in support of each statement of fact.

(3) If a proceeding was terminated by a prosecution office or investigating authority, a statement of claim shall be submitted to the court where the prosecution service submitted its motion for pre-trial detention, preliminary compulsory psychiatric treatment, or criminal supervision as described in section 845 (1). Otherwise, the statement of claim shall be submitted to the court that proceeded as court of first instance in the criminal proceeding.

(4) A court shall send a statement of claim in a recompense action, together with the case documents of the criminal proceeding, to the district court or regional court with territorial jurisdiction over the ministry responsible for justice and subject-matter jurisdiction over the action within one month of receipt and without any examination as to its merits. If the case documents cannot be sent in view of their volume or for any other reasons, the court shall send the decision on terminating the proceeding, the conclusive decisions, the decisions on a coercive measure, the minutes of the interrogation of the person seeking recompense, and any other case documents that are relevant to adjudicating the claim for recompense.

(5) Upon a motion from the party against whom the action is brought, the court may obtain a statement from the prosecution office, or investigating authority, that proceeded in the criminal proceeding, with a view to determining if a ground for exclusion specified in section 846 (1) *a)* to *c)* or *e)* exists or clarifying a matter that arose in the recompense action. The statement shall present a legal position on the ground for exclusion, or the circumstance that arose in the recompense action, and it shall be accompanied by supporting documents.

Rules concerning the payment of recompense

Section 855 (1) If the State is to pay recompense, and any indication arises during the recompense proceeding that a civil claim was granted with final and binding effect against the person seeking recompense in relation to his commission of the criminal offence that served as ground for the criminal proceeding giving rise to recompense, the Minister responsible for justice shall retain the recompense sum, provided that the civil claim is not satisfied prior to the recompense payment. In that event, the civil claim granted shall be satisfied from the recompense sum. Any remainder of the recompense sum shall be paid after a statement by a court bailiff confirming seizure is received.

(2) If the State is to pay recompense, and any indication arises during the recompense proceeding that forfeiture of assets was ordered, financial penalty was imposed on a juvenile, or the person seeking recompense was obliged to bear criminal costs, in relation to his commission of the criminal offence that served as ground for the criminal proceeding giving rise to recompense, the Minister responsible for justice shall send a request to the state tax and customs authority regarding enforcement before paying any recompense, provided that enforcement was not effected before recompense is paid. The request shall include the natural identification data of the person seeking recompense, and data relating to the payment of recompense.

(3) On the basis of paragraphs (1) and (2), the Minister responsible for justice may process data relating to a civil claim, forfeiture of assets, financial penalty imposed on a juvenile, or criminal costs, and he may request data from a court bailiff or the state tax and customs authority pursuant to the provisions on data requests; additionally, a court bailiff, with a view to enforcing a civil claim, and the state tax and customs authority, with a view to enforcing a forfeiture of assets, a financial penalty imposed on a juvenile, or criminal costs, may access and process personal data relating to a recompense proceeding.

Chapter CIX

REIMBURSEMENT

Section 856 (1) Any amount paid as financial penalty, fine for an infraction, or criminal costs shall be reimbursed to the defendant, including prevailing interest calculated for the period between the date of payment and reimbursement, if

a) as a result of extraordinary legal remedy, the final and binding conclusive decision is set aside by a court, or annulled by the Constitutional Court, and a repeated proceeding is to be conducted,

b) as a result of extraordinary legal remedy, the final and binding conclusive decision is set aside and the case documents are sent to the prosecution service by a court,

c) as a result of extraordinary legal remedy, the defendant was acquitted or the proceeding against him was terminated by the proceeding court, or

d) a decision passed as a result of extraordinary legal remedy does not impose any obligation to pay a financial penalty, a fine for an infraction, or criminal costs.

(2) If a decision passed as a result of extraordinary legal remedy imposes an obligation to pay a lower amount as financial penalty, fine for an infraction, or criminal costs, the difference between the amount already paid and the imposed lower amount shall be reimbursed to the defendant, including prevailing interest calculated for the period between the date of payment and reimbursement.

(3) The provisions laid down in paragraphs (1) and (2) shall also apply to forfeiture of assets, confiscation, and if a seized thing is taken into State ownership, with the proviso that where a court, as a result of extraordinary legal remedy, acquitted, or terminated a proceeding against, a defendant, reimbursement may not be granted, unless the court did not order any forfeiture of assets or confiscation, or did so only for a lower amount, in its judgment of acquittal or decision on terminating the proceeding. A thing confiscated, asset forfeited, or thing seized shall be returned in kind, if possible. If it is not possible, or forfeiture of assets was applied with regard to a specific amount of money, an amount calculated on the basis of the commercial value, or the amount of money, at the time of forfeiture or confiscation shall be reimbursed, including prevailing interest calculated up until the date of reimbursement.

(4) Reimbursement shall be ordered by a court *ex officio*, or upon a motion from the prosecution service, the defendant, the defence counsel, or an other interested party.

(5) Where

a) a motion for extraordinary legal remedy is submitted after the death of a defendant,

b) a defendant dies in the course of a proceeding for extraordinary legal remedy, or

c) a defendant dies after a decision is passed as a result of extraordinary legal remedy, but before a motion for reimbursement is submitted,

a motion for reimbursement may also be submitted by an heir of the defendant.

(6) If a motion for reimbursement is filed by an heir of a defendant, the provisions laid down in paragraphs (1) to (3) shall apply, with the proviso that reimbursement shall be provided to the heir of the defendant.

Section 857 (1) A reimbursement shall be ordered by

a) the court that passed the final and binding conclusive decision in a repeated proceeding in the case of a retrial, or decided on granting a retrial in a situation specified in section 644 (3) or (4),

b) the court that proceeded at first instance, if a constitutional complaint is filed,

c) the Curia in a review proceeding, or if legal remedy is submitted on the ground of legality, or in a proceeding for the uniformity of jurisprudence,

d) the court that passed a final and binding conclusive decision in the main case during a simplified review proceeding.

(2) If reimbursement is based on section 856 (1) *d)* or (2), and the court, in its final and binding conclusive decision passed as a result of an extraordinary legal remedy, granted a civil claim submitted by an aggrieved party, the amount to be reimbursed shall be used to satisfy the civil claim concerned, provided that the civil claim has not yet been satisfied or has only been satisfied in part.

(3) Any amount remaining after all civil claims are satisfied shall be reimbursed to the defendant.

Chapter CX

PARDON IN A CRIMINAL PROCEEDING

Instituting a pardon proceeding

Section 858 (1) A pardon proceeding for terminating a criminal proceeding shall be conducted pursuant to the provisions laid down in this Chapter.

(2) A pardon proceeding for terminating a criminal proceeding may be instituted upon request or *ex officio*.

(3) A plea for pardon may be filed by a defendant, defence counsel, statutory representative of a defendant, or a relative of a defendant.

(4) A plea for pardon shall be filed in writing with the court or prosecution office before which the criminal proceeding is pending.

(5) A pardon proceeding may be instituted *ex officio* by the court or prosecution office acting in the criminal proceeding by way of a pardon initiative.

(6) In the case of a pardon initiative, or if a plea for pardon is filed by a person other than the defendant, the proceeding court or prosecution office shall obtain a statement from the defendant as to whether he consents to a pardon proceeding. If the defendant concerned refuses his consent, the pardon proceeding may not be conducted.

Pardon proceeding

Section 859 (1) A pardon proceeding shall not have suspensory effect on a criminal proceeding.

(2) In a pardon proceeding, a court or prosecution office shall obtain data and documents concerning a defendant, in line with the provisions laid down in this Act concerning data requests, that are necessary for conducting a pardon proceeding and assessing a plea for pardon or a pardon initiative.

(3) For the purpose specified in paragraph (2), the proceeding court or prosecution office may obtain the following in particular:

a) a home study regarding the defendant,

b) an evaluation opinion from the penal institution holding the defendant, if he is detained, or

c) a police report on public data concerning the lifestyle of the defendant.

(3a) The home study shall be prepared by the probation officer.

(4) A plea for pardon or a pardon initiative, all or some of the case documents, and the data and documents obtained for the purpose specified in paragraph (2), shall be referred by the

a) proceeding prosecution office, before the indictment, to the Prosecutor General,

b) proceeding court, after the indictment, to the Minister responsible for justice

within eight days after they are obtained.

Section 860 (1) The Prosecutor General or Minister responsible for justice shall examine the plea for pardon or the pardon initiative, and the data and documents referred to him, and he may request data for the purpose specified in section 859 (2), if necessary, pursuant to the provisions on data requests. In that event, the provisions laid down in sections 263 and 264 shall apply to a data request accordingly.

(2) In the course of a pardon proceeding, the Prosecutor General or the Minister responsible for justice may request data, falling within a category specified in an Act, from the following registers:

a) the criminal records system,

b) the infraction records system,

c) the register of personal data, home address, and contact address of citizens,

d) the road transport register,

e) the central immigration register,

f) the wanted notice register.

(2a) In a pardon proceeding, the Prosecutor General or the Minister responsible for justice may obtain the case documents referred to in section 859 (3) with a view to the assessment of the plea for pardon or the pardon initiative.

(3) A proposal for granting a pardon and terminating a criminal proceeding may be submitted to the President of the Republic by the Prosecutor General, before the indictment, or the Minister responsible for justice, after the indictment.

(4) The Prosecutor General or the Minister responsible for justice shall refer a plea for pardon, and the Minister responsible for justice shall refer a pardon initiative by a court, to the President of the Republic, even if he does not propose that pardon be granted.

Section 861 The President of the Republic shall send his decision on granting a pardon to the Minister responsible for justice or the Prosecutor General, who put forward the plea for pardon

Section 861/A The President of the Republic shall not exercise the right to grant individual pardon if the defendant was interrogated as an accused or was indicted for

a) a criminal offence against the freedom of sexual life and sexual morality that was committed by a person who has attained the age of eighteen years against a person who has not attained the age of eighteen years, or

b) another intentional criminal offence committed by a person who has attained the age of eighteen years relating to the criminal offence referred to in point *a)* or to the criminal proceeding instituted for the criminal offence referred to in point *a)*.

Section 862 (1) The Prosecutor General shall send the decision on granting a pardon and the documents of the pardon proceeding to the prosecution office that proceeds in the criminal proceeding concerned.

(2) If a proposal was submitted by the Minister responsible for justice, the Minister responsible for justice shall send to the court of the criminal proceeding the decision on granting a pardon and the documents of the pardon proceeding.

(3) A decision on granting a pardon shall be served on the defendant, the defence counsel and the person who submitted a plea for pardon by the court or prosecution office that proceeds in the criminal proceeding concerned. The court or prosecution office shall also serve a decision on terminating the proceeding together with the decision on granting a pardon and terminating the criminal proceeding. If the defendant is in detention, the court or prosecution office shall send a copy of the decision on granting a pardon and terminating the criminal proceeding to the detaining organ.

(4) If a pardon proceeding is concluded for another reason without a decision by the President of the Republic), this fact shall be established by the organ or person which or who proceeds in the pardon proceeding.

(5) If the President of the Republic does not grant a pardon, the eligible person may file another plea for pardon.

Chapter CXI

REDUCING THE AMOUNT OF OR WAIVING, CRIMINAL COSTS OR A DISCIPLINARY FINE

Section 863 (1) An application for reducing the amount of, or waiving, for a reason deserving special consideration, criminal costs or a disciplinary fine payable to the State may be filed by a person obliged to pay criminal costs to the State or subjected to a disciplinary fine (hereinafter jointly "payment obligor"), or a defence counsel, representative, or relative of a payment obligor.

(2) If liability for the payment of criminal costs to the State is joint and several, all payment obligors shall file an application. Even in that event, the persons specified in paragraph (1) shall be entitled to file the application.

(3) An application for reducing the amount of, or waiving, criminal costs shall be filed with the court that proceeded in the case at first instance, or the prosecution office that passed a decision on terminating the proceeding; an application for reducing the amount of, or waiving, a disciplinary fine shall be filed with the court, prosecution office, or investigating authority that imposed the disciplinary fine.

Section 864 (1) Before the referral of an application, the proceeding court, prosecution office, or investigating authority shall obtain, in line with the provisions on data requests, data and documents concerning the payment obligor that are necessary for conducting a proceeding and assessing the application.

(2) For the purpose specified in paragraph (1), the proceeding court, prosecution office, or investigating authority may request the following data in particular:

a) a certificate containing the amount of the outstanding debt and data regarding any payment already made,

b) data regarding the financial situation and income of the payment obligor,

c) a home study regarding the personal and family circumstances, financial situation, and income of the payment obligor, or

d) an evaluation opinion from the penal institution holding the payment obligor if he is detained.

(2a) The home study shall be prepared by the probation officer.

(3) An application, all or some of the case documents of the criminal proceeding, and the data and documents obtained for the purpose specified in paragraph (1) shall be referred by the proceeding court, prosecution office, or investigating authority to the Minister responsible for justice within eight days after they are obtained.

(4) If an application is filed for reducing or waiving a disciplinary fine, the court may order, until a decision is passed by the Minister responsible for justice, the enforcement of the disciplinary fine to be suspended or, if the disciplinary fine is converted, the enforcement of the confinement replacing the disciplinary fine to be postponed or interrupted.

Section 865 (1) The Minister responsible for justice shall examine the application and the data and documents referred to him, and he may request data for the purpose specified in section 864 (1), if necessary, pursuant to the provisions on data requests. In that event, the provisions laid down in sections 263 and 264 shall apply to a data request accordingly.

(2) In the course of assessing an application, the Minister responsible for justice may request data from the register of personal data, home address, and contact address of citizens.

(3) The Minister responsible for justice shall send his decision on an application to the court, prosecution office, or investigating authority that referred to him the application. The court, prosecution office, or investigating authority that referred the application to the Minister responsible for justice shall send the decision on the application to the payment obligor and the person who filed the application.

PART TWENTY-THREE

FINAL PROVISIONS

Authorising provisions

Section 866 (1) The Government shall be authorised to determine in a decree

a) the tasks that may be carried out by administrative court officers in criminal proceedings,

b) the rules of conducting a preparatory proceeding, filing or granting a motion for using covert means, and conducting an investigation by an investigating authority, as well as the rules of cooperation between the prosecution service and the investigating authorities, and of certain costs incurred, during a prosecutorial investigation,

c) the amount that may be paid in a simplified recompense proceeding, its calculation method, and the rules of concluding an agreement and providing recompense.

(2) The Minister responsible for justice shall be authorised to determine in a decree

1. the provisions concerning persons participating, and procedural acts performed, in a criminal proceeding,

2. the provisions on the use of telecommunication devices in a criminal proceeding,

3. the provisions concerning the setting up and monitoring of a room used for procedural acts requiring the participation of a person requiring special treatment,

4. the provisions on inspecting case documents of a criminal proceeding, in agreement with the Minister responsible for public finances, the Minister responsible for law enforcement, and the Minister controlling the National Tax and Customs Administration,

5. the provisions on the advancement of criminal costs of a criminal proceeding as well as costs proven in accordance with the Act on the Police arising in connection with enforcing forced attendance ordered in a criminal proceeding and compulsory attendance of the defendant on the basis of an arrest warrant, other than the provisions on the establishment of the amount of the costs of forced attendance, in agreement with the Minister responsible for public finances, the Minister responsible for law enforcement, and the Minister directing the National Tax and Customs Administration,

6.

7. the provisions on the fee and expenses of a legal aid lawyer, or an officially appointed defence counsel, in a criminal proceeding, in agreement with the Minister responsible for public finances,

8. the provisions on the payment of expenses of a defendant or a defence counsel, and the fee of an authorised defence counsel, by the State, a substitute private prosecuting party or a private prosecuting party, in agreement with the Minister responsible for public finances,

9. the provisions on the fee and expenses of persons participating in a criminal proceeding and their representatives, in agreement with the Minister responsible for public finances,

10. the provisions on the expenses of a witness, in agreement with the Minister responsible for public finances,

11. the provisions on the fee and expenses of a consultant, in agreement with the Minister responsible for public finances,

12. the provisions on the fee and expenses of an interpreter or translator, in agreement with the Minister responsible for public finances,

13. the healthcare institutions designated to observe the mental condition of a person, and the costs, and the accounting for such costs, relating to the observation of the mental condition of a person in a psychiatric in-patient institute, in agreement with the Minister responsible for healthcare,

14. the provisions on the enforcement of criminal supervision, restraining orders, and supervision for the purpose of crime prevention, in agreement with the Minister responsible for law enforcement,

15. the provisions on court deposits where bail is posted,

16. the provisions on the observation of the mental condition of a detained defendant, in agreement with the Minister responsible for healthcare,

17. the provisions on seizure, in agreement with the Minister responsible for public finances, the Minister responsible for law enforcement, and the Minister directing the National Tax and Customs Administration,

18. the provisions on sequestration, in agreement with the Minister responsible for public finances, the Minister responsible for law enforcement, and the Minister directing the National Tax and Customs Administration,

19. the provisions on judicial case management,

20. the tasks of courts to be performed in the course of criminal proceedings where a person is detained, and regarding the enforcement of decisions passed in criminal proceedings,

21. the provisions on the production of sound recordings or audio-visual recordings of procedural acts during court proceedings,

22. the provisions on restorative conflict management procedure to be ordered in the context of conditional suspension by a prosecutor,

23. the provisions on the activities of probation officers in criminal proceedings.

(3) The Minister responsible for law enforcement shall be authorised to determine in a decree

a) the subject-matter and territorial competence of investigating authorities under his direction, in agreement with the Minister responsible for justice,

b)

c) the provisions on the uniform system of criminal statistics for investigating authorities and prosecution offices, and the detailed rules on collecting and processing data.

(4) The Minister responsible for national defence, with regard to national defence organisations and soldiers serving at a vocational training institution not qualifying as a national defence organisation that is under the direction of the Minister of national defence as a maintainer, the Minister directing an organ performing law enforcement duties, and, concerning the Parliamentary Guard, the Minister responsible for law enforcement, with regard to organs performing law enforcement duties within the meaning of the Act on the service relationship of professional personnel of organs performing law enforcement duties, as well as the Minister responsible for the direction of civilian intelligence activities and the Minister responsible for the direction of civilian national security services, with regard to civil national security services, shall be authorised to determine in a decree

a) the persons authorised to conduct investigations as commanders, their subject-matter competence, and the provisions on investigations by commanders, and

b) the provisions on monitoring criminal supervision ordered against a soldier

in agreement with the Minister responsible for justice and, with regard to the Parliamentary Guard, after seeking the opinion of the Speaker of the National Assembly.

(5) The Minister responsible for healthcare shall be authorised to determine in a decree the provisions concerning medical treatment for drug addiction, other treatment for drug use and preventive-informative services, in agreement with the Minister responsible for drug prevention and the coordination of drug-related matters, the Minister responsible for law enforcement, and the Minister responsible for justice.

Entry into force

Section 867 This Act shall enter into force on 1 July 2018.

Transitional provisions

Section 868 (1) Subject to the derogations laid down in section 868 to 876, the provisions of this Act shall apply also to criminal proceedings pending at the time of its entry into force.

(2) With the exception specified in paragraph (3), a proceeding shall be conducted by a court with subject-matter and territorial jurisdiction, and in the composition required, under the previous law, provided that the case arrives at the court before this Act enters into force.

(3) If a court sits, under the previous law, as a panel of one professional judge and two lay judges, and a single judge is to proceed under this Act, the court shall continue to sit as a single judge after this Act enters into force.

(3a) If the court received a case by 31 July 2024, the court with subject-matter and territorial jurisdiction pursuant to the wording of section 21 (5) as in force on 31 July 2024 shall conduct the proceeding even after that date.

(4) If a decision is set aside before this Act enters into force, the repeated proceeding shall be conducted by the court with subject-matter and territorial jurisdiction under this Act, with the exception specified in paragraph (5).

(5) If a decision is set aside before this Act enters into force, the repeated proceeding shall be conducted by the court with subject-matter and territorial jurisdiction under the previous law, provided that the case arrives at the court for a repeated proceeding before this Act enters into force.

(6) Point 20 of section 20 (1) of this Act as introduced by Act XLIII of 2020 amending the Act on the Code of Criminal Procedure and other related Acts shall apply to cases that arrived to the court following 1 January 2021.

(7) If, in accordance with the rules of this Act as in force on 31 August 2024, the court, the prosecution service or the investigating authority communicated in a paper-based manner with a natural person participating in a criminal proceeding, and this person qualifies as a person participating in the criminal proceeding who communicates by electronic means under the rules of this Act as in force after 31 August 2024, the court, the prosecution service or the investigating authority shall continue to communicate with this person in a paper-based manner in the case pending, except if

a) the court, the prosecution service or the investigating authority informs the person participating in the criminal proceeding who communicates by electronic means that he is obliged to communicate by electronic means, or

b) the person participating in the criminal proceeding makes a statement or another written submission addressed to the court, the prosecution service or the investigating authority by electronic means in the case pending after 31 August 2024.

Section 869 (1) For the purposes of section 14 (3) *a)*, a judge who proceeds as a member of a second instance panel of a regional court shall be considered disqualified from proceedings instituted after 30 November 2016.

(2) For the purposes of section 14 (3) *a)*, a judge shall be considered disqualified from a criminal proceeding instituted after

a) 22 November 2013 if he proceeded as a single judge of a regional court in cases specified in section 207 (6) of Act XIX of 1998 on the Code of Criminal Procedure, as in force until 30 June 2017, or regarding the extension of house arrest for over one year,

b) 30 November 2016 if he proceeded as a member of a panel of a regional court of appeal under sections 131 (3), 138 (3), 142 (4), or section 486 of Act XIX of 1998 on the Code of Criminal Procedure, as in force until 30 June 2017.

Section 870 (1) A procedural act performed earlier under the previous law in a criminal proceeding pending at the time of the entry into force of this Act shall be considered valid, even if this Act regulates the given procedural act differently.

(2) Time limits running at the time of entry into force of this Act shall be calculated pursuant to the previous law.

(3) After this Act enters into force, an investigating authority, prosecution office, or court shall not assess a complaint, motion for revision, or other motion filed under the previous law, and it shall notify the submitting person accordingly, provided that the given complaint, motion for revision, or other motion may not be submitted, or decided on by the addressee, under this Act.

(4) The rule laid down in this Act regarding the time limit for submitting an application for excuse shall apply to omissions that take place after this Act enters into force.

(5) A proceeding suspended under the previous law shall be conducted pursuant to this Act after this Act enters into force.

(6) The provisions laid down in this Act regarding communication by electronic means shall apply to criminal proceedings instituted after 1 January 2018, with the exception specified in paragraph (7).

(7) A motion for a proceeding for imposing an accumulative sentence may be filed with a court, or withdrawn, by the defence counsel of a convict by electronic means even with in the case of a criminal proceeding instituted before 1 January 2018.

Section 871 In a criminal proceeding pending at the time of entry into force of this Act, the provisions laid down in this Act regarding the use of a previous witness testimony shall apply with regard to witness testimonies where the witness concerned was provided witness advice also in line with the provisions of this Act.

Section 872 (1) The legality of using covert means shall be decided on the basis of provisions in force at the time when permission was granted.

(2) Where secret information gathering is in progress under the Act on the prosecution service, the Act on the police, or the Act on the National Tax and Customs Administration at the time when this Act enters into force, the organ performing secret information gathering shall decide, within six months after this Act enters into force, whether it initiates a preparatory proceeding or files a crime report.

(3) The period of secret information gathering subject to the permission of a judge or an external person or entity in a criminal proceeding initiated under paragraph (2) shall be calculated into the period set out in this Act for using covert means subject to permission of a judge.

Section 873 (1) The rules on ordering, and calculating the period of, criminal supervision shall apply starting from the first decision to be passed on a house arrest, restraining order, or a ban on leaving a place of residence ordered, maintained, or extended under the previous law.

(2) A court shall review the need to maintain a ban on leaving a place of residence, ordered or maintained under the previous law, within four months after this Act enters into force. The rules on calculating the period of criminal supervision shall apply after such a decision is passed.

(3) If a court did not order house arrest or impose a ban on leaving a place of residence in addition to a bail posted under the previous law, the court shall order either criminal supervision, or the bail to be returned, within four months after this Act enters into force.

Section 874 (1) The provisions laid down in this Act regarding exclusive prosecutorial investigations shall apply to investigations launched after this Act enters into force.

(2) If a suspect is interrogated under the previous law, the case documents of the investigation shall be presented to the prosecution service when the time limit for the investigation, as determined or extended under the previous law, expires.

(3) The rule laid down in this Act regarding the time limit for submitting a private motion shall apply with regard to criminal offences committed after the entry into force of this Act.

(4) If, at the time when this Act enters into force, an investigating authority is performing a procedural act in a case in the course of supplementing a crime report ordered under the previous law, the investigating authority shall prepare a memorandum within three days after this Act enters into force, and it shall transfer or dismiss the crime report, or order an investigation, pursuant to this Act.

(5) A prosecution office shall terminate a proceeding if the period of the postponement of indictment ordered under the previous law passed successfully after the entry into force of this Act. In that event, the prosecution office may oblige the suspect to pay all, or a part, of the criminal costs.

(6) In case the postponement of indictment was ordered under the previous law, the proceeding shall be resumed pursuant to the provisions of this Act if

a) the complaint submitted by the suspect against the postponement of indictment is assessed after the entry into force of this Act,

b) the suspect is interrogated as a suspect during the period of postponement of indictment for an intentional criminal offence committed during the period of postponement of indictment, including any situation where reasonable suspicion may not be communicated because the suspect is staying at an unknown location or in another country, or

c) the suspect commits a material violation of the rules of supervision by a probation officer or a rule of behaviour, imposed in the decision on the postponement of indictment, or fails, and is not likely, to perform his obligations.

(7) If indictment is postponed for a reason for terminating liability to punishment, as specified in section 180 or section 212 (3) of the Criminal Code, the proceeding shall be resumed pursuant to the provisions of this Act, provided that

a) the suspect fails to behave in a manner that would terminate his liability to punishment, and he is not likely to behave in such manner, or

b) the suspect is interrogated as a suspect for a criminal offence of the same kind committed during the period of postponement of indictment, or such interrogation is not possible because the suspect is staying at an unknown location or in another country.

(8) A court may not terminate a proceeding on the ground that

a) an indictment document filed under the previous law does not contain a motion from the prosecution service regarding a penalty to be imposed or measure to be applied, or their type, or

b) a deficiency, under the previous law, of an indictment document filed under the previous law is not rectified, provided that the indictment document meets the requirements of this Act.

Section 875 (1) If the documents of a case are received by a court before this Act enters into force, the court shall hold a preparatory session within six months after this Act enters into force, unless the court already set a trial before the entry into force of this Act

(2) If a court suspended a proceeding under the previous law to conduct a mediation procedure, the proceeding shall be terminated after the conclusion of the mediation procedure, provided that section 29 (1) of the Criminal Code can be applied.

(3) If a court suspended its proceeding under the previous law for a reason for terminating liability to punishment, as specified in section 180 or section 212 (3) of the Criminal Code, and it terminates its proceeding for the same reason for terminating liability to punishment, it may oblige the accused to pay all, or a part, of the criminal costs.

(4) A motion for a procedure for the uniformity of jurisprudence may be filed even in a case that is concluded before, or pending at the time of, the entry into force of this Act.

(5) For a violation relating to the period of expulsion under section 60 (2a) of the Criminal Code, simplified review in accordance with point 10 of section 671 as amended by Act XXXI of 2023 amending Acts related to judicial matters shall be permissible only in the case of a motion for extraordinary legal remedy submitted before the entry into force of the amendment of this provision.

Section 876 (1) If in an immediate summary procedure a court sends back the documents of the case to the prosecution office before this Act enters into force, the proceeding shall be conducted pursuant to this Act after this Act enters into force.

(2) If a court passes an order without holding a trial before this Act enters into force, and a request for trial is filed, the proceeding shall be conducted pursuant to this Act.

(3) If a motion for not holding a trial is filed by a substitute private prosecuting party or a private prosecuting party, the court shall decide on the basis of the previous law, provided that the motion is received by the court before this Act enters into force.

(4) In a proceeding that is pending when this Act enters into force, a substitute private prosecuting party shall proceed on the basis of a motion for prosecution, even if the indictment was abandoned, provided that the motion for prosecution is filed with the court before this Act enters into force.

(5) A substitute private prosecuting party may act even without a legal representative in a proceeding that is pending when this Act enters into force, provided that the substitute private prosecuting party is either a natural person who passed the professional examination in law, or an entity other than a natural person who is represented by a member or officer with the right of management or representation, or a person in an employment relationship with the aggrieved party, who passed the professional examination in law.

(6) If the enforcement of a coercive measure affecting personal freedom ordered because of a criminal offence related to the border fence is commenced before this Act enters into force, it may also be enforced even after this Act enters into force.

(7) A special procedure commenced before this Act enters into force shall be concluded by a court pursuant to the provisions of the previous law.

Section 876/A Section 561 (3) *g)*, sections 604 (4) and 636 (3), section 648 *d)*, sections 649 (6), 652 (1) and 670 (6) of this Act as introduced by Act CXXVII of 2019 amending certain Acts in connection with the introduction of single-instance district office proceedings shall apply to conclusive court decisions passed on or after 1 July 2020.

Section 876/B The territorial jurisdiction of the court with territorial jurisdiction over the perpetrator shall also extend to a person committing handling stolen goods (Section 379 of the Criminal Code) as set out by the Criminal Code in force until 31 December 2020.

Section 876/C (1) The provisions set out in Chapter CV/A shall not apply before 31 December 2022.

(2) The provisions set out in Chapter CV/A shall apply to crime reports filed and proceedings instituted following 31 December 2022.

Section 876/D If a court of first instance sits as a panel of three professional judges regarding a special criminal offence related to business management in accordance with section 13 (3), then, following the entry into force of subtitles 1 to 9 of Act XCVII of 2023 amending certain Acts related to criminal law and other related Acts. it shall sit either as a single judge or as a panel of unchanged composition, at the discretion of the chair of the panel.

Section 876/E Sections 861 and 862 of this Act as introduced by Act XXX of 2024 amending certain Acts for the protection of children (hereinafter "Act XXX of 2024") shall apply to pardon proceedings pending at the time of the entry into force of Act XXX of 2024, with the proviso that the decision by the President of the Republic on granting pardon which was sent for counter-signature shall take effect on 1 July 2024 if the right of counter-signature was not exercised by 30 June 2024.

Cardinality clause

Section 877 (1) Part Six, section 339 (2) and (3), section 340 (1) and (2), section 341, section 343, section 344 (6), section 345 (2) and (3), Chapter LV, section 464 (3), section 641 (4), section 820 (6), section 872 and section 879 qualify as cardinal on the basis of Article 46 (6) of the Fundamental Law.

(2) Section 861/A qualifies as cardinal on the basis of Article 9 (8) of the Fundamental Law.

Compliance with the law of the European Union

Section 878 This Act serves the purpose of compliance with the following:

1. Convention of 29 May 2000 established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union,

2. Protocol of 16 October 2001 established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,

3. Directive 2001/95/EC of 3 December 2001 on general product safety,

4. Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime,

5. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States,

6. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence,

7. Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property,

8. Council Framework Decision 2005/215/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties,

9. Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders,

10. Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union,

11. Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings,

12. Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime,

13. Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union,

14. Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions,

15. Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law,

16. Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime,

17. Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial,

18. Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention,

19. Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings,

20. Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings,

21. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA,

22. Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order,

23. Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA,

24. Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings,

25. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA,

26. Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA,

27. Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty,

28. Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters,

29. Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union,

30. Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA,

31. Directive 2016/343/EU of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings,

32. Directive 2016/680/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA,

33. Directive 2016/800/EU of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, and

34. Directive 2016/1919/EU of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings,

35. Directive (EU) 2022/211 of the European Parliament and of the Council of 16 February 2022 amending Council Framework Decision 2002/465/JHA, as regards its alignment with Union rules on the protection of personal data,

36. Directive (EU) 2022/228 of the European Parliament and of the Council of 16 February 2022 amending Directive 2014/41/EU, as regards its alignment with Union rules on the protection of personal data.

Section 878/A This Act contains provisions for the implementation of Regulation (EU) 2018/1862 of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU.

Section 878/B This Act contains provisions for the implementation of Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022 amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role in research and innovation.

Repealing provision

Section 879