Act XIX of 1998
on Criminal Proceedings[1]

(in consolidated structure)[2]

PART ONE

Chapter I BASIC PROVISIONS

Division of the tasks related to the proceedings

Section 1 In criminal proceedings prosecution, defence and sentencing shall be separate functions.

The basis of the court procedure

Section 2 (1) In the course of sentencing, the court proceeds based upon an accusation.

(2) The court may only ascertain the criminal liability of the person against whom the accusatory instrument was filed, and in the course thereof may only contemplate acts contained in such instrument.

Right to court procedure

Section 3 (1) Everyone has the right to have the charge filed against him adjudicated by a court.

(2)[3] It is the exclusive right of the court to ascertain the liability of a person in committing a criminal offence and to impose punishment therefor.

Burden of proof

Section 4 The charge shall be proven by the accuser. Facts not proven beyond a reasonable doubt may not be contemplated to the detriment of the defendant.

Right to defence

Section 5 (1) The defendant shall have the right to defence.

(2) Everyone has the right to defend himself at liberty. This right may only be restricted or a person be deprived of his freedom for reasons and in compliance with the procedure set forth in this Act.

(3)[4] The defendant may undertake his own defence, and may be defended by a counsel at any phase of the proceedings. The court, the prosecutor and the investigating authority shall ensure that the person against whom criminal proceedings are conducted can defend himself as prescribed in this Act.

(4) In the cases specified in this Act, it is compulsory to retain a defence counsel.

Ex officio procedure, initiating criminal proceedings and exemptions from criminal proceedings[5]

Section 6 (1) It is the responsibility of the court, the prosecutor and the investigating authority to initiate and conduct the criminal proceedings if the conditions set forth in this Act prevail.

(2) Criminal proceedings may only be initiated upon the suspicion of a criminal offence and only against the person reasonably suspected of having committed a criminal offence.

(3)[6] No criminal proceedings may be initiated, and criminal proceedings in progress shall be terminated or a verdict of acquittal be rendered if

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[1] This Act was adopted by Parliament on 10 March 1998. Promulgated in the 23/1998 issue of the Official Gazette.

[2] Publication of the text of this Act, consolidated with the amendments, in the Official Gazette was ordered by Section 308 (5) of Act 1 of 2002, then by Section 88 (5) of Act II of 2003.

[3] Section 3 (2) was established by Section 1 of Act I of 2002.

[4] Section 5 (3) was established by Section 2 of Act I of 2002.

[5] The subtitle of Section 6 was established by Section 3(1) of Act I of 2002.

[6] Section 6 (3)–(5) was enacted by Section 3 (2) of Act I of 2002.

a) the action does not constitute a criminal offence, or was not committed by the defendant (the person against whom the complaint was filed),

b) it cannot be ascertained either that the criminal offence has been committed or that it has been committed by the defendant (the person against whom the complaint was filed),

c) with the exceptions set forth in this Act, grounds for the preclusion or termination of punishability exist,

d) a final court verdict has already been delivered on the action of the defendant, however, this provision does not apply to the procedures defined in Part Four and Titles II and III of Chapter XXVIII.

(4) With the exception of the procedures specified in Part Four (extraordinary legal remedy), subsection (3) *d)* shall apply even if the action of the offender constitutes several criminal offences, but the court – in accordance with the classification in the indictment – does not ascertain the guilt of the defendant in all offences that could be established based on the facts of the indictment.

(5) Prior to the procedure for a new trial[7] defined in the Act on Procedures for Administrative Offences, no criminal proceedings may be instituted against a person who has been declared liable in a court decision delivered in a procedure for administrative offences, if the facts of the case have not changed.

Presumption of innocence

Section 7 Everyone shall be presumed innocent until convicted in a final court verdict.

Prohibition of self-incrimination

Section 8 No one may be compelled to make a self-incriminating testimony or to produce self-incriminating evidence.

Use of the native language

Section 9 (1) Criminal proceedings shall be conducted in the Hungarian language. Not knowing the Hungarian language shall not be a ground for discrimination.

(2)[8] In criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken.

(3) Translation of the decisions and other official documents to be served pursuant to this Act shall be the responsibility of the court, prosecutor or investigating authority which has adopted the decision or issued the official document.

Independent judgement of criminal liability

Section 10 When establishing whether the defendant has committed a criminal offence and the nature of the offence, the court, the prosecutor and the investigating authority shall not be bound by decisions adopted in other procedures, thus especially in civil proceedings, procedure for misdemeanours or disciplinary actions, nor by the facts set forth therein.

Scope of the Act

Section 11 (1) Criminal proceedings shall be conducted in compliance with the law in force at the time of judging the action.

(2) In cases falling under Hungarian criminal jurisdiction [Sections 3 and 4 of Act IV of 1978 on the Penal Code (hereinafter: Penal Code)] the proceedings shall be conducted in accordance with this Act.

Chapter II THE COURT

Responsibility of the court

Section 12 (1) The court shall be responsible for the administration of justice.

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[7] See Section 103 (1) e) of Act LXIX of 1999.

[8] See Section 103 (1) e) of Act LXIX of 1999.

(2) Unless provided otherwise by this Act, courts shall be responsible for making a decision on coercive measures involving the loss or restriction of liberty.

(3) The court shall discharge other duties as set forth in this Act.

(4) Unless provided otherwise in this Act, prior to the indictment the responsibilities of the court shall be performed by the investigating judge.

Acting courts

Section 13 (1) The court of first instance shall be the local court and the county court.

(2) The court of appeal shall be

a) the county court in the cases falling within the competence of the local court,

b) the tribunal in the cases falling within the competence of the county court,

c)[9] the Supreme Court in the cases falling within the competence of the tribunal, if the decision of the tribunal may be appealed pursuant to this Act.

(3)[10] In the cases specified in this Act the secretary of the court vested with independent signatory rights may also act in lieu of the single judge or the presiding judge in cases falling within the competence of the court of first instance. In such cases the actions of the secretary of the court shall be governed by the provisions set forth in this Act for court procedures.

(4)[11] In the cases specified in the relevant legal regulation, the court executive vested with independent signatory rights may also act – under the direction and supervision of the judge – out of trial. In such cases the actions of the court executive shall be governed by the provisions set forth in this Act for court procedures.

Composition of the court

Section 14 (1) The local court shall act

a[12]*)* in a panel comprising one professional judge and two associate judges, if the criminal offence is punishable by eight years or more imprisonment by law,

b) without the involvement of associate judges (as single judge) in the cases not falling under item *a)*.

(2) Unless provided otherwise by this Act, the county court acting as a court of first instance may conduct its procedure in a panel consisting of one professional judge and two associate judges.

(3) In the case specified in subsection (1) *b)*, the local court may act in a panel consisting of one professional judge and two associate judges, if it establishes a classification of the criminal offence underlying the prosecution differently from that indicated in the indictment.

(4) In the cases specified in this Act, the county court acting as a court of first instance may conduct its procedure in a panel consisting of two professional judges and three associate judges.

(5)[13] The court of appeal, the tribunal and – unless provided otherwise by this Act – the Supreme Court shall act in a panel consisting of three professional judges.

(6) Both the single judge and the presiding judge shall be professional judges; in the course of administering justice, the professional judge and the associate judges have identical rights and obligations.

(7)[14] In the case of criminal offences enumerated in Section 17 (5) and (6) in the first instance the presiding judge (single judge), and in the second instance one of the members of the panel shall be a judge designated by National Judiciary Council.

Competence of the court of first instance

Section 15 Judgement of criminal offences in the first instance shall fall within the competence of the local court, unless they are referred to the competence of the county court by this Act.

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[9] Section 13 (2) c) was enacted by Section 5 (1) of Act I of 2002.

[10] Section 13 (3) was established by Section 5 (2) of Act I of 2002.

[11] Section 13 (4) was enacted by Section 5 (2) of Act I of 2002.

[12] The text of Section 14 (1) a) was established by Section 6 (1) of Act I of 2002.

[13] The text of Section 14 (5) was established by Section 6 (2) of Act I of 2002.

[14] Section 14 (7) was enacted by Section 6 (3) of Act I of 2002. See also Section 14 (3) of Act LXVII of 1997

Section 16 (1)[15] The following shall fall within the competence of the county court

a) criminal offences punishable by imprisonment for a term up to fifteen years or life imprisonment by law; and

b) criminal offences against the state (Chapter X. of the Penal Code);

c) crimes against humanity (Chapter XI of the Penal Code);

d)[16] preparations for murder, negligent homicide [Section 166 (3) and (4) of the Penal Code], murder committed in the heat of passion (Section 167 of the Penal Code), physical injury creating a substantial risk of death or causing death [third sentence part in Section 170 (5) and (6) of the Penal Code], kidnapping (Section 175/A of the Penal Code), trafficking in human beings (Section 175/B of the Penal Code), offences related to medical treatment and offences against the order of medical research and medical self-determination (Title II of Chapter XII of the Penal Code);

e)[17] criminal offences against the order of elections, referenda and the people's motions (Section 211 of the Penal Code), violation of state and official secrets (Title III of Chapter XV of the Penal Code), abuse of public office (Title IV of Chapter XV of the Penal Code), violation against an internationally protected person (Section 232 of the Penal Code), riot of prisoners (Section 246 of the Penal Code), criminal offence against the administration of justice before an international court (Section 249/B of the Penal Code), criminal offences against the integrity of public life (international public life) (Title VII and VIII of Chapter XV of the Penal Code);

f) terrorist acts (Section 261 of the Penal Code), violation of international legal obligations (Section 261/A of the Penal Code), seizure of aircraft and railway vehicles, vessels and road vehicles of mass transportation or vehicles suitable for the mass transportation of goods (Section 262 of the Penal Code), participation in criminal organisation (Section 263/C of the Penal Code);

g) violation of obligations related to the movement of internationally controlled products and technologies (Section 287 of the Penal Code), insider trading (Section 299/A), capital investment fraud (Section 299/B of the Penal Code), organisation of a pyramid scheme (Section 299/C of the Penal Code), money laundering (Section 303 of the Penal Code), counterfeiting of money (Section 304 of the Penal Code) and forgery of stamps (Section 307 of the Penal Code);

[h)[18] *causing public danger resulting in major or greater financial loss [Section 259 (2) b) of the Penal Code], interference with the operation of public utilities [Section 260 (2) of the Penal Code], criminal offence against computer systems and data, causing major or exceptionally large damage [Section 300/C (4) b) and c) of the Penal Code], social security or tax fraud resulting in a major or greater loss of revenue [Section 310 (4) a) of the Penal Code], violation of the payment obligation to the Labour Market Fund [Section 310/A (3) of the Penal Code], violation of the obligation to pay social security, health or pension contribution [Section 310/B (3) of the Penal Code], misuse of excise duty [Sections 311 (4) a) and 311 (5) of the Penal Code], receiving of products subject to excise duty and having major or exceptionally large value [Sections 311/A (3) a) and 311/A (4) of the Penal Code], trafficking in and receiving of stolen dutiable goods of major or exceptionally large value [Sections 312 (3) a) and 312 (4) of the Penal Code], misuse of cash substitutes causing major or exceptionally large damage [Sections 313/C(5) a) and 313/C (6) of the Penal Code], theft [Sections 316 (6) a) and 316 (7) of the Penal Code] and embezzlement [Sections 317 (6) a) and 317 (7) of the Penal Code] of major or exceptionally large value, fraud causing major or exceptionally large damage [Sections 318 (6) a) and 318 (7) of the Penal Code], misappropriation of funds resulting in major or exceptionally large financial loss [Section 319 (3) c) and d) of the Penal Code], negligent mismanagement of funds resulting in major or exceptionally large financial loss [Section 320 (2) of the Penal Code], robbery [Section 321 (4) a) of the Penal Code] and mugging [Section 321 (4) a) of the Penal Code] of major or greater value, further, causing major or exceptionally large damage [Sections 324 (5) and 324 (6) of the Penal Code], receiving of stolen goods of major or exceptionally*

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[15] The text of Section 16 (1) a) to d) and g), further, item h) which latter is in force until January 1, 2005 was established by Section 7 of Act I of 2002.

[16] Pursuant to Section 88 (2) a) of Act II of 2003, the sentence part "infanticide (Section 166/A of the Penal Code)" shall lose effect and not enter into force.

[17] The text of Section 16 (1) e) and f) was established by Section 29 (1) of Act I of 2002.

[18] Section 16 (1) h) was enacted by Section 29 (2) of Act II of 2003, which simultaneously designated item h) as item i). Pursuant to Section 88 (3) of Act II of 2003, the provision shall enter into force on January 1, 2005.

large value [Section 326 (5) a) and 326 (6)], violation of copyright or associated rights resulting in major or exceptionally large financial loss [Section 329/A (3) of the Penal Code] and violation of rights protected by industrial patent law [Section 329/D (3) of the Penal Code].

[i]h) criminal offences subject to military law.

(2) Defendants having committed offences falling within the competence of various courts shall be prosecuted by the county court.

Jurisdiction of the court of first instance

Section 17 (1)[19] Unless provided otherwise by this Act, the court of jurisdiction shall be the court located at the geographical area where the criminal offence has been committed. The geographical jurisdictions of the courts are specified in the Act on the organisation and management of courts.

(2) If the offence has been committed in the area of more than one courts, or the crime scene cannot be established, the court of jurisdiction from among the courts of identical competence shall be the one that had taken measures earlier in the case (preceding authority), not considering, however, the procedure conducted by the investigating judge. If the scene of the crime becomes known prior to the commencement of the trial, the procedure shall be continued by the court located at the geographical area where the criminal offence has been committed, as requested in the motion of the prosecutor, the defendant, the counsel for the defence, the substitute private accuser or the private accuser.

(3)[20] The court located at the place of residence of the defendant shall also have jurisdiction to proceed in the case, if the prosecutor, the private accuser or – unless provided otherwise in this Act – the substitute private accuser files the indictment there.

(4) In the event of several defendants, the court having jurisdiction over any of the defendants may also adjudicate the case of the others, unless it exceeds its competence. If there are more than one court meeting this criterion, the "principle of preceding authority" shall decide the jurisdiction.

(5)[21] Endangering in the course of practising a profession (Section171 of the Penal Code), traffic-related offences (Chapter XIII of the Penal Code) – not including driving under the influence of alcohol or a narcotic substance [Section 188 (1) of the Penal Code] and allowing driving to an unauthorised person [Section 189 (1) of the Penal Code] –, criminal offences related to traffic regulations but not specified in Chapter XIII of the Penal Code, endangering a minor (Section 195 of the Penal Code), causing public danger (Section 259 of the Penal Code) and interference with the operation of public utilities (Section 260 of the Penal Code) shall fall under the jurisdiction of the local court located at the seat of the county court, or, within the geographical jurisdiction of the Metropolitan Court, Pest Central District Court. The jurisdiction of these courts in respect of such criminal offences shall extend to the territory of the county or Budapest, respectively.

(6)[22] Abuse of nuclear materials (Section 264of the Penal Code), abuse of the operation of nuclear facilities (Section 264/A of the Penal Code), abuse of the application of nuclear energy (Section264/B of the Penal Code) and economic crimes (Chapter XVII of the Penal Code) – not including financial offences (Title III of Chapter XVII of the Penal Code) – shall fall under the jurisdiction of the local court located at the seat of the county court, or, within the geographical jurisdiction of the Metropolitan Court, Pest Central District Court. The jurisdiction of these courts in respect of such criminal offences shall extend to the territory of the county or Budapest, respectively.

(7) In the case of defendants having committed criminal offences falling under the jurisdiction of several courts, the court having jurisdiction over any of the offences pursuant to subsections (5)–(6) shall proceed.

(8)[23] The jurisdiction of the court competent in respect of the offender shall be extended to the abettor and the receiver as well.

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[19] The second sentence of Section 17 (1) was enacted by Section 8 ()1) of Act I of 2002. See also Part I of the Annex to Act LXVI of 1997.

[20] The text of Section 17 (3)–(4) was established by Section 8 (2) of Act I of 2002.

[21] The text of Section 17 (5) was established by Section 29 (3) of Act II of 2003.

[22] The text of Section 17 (6) was established by Section 8 (2) of Act I of 2002.

[23] The text of Section 17 (8) was enacted by Section 8 (3) of Act I of 2002.

Section 18 (1) Criminal offences committed outside the boundaries of the Republic of Hungary shall be prosecuted by the court having jurisdiction at the place where the defendant resides or stays, failing this, the court having jurisdiction at the place where the offender is detained.

(2) If the defendant has committed the criminal offence outside the boundaries of the Republic of Hungary and the procedure is conducted in his absence, the court of jurisdiction shall be the court having jurisdiction at the place of the last residence or stay of the defendant.

Examination of competence and jurisdiction

Section 19 The court shall examine its competence and jurisdiction ex officio.

Designation of the acting court

Section 20 (1) In the event of a conflict in the competence or jurisdiction of courts, the acting court shall be designated after obtaining the motion of the prosecutor.

(2) The decision on the designation

a) shall be adopted by the panel of second instance of the county court, if the conflict arises among local courts located in its jurisdiction,

b)[24] shall be adopted by the tribunal, if the conflict of competence arises between the county court and the local court, or a conflict of jurisdictions arises among the county courts or local courts located within the jurisdiction of various county courts,

c) shall be adopted by the Supreme Court, if the conflict of competence arises between the county courts and local courts belonging to various tribunals, the military panel of the county court and another division of the county court or another county court, between the county court and the tribunal, the military panel of the Metropolitan Tribunal and another panel of the tribunal or another tribunal, or between the Supreme Court and the tribunal, further, if the conflict of jurisdiction arises between tribunals or county courts and local courts belonging to various tribunals.

(3) The acting court shall also be designated by the Supreme Court if the conditions for determining jurisdiction cannot be established.

Exclusion of judges

Section 21 (1) No one may act as a judge,

a) who has acted in the case as a prosecutor or a member of the investigating authority, or who is a relative of the prosecutor or a member of the investigating authority having acted or acting in the case,

b) who is or has been involved in the case as a defendant or a counsel for the defence, or a victim, a private accuser, a substitute private accuser, private party, informant or the representatives thereof, further, the relatives of the above,

c) who is or has been involved in the case as a witness, expert or advisor,

d) who has made a decision, under the relevant legal regulation[25] on gathering secret intelligence in the case, regardless of whether the information thus collected has been actually used in the course of the criminal proceedings,

e) who cannot be expected to form an unbiased opinion for other reasons.

(2) The provisions set forth in subsection (1) above shall also apply to the investigating judge.

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

a) the person having acted as a investigating judge in the case shall be excluded from subsequent court procedures,

b)[26] the judge having participated in the judgement of the case in the first instance shall be excluded from the procedure of the appeal court,

c) further, when proceedings of first or second instance are re-instituted due to repealing the original decision, the judge who has participated in adopting either the repealing decision or the decision repealed owing to lack of grounds shall be excluded from the re-instituted proceedings,

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[24] The text of Section 20 (2) b) and c) was established by Section 2 (1) of Act XXII of 2002.

[25] See Section 71 of Act XXXIV of 1994, Section 174 (4) of Act C of 1995, Section 59 of Act XXXII of 1997 and Section 58 (1) of Act CXXV of 1995.

[26] The text of Section 21 (3) b) and c) was established by Section 10 (1) of Act I of 2002.

d)[27] the judge who has participated in the adoption of the decision appealed by a motion for extraordinary legal remedy shall be excluded from the extraordinary legal remedy procedure.

(4) In the case specified in subsection (3) the judge whose relative participated in the adoption of the appealed decision shall also be excluded from the judgement of the case.

(5)[28] In the case of subsection (3) *d)* participation of the judge in the adoption of a decision not affected by the motion for extraordinary legal remedy shall not constitute a ground for exclusion.

Section 22[29] With the exception of the Supreme Court, when a ground for exclusion regulated in Section 21 (1) *a)–c)* exists in respect of the president or vice-president of a court, the given court may not proceed in the case.

Section 23 (1) The judge affected by a ground for exclusion and the presiding judge gaining cognisance of the existence of a ground for exclusion in respect to a member of the panel shall immediately notify the president of the court thereof.

(2) The ground for exclusion may also be reported by the prosecutor, the defendant, the counsel for the defence, furthermore, by the victim, the private accuser, the substitute private accuser, the private party, and the representatives thereof.

(3)[30] After the commencement of the trial, the persons in subsection (2) may only validly refer to the ground for exclusion specified in Section 21 (1) *e)*, if they justify that the fact underlying the notification came to their cognisance only after the commencement of the trial and announce it forthwith.

(4) Upon gaining cognisance of a ground for exclusion, the president of the court shall initiate the exclusion of the judge ex officio.

Section 24 (1)[31] If the ground for exclusion is announced by the judge himself or the presiding judge in respect of the judge, from the time of the announcement the judge concerned shall not be involved in the case.

(2) Apart from the cases specified in subsection (1) the judge may remain involved in the case until the motion is given effect, however, the judge may not participate in the adoption of the conclusive decision.

(3) The restriction set forth in subsection (2) shall not apply to the judge, if after the dismissal of the first motion, the same party makes a further motion for the exclusion of the judge referring to the same item of Section 21 (1) and (3).

(4) The president of the court shall ensure the designation of another judge if the ground for exclusion has been notified by the judge himself or the presiding judge in respect of the judge, or the judge has consented to the exclusion. In such cases no separate decision is required thereon.

(5) If the exclusion cannot be arranged as regulated in subsection (4), the exclusion shall be decided upon by another panel of the court.

(6)[32] In the case set forth in Section 22, or if the court division has no panel which is unaffected by the ground for exclusion, the exclusion shall be resolved by the court of appeal, or, if the motion on the ground for exclusion was made, partially or entirely, in respect of the county court as the court of appeal, the exclusion shall be resolved by the tribunal. If the ground for exclusion applies to or affects the tribunal, the decision shall be made by the Supreme Court. Should the motion for exclusion be admitted, designation of the acting court shall be governed by the provisions of Section 20.

(7) The decision on the exclusion shall be adopted by the court at a panel meeting. If the motion for the exclusion was made by a party other than the judge, a declaration shall be obtained from the judge.

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[27] The text of Section 21 (3) d) and c) was established by Section 10 (1) of Act I of 2002.

[28] Section 21 (5) was enacted by Section 10 (2) of Act I of 2002.

[29] The text of Section 22 was established by Section 2 (2) of Act XXII of 2002 then amended by Section 88 (2) c) of Act II of 2003 ("president or vice-president" was amended to read "president and vice-president")

[30] Section 23 (3) was enacted by Section 12 of Act I of 2002, which simultaneously designated the original subsection (3) as subsection (4).

[31] The text of Section 24 (1) was established by Section 13 (1) of Act I of 2002.

[32] The first and third sentence of Section 24 (6) was established by Section 13 (2) of Act I of 2002, while the second sentence was enacted by Section 2 (3) of Act XXII of 2002.

(8) The decision on the exclusion may not be appealed, the denial of the exclusion may be contested in the form of an appeal against the conclusive decision.

Section 25 If the counsel for the defence, the victim, the private accuser, the substitute private accuser, the private party or the representative thereof repeatedly announces an unfounded ground for exclusion in respect of the same judge, a disciplinary penalty may be imposed on them in the decision on the denial of the exclusion.

Section 26 (1) The provisions regarding the exclusion of judges shall also apply to associate judges.

(2) With regard to the exclusion of investigating judges the provisions of Sections 23–25 shall apply; however, if the investigating judge did not consent to the exclusion based on the ground announced against him, he may remain involved in the case until the motion is given effect.

Section 27[33] The provisions regarding the exclusion of judges shall also apply to the exclusion of secretaries of the court, keepers of the records and court executives.

Chapter III THE PROSECUTOR

Responsibilities of the prosecutor

Section 28 [34](1) The prosecutor shall act as the public accuser. The prosecutor shall be obliged to consider both the circumstances aggravating and extenuating for the defendant and the circumstances aggravating and mitigating the criminal liability in all phases of the proceedings.

(2) The prosecutor shall exercise the rights vested in the prosecutor's office where the prosecutor works.

(3) The prosecutor shall order or perform an investigation to establish the conditions for accusation.

(4) When the investigating authority conducts an investigation or certain investigative actions independently [Section 35 (2)], the prosecutor shall supervise compliance with this Act throughout the procedure and ensure that the persons participating in the procedure can assert their rights. With this in view, the prosecutor

a) may order an investigation, assign the investigating authority to conduct the investigation, and may instruct the investigating authority to perform – within the its own geographical jurisdiction – further investigative actions or further investigation, or to conclude the investigation within the deadline designated by the prosecutor,

b) may be present at the investigative actions, and may examine or send for the documents produced during the investigation,

c) may amend or repeal the decision of the investigating authority, and shall consider the complaints received against the decision of the investigating authority,

d) may reject the complaint, terminate the investigation and order the investigating authority to terminate the investigation,

e) may refer the proceedings in his own competence.

(5) In the event that the prosecutor conducts the investigation, it may instruct any investigating authority to perform – within its own geographical jurisdiction – an investigative action, and in the course of an investigation by the prosecutor's office, the Prosecutor General may employ the members of other investigating authorities upon the consent of the national head of the given authority.

(6) The prosecutor shall oversee lawful enforcement of coercive measures ordered in the course of the criminal proceedings and entailing the restriction or deprival of personal freedom.

(7) If the conditions set forth in this Act prevail, the prosecutor shall file an indictment and – unless the charge was pressed by a private accuser or a substitute private accuser – represent the charge before the court, or decide on the postponement or partial omission of filing an indictment. The prosecutor may abandon or modify the charge. In the course of a court action, the prosecutor may examine the documents of the case and shall have the right of motion in any issue arising in connection with the case in which the court has the right to decide.

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[33] The text of Section 27 was established by Section 14 of Act I of 2002.

[34] The text of Section 28 was established by Section 15 of Act I of 2002.

Section 29 It shall fall within the exclusive competence of the prosecutor's office to conduct investigation in the following criminal offences:

a) [35] criminal offences committed by persons enjoying immunity due to holding a public office [Section 551 (1)] and by persons enjoying international immunity [Section 553 (1)], violence against such persons in their capacity as officials and criminal offences committed against such persons in connection with their work, as well as violence against internationally protected persons (Section 232 of the Penal Code),

b) murder and violence against a judge, a prosecutor, a clerk or secretary or executive of the court or the prosecutor's office, an inspector at the prosecutor's office, an independent bailiff, a county court bailiff or their respective deputies, a notary public or an assistant notary public, or a sworn officer of the police in their capacity as official persons, further, kidnapping an official person, violence against an official person and robbery against official persons in the course of their official proceedings [Sections 166 (2) *e)*, 229, 321 (3) *d)*, (4) *b)* and *c)* of the Penal Code],

c)[36] with the exception of the sworn members of the police, any criminal offence committed by the persons listed under item *b)*, as well as criminal offences committed by an associate judge in connection with the administration of justice,

d) bribery of the persons listed in item *b)* [Section 253 (1) and (2) of the Penal Code], bribery by an official person holding a senior position or entitled to take measure in matters of importance [Section 250 (2) *a)* and the second item in Section 250 (3) of the Penal Code], the form of bribery specified in Section 255 of the Penal Code, failure to report a bribery (Section 255/B of the Penal Code) and trafficking in influence [256 Section (1) and (2) of the Penal Code],

e)[37] criminal offences committed by the sworn members of the police and civil national security services if the offence is not subject to the military law, and any criminal offence committed by a sworn member of the Customs and Excise Office or a financial investigator,

f)[38] from among criminal offences against the administration of justice (Chapter XV of Title V of the Penal Code) false accusation (Sections 233 to 236 of the Penal Code), misleading the authority (Section 237 of the Penal Code), perjury (Sections 238 to 241 of the Penal Code), soliciting perjury (Section 242 of the Penal Code), obstruction of official procedure (Section242/A of the Penal Code), suppressing extenuating circumstances (Section 243 of the Penal Code), harbouring crime by official persons in the course of their proceedings [Section 244 (3) *b)* of the Penal Code], misuse of power of attorney (Section 247 of the Penal Code), unlawful legal practice (Section 248 of the Penal Code), criminal offence against the administration of justice before an international court (Section 249/B of the Penal Code), (international public life)

g)[39] criminal offences committed against foreign official persons (Section 137 3. of the Penal Code) and criminal offences against the integrity of public life (Title VIII of Chapter XV of the Penal Code).

Competence and jurisdiction of the prosecutor's office

Section 30 (1)[40] As a rule, the competence and jurisdiction of the prosecutor's office shall depend on the competence and jurisdiction of the court where it operates. The organisation of the prosecutor's office shall be determined by the Prosecutor General pursuant to the relevant law. [41]

(2) In the event of criminal offences falling within the jurisdiction of various prosecutor's offices, the acting prosecutor's office shall be the one that had taken measures in the case earlier.

(3) If instructed by the Prosecutor General, the prosecutor general for appeals or the county prosecutor general, the prosecutor may also proceed in cases otherwise not falling under his competence or jurisdiction.

(4) In the event of a conflict of competence or jurisdiction between prosecutor's offices, the acting prosecutor's office shall be designated by the superior prosecutor.

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[35] The text of Section 29 a) and b) was established by Section 30 (1) of Act II of 2003.
[36] The text of Section 29 c) and d) was established by Section 16 (1) of Act I of 2002.
[37] The text of Section 29 e) was established by Section 30 (2) of Act II of 2003.
[38] The text of Section 29 f) was established by Section 16 (1) of Act I of 2002.
[39] The text of Section 29 g) was enacted by Section 16 (2) of Act I of 2002.
[40] The text of Section 30 (1) was established by Section 17 of Act I of 2002.
[41] See Section 19 (3) of Act V of 1972 and the order of the General Prosecutor's Office No. 3/2001 (ÜK 5).

Exclusion of the prosecutor

Section 31 (1) No one may act as a prosecutor in criminal proceedings,

a) who has acted as a judge in the case, or a relative of a judge acting or having acted in the case,

b) who is or has been involved in the case as a defendant or a counsel for the defence, or a victim, a private accuser, a substitute private accuser, private party, informant or the representatives thereof, further, the relatives of the above,

c) who is or has been involved in the case as a witness, expert or advisor,

d) who cannot be expected to form an unbiased opinion for other reasons.

(2) The prosecutor having conducted the investigation or performed investigative actions, has filed the indictment or represented the charge in the underlying offence may not participate in the re-trial procedure.

(3) It shall not constitute a ground for exclusion, if the prosecutor has filed a report on a criminal offence coming to his cognisance within his official competence.

(4)[42] With the exception of the Prosecutor General's office, when a ground for exclusion regulated in subsection (1) a) or b) exists in respect of the head or deputy head of the prosecutor's office, the given prosecutor's office may not act in the case.

(5)[43] When a ground for exclusion regulated in subsection (1) a) or b) exists in respect of the county prosecutor general or his deputy, the local prosecutor's office located in the area of the county prosecutor general's office may not act in the case.

Section 32 (1)[44] The prosecutor affected by a ground for exclusion shall immediately notify the head of the prosecutor's office thereof. From the time of the notification of a ground for exclusion, the prosecutor may not act in the case.

(2) The ground for exclusion may also be reported by the defendant, the counsel for the defence, furthermore, by the victim, the private accuser, the substitute private accuser, the private party, and the representatives thereof.

(3) Upon gaining cognisance of a ground for exclusion, the head of the prosecutor's office shall initiate the exclusion of the prosecutor ex officio.

(4) If the ground for exclusion is not reported by the prosecutor himself, the prosecutor may proceed in the case until the motion is given effect, however – with the exception of a ground for exclusion regulated in Section 31 (1) *d)* – he shall have no power to dismiss a complaint, terminate the investigation, apply coercive measures, file an indictment or represent the charge.

(5) The decision on the exclusion of the prosecutor and the head of the prosecutor's office shall be adopted by the head of the prosecutor's office and the head of the superior prosecutor's office, respectively.

Section 33 [45](1) The restriction set forth in subsection Section 32 (4) shall not apply to the prosecutor, if after the dismissal of the first motion, the same party makes a further motion for the exclusion of the prosecutor referring to the same item of Section 31 (1) or to Section 31 (2).

(2) If the defendant, counsel for the defence, the victim, the private accuser, the private party or the representative of the victim, the private accuser or the private party repeatedly announces an unfounded ground for exclusion in respect of the same prosecutor, a disciplinary penalty may be imposed on them in the decision on the denial of the exclusion.

Section 34 [46] The provisions regarding the exclusion of the prosecutor shall also apply to the exclusion of the secretary and the keeper of the minutes of the prosecutor's office.

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[42] The text of Section 31 (4) was established by Section 2 (4) of Act XXII of 2002.

[43] Section 31 (5) was enacted by Section 18 of Act I of 2002.

[44] Section 32 (1) to (3) was enacted by Section 19 of Act I of 2002 which simultaneously designated the original subsections (1) and (2) as subsections (4) and (5).

[45] The text of Section 33 was established by Section 20 of Act I of 2002.

[46] The text of Section 34 was established by Section 21 of Act I of 2002.

Chapter IV THE INVESTIGATING AUTHORITY

Responsibilities of the investigating authority

Section 35 (1) The investigating authority conducts the investigation upon the order of the prosecutor or independently.

(2) The investigating authority shall conduct the investigation or perform certain investigative actions independently, if the criminal offence was detected by, or the complaint filed with, the investigating authority itself, or the offence came to the notice of the investigating authority in another way.

The investigating authority

Section 36 (1) The general investigating authority is the police.

(2)[47] The Customs and Excise Office shall conduct the investigation in the following criminal offences:

a) violation of international legal obligations (Section 261/A of the Penal Code), violation of obligations related to the movement of internationally controlled products and technologies (Section 287 of the Penal Code), foreign trade without a licence (298 Section of the Penal Code), misuse of excise duty (Section 311 of the Penal Code), receiving of goods subject to excise duty (Section 311/A of the Penal Code), smuggling and receiving smuggled goods (Section 312 of the Penal Code);

b) false marking of goods (Section 296 of the Penal Code), usurpation (Section 329 of the Penal Code), violation of copyright or associated rights (Section 329/A of the Penal Code), evasion of technical measures guaranteeing copyright or associated rights (Section 329/B of the Penal Code), forgery of data relating to copyright or associated rights (Section 329/C of the Penal Code) and violation of rights protected by industrial patent law [Section 329/D of the Penal Code], if such offences involve goods subject to customs or excise duty;

c) social security or tax fraud (Section 310 of the Penal Code), fraud (Section 318 of the Penal Code), if such offences involve taxes, contributions or budget subsidies falling within the competence of the Customs and Excise Office,

d) forgery of public deeds (Section 274 of the Penal Code), forgery of private deeds (Section 276 of the Penal Code), forgery of a unique identification mark (Section 277/A of the Penal Code) and forgery of stamps (Section 307 of the Penal Code), if committed in connection with the criminal offences specified in items a) to c) above,

e) drug abuse through importation into Hungary, exportation from Hungary or transportation through the territory of Hungary (Sections 282 and 282/C of the Penal Code) and misuse of substances used for drug production (Section 283/A of the Penal Code), if the offence is detected or the complaint is received by the Customs and Excise Office.

(3) [48] The investigation in the cases of prohibited entry or stay in Hungary (Section 214 of the Penal Code), facilitation of unlawful stay in Hungary (Section 214/A of the Penal Code), trafficking in human beings (Section 218 of the Penal Code), damaging border marks (Section 220 of the Penal Code) and forgery of public deeds in respect of travel documents (Section 274 of the Penal Code) shall be conducted by the Border Guard, if the offence is detected or the complaint has been received by the Border Guard.

(5)[49] The investigation in the criminal offences committed by Hungarian citizens or – with the exception of the cases set forth in Sections 3 (2) and 4 of the Penal Code – any other person on a Hungarian commercial vessel or civil aircraft, the commanding officer of the vessel or the aircraft shall have the power to apply the regulations pertaining to the investigating authority.

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[47] The text of Section 36 (2) was established by Section 31 of Act II of 2003.

[48] The text of Section 36 (3) was established by Section 22 of Act I of 2002.

[49] Pursuant to Section 88 (2) a) of Act II of 2003, the original Section 36 (4) will lose effect and will not enter into force. Pursuant to Section 88 (2) b) of Act II of 2003, the numbering of Section 36 (5) shall be amended to 36 (4). See Act LXVI of 2002.

Competence and jurisdiction of the investigating authority

Section 37 (1) The competence and jurisdiction of the investigating authorities is stipulated in the relevant legal regulation. [50]

(2)[51] In the event of a conflict of interest among the investigating authorities listed in Section 36 (1) to (4), or, if an offence falling within the competence of the police, the Customs and Excise Office or the Border Guard is combined with an offence beyond the competence of the given investigating authority and the procedure cannot be practicably separated, the acting investigating authority shall be designated by the competent prosecutor. The prosecutor may also designate as the acting investigating authority an investigating authority which, pursuant to Section 36 (2) and (3) would not otherwise be competent in the investigation of the offence.

(3)[52] Upon the agreement of their heads and the consent of the prosecutor, the investigating authorities may set up a joint task force to investigate a specific case or a specific group of cases.

Exclusion of a member of the investigating authority

Section 38 (1) No one may act as a prosecutor in criminal proceedings,

a) who has acted as a judge in the case, or a relative of a judge acting or having acted in the case,

b) who is or has been involved in the case as a defendant or a counsel for the defence, or a victim, a private accuser, a substitute private accuser, private party or the representatives thereof, further, the relatives of the above,

c) who is or has been involved in the case as a witness, expert or advisor,

d) who cannot be expected to form an unbiased opinion for other reasons.

(2) The member of the investigating authority having participated in the investigation of the underlying offence may not participate in the investigation conducted during the re-trial procedure.

(3) It shall not constitute a ground for exclusion, if the member of the investigating authority has filed a report on a criminal offence coming to his cognisance in the course of discharging his duties.

(4) The investigating authority may not act in the case, when a ground for exclusion regulated in Section 38 (1) exists in respect of its head. Should the ground for exclusion occurs in respect of the head of the investigating authority with nation-wide competence, the investigation shall be conducted by the prosecutor's office.

Section 39 (1) If the ground for exclusion is not reported by the member of the investigating authority himself, such member may proceed in the case until the motion is given effect, without, however, having the power to apply coercive measures.

(2) The decision on the exclusion of a member of the investigating authority and the head of the investigating authority shall be adopted by the head of the investigating authority and the head of the superior investigating authority, respectively. The decision on the exclusion of the head of the investigating authority with nation-wide competence shall be adopted by the competent prosecutor.

Section 40[53] In other respects, to the exclusion of a member of the investigating authority the provisions set forth in Sections 32 (1) to (4) and 33 shall apply as appropriate, however, it shall be the prosecutor's right to impose the disciplinary penalty.

Section 41 The provisions regarding the exclusion of the members of the investigating authority shall also apply to the exclusion of the keeper of the minutes.

V Chapter PERSONS PARTICIPATING IN CRIMINAL PROCEEDINGS

Section 42 [54] In addition to those listed in Chapters II–IV, the following persons participate in criminal proceedings: the defendant, the counsel for the defendant, the private accuser, the

[50] See Decrees No. 15/1994 (VII.14) BM of the Ministry of the Interior, No. 59/1997 (X.31) BM of the Ministry of the Interior and No. 37/1991 (XII.24) PM of the Ministry of Finance.
[51] The text of Section 37 (2) was established by Section 32 of Act II of 2003.
[52] The text of Section 37 (3) was enacted by Section 23 (2) of Act I of 2002.
[53] The text of Section 40 was established by Section 22 of Act I of 2002.

substitute private accuser, the private party, other interested parties as well as the representatives thereof and the aides.

The defendant

Section 43 (1) The defendant is the person against whom criminal proceedings have been instituted. The defendant is called suspect in the course of the investigation, accused in the course of the court procedure and convict after the final imposition of the sentence, or the definitive imposition of the reprimand, probation or corrective education.

(2) The defendant is entitled to

a) receive information on the suspicion, on the charge and any changes therein,

b) – unless provided otherwise by this Act – be present at the procedural actions, and inspect the documents affecting him or her in the course of the procedure,

c) be granted sufficient time and opportunity for preparing his or her defence,

d) present facts to his or her defence at any stage of the procedure, and to make motions and objections,

e) file for legal remedy,

f) receive information from the prosecutor and the investigating authority concerning his or her rights and obligations during the criminal proceedings.

(3) [55] The defendant in custody is entitled to

a) contact his or her defence counsel, and, in the case of foreign citizens, the representative of the consulate of his or her native country and communicate with them both in writing and verbally without control,

b) conduct verbal communication with his or her relatives personally under supervision, and written communication under control, based on the decision of the prosecutor and the court before and after the bill of indictment is filed, respectively.

(4) Without prejudice to the right set forth in subsection (2) *c)* above, the defendant shall be granted the possibility for making preparations without causing unreasonable difficulties for conducting the procedure.

(5) [56] The defendant residing in the territory of the Republic of Hungary shall report his or her place of residence or place of stay and any change therein to the court, prosecutor or investigating authority within three working days after moving, which conducts criminal proceedings against him or her. Unless this Act stipulates other legal consequences, upon the failure to report the above, in addition to imposing a disciplinary penalty, the defendant may be obliged to pay the resulting costs.

(6) When the relative (heir) of the defendant is granted the right of motion by this Act, the rights of the defendant shall apply, as appropriate, to the rights of the relatives (heirs). Upon the death of a defendant was a member of a church and was prevented from entering into marriage due to the order of the church which he belonged to or due to an oath made, in the absence of a relative (heir), his principal at the relevant church shall have the rights of a relative in direct line.

The counsel for the defendant

Section 44 [57](1) The counsel for the defendant may be a lawyer acting upon a power of attorney or an official appointment.

(2) More than one counsels for the defence may act on behalf of a single defendant. In the event that powers of attorney are given to several counsels for defence – unless the power of

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[54] The text of Section 42 was established by Section 33 of Act II of 2003.
[55] The text of Section 43 (3) was established by Section 26 (1) of Act I of 2002.
[56] The text of Section 43 (5) and (6) was enacted by Section 26 (2) of Act I of 2002.
[57] The text of Section 44 was established by Section 27 of Act I of 2002.

attorney indicates otherwise – any of the assigned defence counsels may act on behalf of the defendant at procedural actions or upon making a legal statement.

(3) If several defence counsels act on behalf of a single defendant, the official documents – including the subpoena and notices – shall be served on the counsel of record, and any statement concerning legal remedy or pleading may only be made by the counsel of record or the defence counsel designated by him. Until the counsels for the defence unanimously denominate another person, the counsel of record shall be the one who had first submitted his power of attorney.

(4) The same counsel for defendant may act on behalf of several defendants, provided that the defendants do not have adverse interests.

(5) Apprentice lawyers may act together with the lawyer or as an assistant lawyer until the submission of the bill of indictment and at local courts.

Section 45 (1) The following shall not act as counsels for the defence :

a) the victim, the private accuser, the substitute private accuser, the private party as well as the representatives and relatives thereof,

b) who has acted in the case as a judge, prosecutor or a member of the investigating authority, or who is a relative of the judge, prosecutor or a member of the investigating authority having acted or is acting in the case,

c) whose conduct was adverse to the interests of the defendant, or whose interests are adverse to those of the defendant,

d) who is or has been involved in the case as an expert or advisor,

e)[58] who is or has been involved in the case as a witness, unless the person could not be heard pursuant to 81 (1) *b)* or refused to give testimony under Section 82 (1) *c).*

f)[59] who is involved in the case as a defendant.

(2) The lawyer acting in the interest of a witness cannot act simultaneously as a counsel for the defence.

(3) The exclusion of the counsel for the defence pertains to the competence of the court.

Section 46 The participation of a counsel for the defence is statutory in criminal proceedings, if

a) [60]the defendant is detained,

b)[61] the defendant is deaf, mute, blind or – regardless of his legal responsibility – mentally disabled,

c) the defendant does not speak the Hungarian language or the language of the procedure,

d) the defendant is unable to defend himself personally for any other reasons,

e) if expressly stipulated so in this Act.

Section 47 [62](1) A counsel for the defence may primarily be retained by the defendant. A power of attorney may also be conferred by legal representative or a relative of legal age of the defendant, or, in the case of foreign citizens, the officer at the consulate of their native country. The defendant shall be notified of the retainer.

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[58] The text of Section 44 (1) e) was established by Section 34 of Act II of 2003.

[59] The text of Section 44 (1) f) was enacted by Section 28 of Act I of 2002.

[60] Pursuant to Section 88 (2) a) of Act II of 2003, the words “unless he is in custody” shall be repealed and shall not enter into effect.

[61] The text of Section 46 b) was established by Section 29 of Act I of 2002.

[62] The text of the second sentence of Section 47 (1) was established by Section 30 (1) of Act I of 2002.

(2) [63] The power of attorney shall be submitted to the court, prosecutor or investigating authority at which the criminal proceedings is in progress at the time of conferring the power of attorney. The retained counsel for the defence may exercise his procedural rights after submitting the power of attorney.

(3) The defendant may withdraw the power of attorney, regardless of whether the counsel of defence was retained by himself or another person.

Section 48 (1) [64] The court, the prosecutor, or the investigating authority shall officially appoint a counsel for the defence, if defence is statutory and the defendant has not retained a counsel for the defence. The defendant shall be notified of the person of the counsel for the defence after the official appointment thereof. In the case of Section 46 *a)*, the counsel for the defence shall be appointed not later than the first hearing of the defendant.

(2) The court, the prosecutor or the investigating authority shall also appoint a counsel for the defence, if defence is not statutory, but he requests the appointment of a counsel on the ground of inability to make arrangements for his defence due to his financial standing.

(3)[65] If deemed necessary in the interest of the defendant, at the request of those listed in Section 47 (1) or ex officio, the court, the prosecutor or the investigating authority shall appoint a counsel for the defence.

(4) The official appointment shall lose effect if the defence of the defendant is ensured by a retainer.

(5) The appointment of a counsel for the defence shall not be subject to appeal, however, the defendant – with justification – may request the appointment of another counsel. The request shall be judged by the court, prosecutor or investigating authority which is processing the case.

(6) In justified cases the appointed defender may request dispensation from the appointment. The request shall be judged by the court, prosecutor or investigating authority which is processing the case.

(7) [66] The counsel for the defence shall forthwith inform the defendant, as well as the court, prosecutor or investigating authority at which the procedure is in progress of the person of an assistant employed after his appointment.

(8) [67] If the defendant is detained, it shall be the responsibility of the appointing party to notify the detention facility of the person of the appointed defender.

(9) [68] The appointed defender shall be entitled to remuneration for appearing before the court, the prosecutor or the investigating authority when summoned or notified as well as for counselling the detained defendant at the detention facility, as well as to reimbursement of his verified out-of-pocket expenses incurred in connection with his actions.[69]

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[63] Section 47 (2) was enacted by Section 30 (1) of Act I of 2002 which simultaneously amended the original numbering of subsection (2) as subsection (3).

[64] The last sentence of Section 48 (1) was enacted by Section 35 (1) of Act II of 2003.

[65] Section 48 (3) was enacted by Section 31 (1) of Act I of 2002 which simultaneously amended the original numbering of subsections (3)–(6) to subsections (4)–(7).

[66] The text of Section 48 (7) was established by Section 31 (2) of Act I of 2002.

[67] Section 48 (8) was enacted by Section 31 (3) of Act I of 2002.

[68] Section 48 (9) was enacted by Section 31 (3) of Act I of 2002, the text was established by Section 35 (2) of Act II of 2003.

[69] Please refer to the Decree of the Ministry of Justice No. 7/2002 (III.30.) IM.

Section 49 [70](1) The appointment and – unless indicated otherwise therein – the power of attorney shall remain valid until the final conclusion of the criminal proceedings, but shall also extend to special procedures.

(2) With the exception of the case regulated in subsection (1) above, the appointment of the counsel for the defence will lose effect only upon the decision of the acting court, prosecutor or investigating authority, even if the legal cause for the appointment has ceased to exist.

Section 50 (1) The counsel for the defence shall

a) establish contact with the defendant without delay,

b) use all legal means of defence in the interest of the defendant in due time,

c) inform the defendant of the legal means of defence and his rights,

d) further the investigation of facts extenuating for the defendant or diminishing the liability thereof.

(2) [71] For the purpose of the defence, the counsel for the defence may make enquiries, and may obtain and collect data in compliance with the law.

(3) With the exception of the rights attached exclusively to the person of the defendant, the rights of the defendant may also be exercised by his counsel independently.

The victim

Section 51 (1) The victim is the party whose right or lawful interest has been violated or jeopardised by the criminal offence.

(2) The victim shall be entitled to

a) be present at the procedural actions (unless provided otherwise by this Act) and to inspect the documents affecting him or her in the course of the procedure,

b) make motions and objections at any stage of the procedure,

c) receive information from the prosecutor and the investigating authority concerning his or her rights and obligations during the criminal proceedings,

d) file for legal remedy in the cases specified in this Act.

(3)[72] Victims who died, either prior to, or following the institution of criminal proceedings, may be replaced by a relative in direct line, a spouse, life partner or legal representative who may exercise the rights specified in subsection (2) above. Upon the death of a victim who was a member of a church and was prevented from entering into marriage due to the order of the church which he belonged to or due to an oath made, in the absence of a relative (heir), his principal at the relevant church shall have the rights of a relative in direct line.

The private accuser

Section 52 (1) Unless provided otherwise by this Act, in the case of an assault, invasion of privacy, violation of secrecy of correspondence, libel, defamation and irreverence prosecution shall be represented by the victim as a private accuser, provided that the offender may be prosecuted based on a private motion.

(2) In the event of the death of a private accuser he may be replaced by a relative within thirty days.

(3) [73] In the case of a mutual assault, libel and defamation prosecution, when proceedings instituted based on the report filed by either party – when there is a close connection between

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[70] The original text of Section 49 was designated as subsection (1) by Section 32 of Act I of 2002 which simultaneously supplemented Section 49 with subsection (2).

[71] The text of Section 50 (2) was established by Section 33 of Act I of 2002.

[72] The text of Section 51 (3) was established by Section 34 of Act I of 2002.

[73] The text of Section 52 (3) was established by Section 35 of Act I of 2002.

the personal and real aspects of the actions – the other party filing a private motion in compliance with this Act shall act as a cross complainant. The provisions in this Act pertaining to the private accuser shall also apply to the cross complainant.

(4) Libel and defamation committed against an official person in the course of his official proceedings and against an authority in connection with its official operations shall be prosecuted based on a public accusation.

The substitute private accuser

Section 53 (1) [74] In the cases specified herein, the victim may act as a substitute private accuser, if

a) the prosecutor or the investigating authority rejected the report, or terminated the investigation,

b) the prosecutor filed formal charges only in respect of a part of the accusation,

c) the prosecutor dropped the charge.

(2) In the event of the death of the substitute private accuser, he may be replaced – within thirty days – by a relative in direct line, a spouse, life partner or legal representative.

The private party

Section 54 (1) The private party is the victim enforcing a civil claim in criminal proceedings.

(2) The private party may enforce the civil claim against the defendant which arose as a consequence of the act being the subject of the accusation.

(3) The fact that the victim did not take action as a private party shall not preclude the possibility of enforcing a civil claim by other legal means.

(4) [75] Under the conditions specified in the Code of Civil Procedure [76], the civil claim may also be enforced by the prosecutor.

(5) [77] It shall be the right of the Tax and Financial Audit Office to file a civil claim on behalf of the state for compensation for damage caused by a criminal offence related to tax or subsidy falling within the competence of the public tax authority.

(6) If the victim died, his heir may take action as a private party, however, the heir shall only be entitled to the rights regulated in Section 51 inasmuch as the enforcement of the civil claim is concerned.

(7) Procedural issues related to the enforcement of a civil claim not regulated in this Act shall be governed by the rules of civil procedures, provided that such rules are not contradictory to this Act or the nature of the criminal proceedings. The defendant may not enforce a claim against the private party, nor may he file an offset claim.

(8) [78] The decision referring the enforcement of a civil claim to other legal means shall not be subject to an appeal. The court may not declare that the part of the sentence pertaining to the civil claim has the effect of preliminarily injunction. The civil claim filed in the procedure of first instance may not be extended or its amount raised in the appeal.

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[74] The text of Section 53 (1) was established by Section 36 of Act I of 2002.

[75] The text of Section 54 (4) was established by Section 37 (1) of Act I of 2002.

[76] Please refer to Act III of 1952.

[77] Section 54 (5) was enacted by Section 37 (2) of Act I of 2002 which simultaneously amended the original numbering of subsections (5)–(6) to subsections (6)–(7).

[78] Section 54 (8) was enacted by Section 37 (3) of Act I of 2002.

Other interested parties

Section 55 [79](1) Any one whose right or lawful interest may be directly affected by the decision made in the course of criminal proceedings, may make motions and objections in connection with the related issues, may lodge an appeal against the provision of the decision concerning him and may attend the trial.

(2) In proceedings involving a criminal offence subject to confiscation or forfeiture of property, to the rights of other interested parties whose property may be confiscated as well as to the rights of the owners of the property which may be ordered to be forfeited, the rights of the victim shall apply [Section 51 (2)].

(3) In the case of subsection (2), if the court ordered confiscation or forfeiture of property, other interested parties may enforce their ownership claim by other legal means after the order has become final.

Representatives

Section 56[80] (1) Unless this Act stipulates the obligation of personal cooperation, the victim, the private accuser and other interested parties may exercise their respective rights by way of a representative. Such representative may be a lawyer or a relative of full age, acting based upon an authorisation.

(2) Incompetent and partially incompetent victims, private accusers and other interested parties shall be represented by their legal representatives, in the event of a conflict of interests the provisions of the Civil Code shall apply. In the case specified in this Act the temporary guardian shall also be entitled to act as a representative.

(3) Government bodies and economic organisations may also be represented by an authorised representative or a member or employee who is entitled to handle administrative issues.

(4) Substitute private accusers shall be represented by a lawyer unless they are natural persons having taken an examination in law.

(5) Representation of private parties shall be governed by the rules of civil procedures.

(6) No one may act as a representative who has been validly prohibited from participation in public affairs. A non-lawyer relative of full age shall attach a certificate of clean criminal record to his or her authorisation.

Section 57[81] (1) A power of attorney may be issued by the victim – or, upon the death of the victim, the persons specified in Section 51 (3) –, the private accuser, other interested parties, as well as the relatives of full age thereof, in the case stipulated in Section 56 (2) the legal representative and the child welfare agency, and in the case of Section 56 (3) the member and the employee of the government body or economic organisation vested with the right of representation. Relatives of full age may be authorised personally by the victim, the private accuser and the other interested party.

(2) Powers of attorney and authorisations shall be made in writing and filed prior to the first procedural action made by the representative. Representatives failing to file the power of attorney ro authorisation may be ordered to rectify the situation on one occasion, setting a deadline not exceeding eight days. The deadline may exceed the time limit for a private motion.

(3) The court may appoint an advocate to represent victims, private accusers, private parties and other interested parties who are unable to enforce their rights for any reason and have no

[79] The original Section 55 was designated as subsection (1) by Section 38 (1) of Act I of 2002 which simultaneously supplemented Section 55 with subsections (2) and (3).
[80] The text of Section 56 was established by Section 39 of Act I of 2002.
[81] The text of Section 57 was established by Section 40 of Act I of 2002.

representative., and the court may also point out to the prosecutor if the prosecutor is entitled to initiate a suit under the Code of Civil Procedures.

Section 58 (1) If a criminal offence has several victims, they may select from among themselves the natural person or legal entity, as appropriate, who will exercise the victim's rights.

(2) If several parties are entitled to lay or represent a private accusation or substitute private accusation, the person of the representative shall be decided by way of an agreement. In the absence of such an agreement, the court shall designate the representative from among them.

(3) [82] In the course of the procedure, a non-profit organisation falling within the scope of the Act on Non-Profit Organisations [83] established to represent the interests of the victims or groups of victims may act as the representative of the victim, or – if the criminal offence has several victims or a larger, indefinable group of persons is to be regarded as victims – the victims.

The aides [84]

Section 59 [85]

Chapter VI
REGULATIONS ON PROCEDURAL ACTIONS

Title I
GENERAL RULES FOR ACTIONS TAKEN BY THE COURT, THE PROSECUTOR AND THE INVESTIGATING AUTHORITY DURING PROCEEDINGS

Section 60. Notwithstanding any permission herein to restrict the constitutional rights – in the event of coercive measures – of the person involved, such action may be ordered, even if other conditions have been met, only when the objective of the proceedings could not be attained by other actions requiring lesser restrictions.

Section 61. The court and the prosecutor may assign the notary of the local government or other authority to perform the procedural action required for the criminal proceeding; such assignment shall be complied with promptly by the authority.

Section 62. Prior to performing the procedural action, the court, the prosecutor and the investigating authority shall inform and advise the person involved in the action of his/her rights and obligations.

Section 63. (1) Personal data of individuals participating in the proceedings may only be inspected and managed by the court, the prosecutor, the investigating authority, the expert, and the authority consulted by the court or the prosecutor, in order to perform their respective duties set forth herein. The scope of personal data of the defendant for criminal records and the rules for managing personal data are stipulated by a separate law.[86]

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[82] The text of Section 58 (3) was established by Section 41 of Act I of 2002.
[83] Please refer to Act CLVI of 1997.
[84] The subtitle of Section 59 – which is identical to the original subtitle – was re-enacted by Section 36 of Act II of 2003.
[85] Section 308 (2) of Act I of 2002 stipulated that the original Section 59, together with its subtitle, was repealed and will not enter into force. The current provision was re-enacted by Section 36 of Act II of 2003.
[86] See Act LXXXV of 1999.

(2) The personal data of individuals participating in the criminal proceedings shall only be recorded in the minutes to the required extent.

(3) Unless otherwise provided herein, personal data recorded in the course of criminal proceedings may not be deleted.

Title II

GENERAL RULES OF PROCEDURE

Deadlines

Section 64 (1) The time available for the performance of various procedural actions (deadline) and the time that should pass between two procedural actions (time interval) is stipulated by this Act; the deadline shall be established by the court, the prosecutor or the investigating authority pursuant to this Act. The deadline shall be specified in hours, days, months or years.

(2) In the event the deadline is prescribed in hours, each hour started shall be regarded as a whole hour. In the event the deadline is established in days, the day on which the circumstance causing the commencement of the period falls (starting day) shall be disregarded. Deadlines specified in months or year shall expire on the day with the same number as the starting day, or, if no such day exists in the month, on the last day of the month.

(3) If the deadline expires on a holiday, it shall be deemed to expire on the next working day.

(4) The deadline for applications and requests submitted to the court, the prosecutor and the investigating authority, and the deadline for procedural actions that may be performed before the said, shall expire at the end of the official hours. Documents mailed on the last day of the time period shall not be deemed to have defaulted the deadline.

(5) The time determined for performing a procedural action is the closing date. The closing date shall be established by the court, the prosecutor or the investigating authority.

Justification

Section 65. (1) Unless provided otherwise herein, in the event the defendant, the counsel for the defence, the victim, the private accuser, the private party, the substitute private accuser, the witness or the expert, or, in the case of court proceedings, the prosecutor has missed the deadline or closing date, or the person entitled to legal remedy missed the deadline through no fault of their own, a justification may be put forward.

(2) The application for justification may be submitted within eight days following the last day of the deadline or closing date missed. In the event the default comes to the notice of the defaulting party at some later time, or the obstacle has been eliminated subsequently, the period for submitting the application for justification shall commence on the day of recognising the default or on the day of eliminating the obstacle. No application for justification may be filed over the period of six months.

(3) The application for justification shall state the reason of the default and the circumstances supporting that the default was not imputable to the applicant. In the event of defaulting a deadline, simultaneously with submitting the application for justification, the defaulted action shall be rectified.

(4) The application for justification shall be given a fair judgement.

(5) An application for justification has no delaying effect on the progress of the proceedings or on the enforcement of the decision. If the application for justification seems to

justify that the defaulting party is not culpable, or that the defaulted action has been or will be rectified, the procedural action or the enforcement of the decision may be suspended.

Section 66. (1) The application for justification shall be judged by the same court, prosecutor or investigating authority, which had prescribed the deadline or the closing date. In the event that a deadline for legal remedy was missed, the application will be judged by the party entitled to decide in respect of the legal remedy.

(2) The application for justification shall be rejected without examining its merit, if

a) the justification is prohibited herein,

b) the application has not been submitted on time,

c) if a deadline was missed and the applicant failed to rectify the omission simultaneously with the submission of the application, even though it would have been possible.

(3) If the court, the prosecutor or the investigating authority accedes to the application for justification, the action subsequently made by the applicant shall be deemed as if it had been taken within the defaulted deadline, and the procedural action taken on the defaulted closing date shall be duly repeated. Pending on the result of such repeated action, a decision shall be made on upholding or revoking – either fully or partially – the previous procedural action.

(4) The decision acceding to an application for justification may not be appealed.

Subpoena and notice

Section 67. (1)[87] Unless provided otherwise herein, the court, the prosecutor and the investigating authority shall serve a subpoena on the person whose presence is statutory for the procedural action and serve a notice on those whose presence is not statutory but permitted by law. The person summoned by the subpoena is compelled to appear before the court, prosecutor or investigating authority having sent the subpoena.

(2) As a rule, subpoenas and notices are made in writing, or by way of verbal communication upon personal attendance before the court, the prosecutor or investigating authority. The subpoena and notice shall state:

a) when and where the recipient of the subpoena is compelled to appear and in what capacity,

b) when and where the recipient of the notice may appear and in what capacity,

c) a warning of the consequences of absence,

d) after filing the indictment, the name of the accused and the description of the criminal action underlying the proceedings.

(3) If justified by the short time available, or, in the case of notices, the substantial number of those involved requires so, a subpoena or notice may also be communicated in a way or by means other than those referred to in subsection (2), particularly by telephone, fax or computer. Should the excessive number of those concerned require so, notices may be published in the form of a press announcement.

(4) In each case, the recipient shall be informed of the court, prosecutor's office or investigating authority having sent the subpoena or notice; the fact that a subpoena or notice was served shall be recorded in the case files.

(5)[88] The person summoned by the subpoena may be requested to bring, in addition to the documentation regarding the case, notes or other evidence that may be used as evidence.

(6) Written subpoenas and notices shall be sent in a sealed envelope. In the event of an announcement in the press, the name of the persons involved may not be published.

Section 68. (1) As a rule, subpoenas and notices may be served on soldiers [Section 122. (1) of the Penal Code] through their commanding officer. The subpoena or notice may also be delivered directly to the soldier, with the simultaneous notification of the commanding officer, if the recipient has no commanding officer at the location of the sender's seat and the delay would endanger the performance of the procedural action.

(2) The ward of a minor shall be notified on the subpoena served together with a request to ensure the attendance of the minor. Subpoenas and notices shall be served on minors under fourteen years of age through their ward. The legal representative of the minor shall also be notified of the fact that a subpoena or notice has been served.

Consequences of defaults related to subpoenas

Section 69. (1)[89] If the defendant, the counsel for the defence, the witness or the expert fails to attend in spite of having received a subpoena, and fails to provide well-grounded justification thereof either in advance — upon gaining cognisance of the obstacle — or, if this is no longer possible, immediately after the obstacle has ceased to exist, or leaves the procedural action without permission,

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[87] Second sentence of Section 67. (1) was enacted by Section 42 (1) of Act I of 2002.
[88] The text of Section 67. (5) was established by Section 42 (1) of Act I of 2002.
[89] The text of Section 69. (1) was established by Section 43 (1) of Act I of 2002.

a) a writ may be issued to bring the defendant to court,

b) a writ may be issued to bring the witness to court, or a disciplinary penalty may be imposed on him/her,

c) a disciplinary penalty may be imposed on the counsel for the defence and the expert.

(2)[90] Should the defendant, the counsel for the defence, the witness or the expert appear, through the fault of their own, in a condition preventing their hearing, or in a state in which they are not able to meet their obligations in respect of the proceedings, a writ may be issued to bring the defendant to court for the next hearing or for enforcing the fulfilment of their respective obligations, a disciplinary penalty may be imposed or a writ may be issued to bring the witness to court, or a disciplinary penalty may be imposed on the counsel for the defence and the expert. The above individuals shall be ordered to cover the costs caused by their conduct.

(3) In the cases specified in subsection (1) above, the defendant, the counsel for the defence, the witness and the expert shall be compelled through an order to reimburse the costs resulting from their absence or leaving.

(4) In the case of default by solders summoned in compliance with Section 68. (1), the provisions set forth in subsection (1)–(3) shall be applied.

(5) If a minor summoned in compliance with Section 68. (2) fails to attend, and his/her ward fails to verify that he/she is not culpable for the absence of the minor, a disciplinary penalty may be imposed on the ward and he/she may be compelled through an order to reimburse the costs resulting from the minor's absence.

(6) If the prosecutor fails to appear at the time and place stated in the notice of the court at a procedural action where his/her presence is statutory, the court shall advise the superior prosecutor thereon.

(7) The consequences of defaults related to subpoenas are only applicable if the subpoena complies with the provisions set forth in Section 67-68., and the service of the subpoena has met the requirements stipulated herein and in the specific law as well as other regulations.

Delivery

Section 70. (1) Official documents of the court, the prosecutor or the investigating authority may be served on (delivered to) the addressee in the following manner:

a) personally,

b) by mail,[91]

c) in the form of an announcement,

d) through the process-server of the court, the prosecutor or the investigating authority,

e) within the scope of an international legal aid[92].

(2) The addressee may also receive the document at the sender's place.

(3) With the exception of the subpoena, documents addressed to a victim or other interested parties having a proxy, shall be delivered to the proxy.

(4)[93] Delivery shall be deemed to have been duly performed, if the official document was received by the addressee or other person on behalf of the addressee, as specified by a separate legal regulation. The official document shall be considered to have been duly delivered, if its receipt has been refused, or if it was received without having signed the delivery voucher (acknowledgement of receipt card).

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[90] The text of Section 69. (2) and (3) was established by Section 43 (2) of Act I of 2002.

[91] See Government Decree No. 254/2001 (XII. 18.) Korm.

[92] See Section61 (2), Section63, Section 80. (3) of Act XXXVIII of 1996 and the Guide of the Ministry of Justice No. 8001/2001. (IK. 4.) IM.

[93] The text of Section 70. (4) and (5) was established by Section 44 (1) of Act I of 2002.

(5) In the case of defendants whose address is unknown, official documents shall be served in the form of an announcement. In such cases the announcement shall state the address of the court, the prosecutor's office or the investigating authority where the document may be taken over by the addressee.

(6)[94] The announcement shall be posted on the notice board of the competent court, prosecutor's office or local government of the last known domestic address of residence or place of stay of the addressee (if any). The document shall be deemed to have been delivered on the fifteenth day following its posting at the court, prosecutor's office or investigating authority.

(7) Official documents mailed with a delivery voucher (acknowledgement of receipt card) shall be deemed to have been duly served on the fifth working day following the second attempt of delivery, if delivery failed because the addressee did not take over the document.

(8) Documents to be served on soldiers [Section 122. (1) of the Penal Code] shall be delivered through their commanding officer. Delivery may also be made directly to the soldier, with the simultaneous notification of the commanding officer, if the recipient has no commanding officer at the location of the sender's seat and the delay in delivery would endanger the success of the proceedings, or violate the soldier's right or appreciable interest. If the military service of the soldier is terminated during the criminal proceedings, delivery shall be governed by the general rules.

(9) If the addressee is under arrest, documents to be served on him/her shall be delivered through the chief warden of the penal institution – in the case of a subpoena and a notice, simultaneously with a writ to bring the defendant to court addressed to the penal institution.

Copying a document produced in the course of the proceedings[95]

Section 70/A. (1) At the request of the individuals participating in the criminal proceedings, the court, prosecutor or investigating authority processing the case shall issue a copy of documents produced during in the course of proceedings – including documents obtained by the court, the prosecutor or the investigating authority, as well as documents submitted or attached by the participants in the criminal proceedings – within eight days of the presentation of such request, in compliance with subsections (2)–(7).

(2) Until the conclusion of the investigation, the suspect, the counsel for the defence, the legal representative of a minor, the victim and the representative thereof may receive a copy of the expert opinion and of documents produced on investigation procedures where their presence is authorized by this Act; or of other documents, provided that this does not interfere with the interest of the investigation. The victim may receive a copy of other documents produced in the course of investigation after being heard as a witness.

(3) The party having filed the report – unless he/she falls under the category of persons listed under subsection (2) above – may only receive a copy of the report. %%

(4) If the documents referred to in subsection (2) above are produced after the hearing of the defendant under Section 179. (1), or the official appointment or authorisation of the counsel for the defence, the defendant may receive a copy after the delivery of the subpoena for the first hearing, and the counsel for the defence after receiving the decision on official appointment or filing the authorisation.

(5) After the conclusion of the investigation

[94] Section 70. (6)–(9) were enacted by Section 44 (2) of Act I of 2002.
[95] Section 70/A and its subtitle was enacted by Section 45 of Act I of 2002.

a) the defendant, the counsel for the defence and the legal representative of the minor may receive a copy of the documents produced during the investigation, which they are entitled to examine pursuant to Section 193. (1), and

b) the victim and his/her representative may receive a copy of the documents produced during the investigation, which they are entitled to examine pursuant to Section 229. (2).

(6) Unless provided otherwise herein, no restrictions may be applied to the issue of a copy for the accused, the counsel for the defence, the legal representative of the minor, the victim, the private accuser, the private party and the representatives thereof during court proceedings.

(7) Other interested parties and their representatives may receive a copy of documents of their concern. Witnesses may receive a copy of the minutes or pages of the minutes containing their testimony.

(8) The issuance of a copy may not be appealed. Refusal of issuing a copy is subject to a separate legal remedy.

(9) The title of the document copied, the recipient and the number of copies issued shall be recorded in the files of the case.

Learning state secrets and official secrets[96]

Section 70/B. (1) In the course of criminal proceedings, the defendant, the counsel for the defence, the legal representative, the victim, the private accuser, the substitute private accuser, the private party, other interested parties, as well as the representatives of the victim, the prosecutor, the substitute private accuser, the private party and other interested parties are entitled to learn of state secrets and official secrets which are contained in documents that they are permitted to examine pursuant to this Act.

(2) The organisation classifying or managing the secret as specified in the Act on State Secrets and Official Secrets[97] shall ensure that the parties enumerated in subsection (1) above may have access to the state secret or official secret that they are permitted to learn during the criminal proceedings even if the specific conditions thereof, set forth in a separate law have not been fulfilled. In such a case, the acting court, the prosecutor and the investigating authority shall advise those concerned of their obligation to keep the state secret or official secret, as well as the consequences of breaching a state secret or official secret. The above advice shall be recorded in a minutes.

(3) In respect of the delivery of documents containing a state secret or official secret the provisions of Section 70 shall be applied, with the following differences:

a) The document containing a state secret or official secret shall only be served on the addressee at a court, the prosecutor's office or the investigating authority in compliance with the Act on the protection of state secrets and official secrets,

b) the addressee shall make a statement on his/her adherence to the conditions set forth in the Act on the Protection of State Secrets and Official Secrets [98]; should the addressee state that he/she does not comply with these requirements or fails to make a statement, the addressee may not take the document containing such information out of the room of the court, the prosecutor's office or the investigating authority designated for storing classified information, and only an abstract of the document, not containing any state secrets or official secrets may be delivered to such addressee. The organisation classifying documents shall make a statement regarding the fact that the abstract contains no state secrets and official secrets

[96] Section 70/B and its subtitle was enacted by Section 46 of Act I of 2002.
[97] See Act LXV of 1995.
[98] See also Government Decree No. 79/1995 (VI. 30.) Korm.

c) If the addressee makes a statement on compliance with the requirements set forth in the Act on the Protection of State Secrets and Official Secrets, the court, the prosecutor, or the investigating authority will deliver the document containing a state secret or official secret to the addressee,

d) The restrictions stipulated in paragraphs *a)-b)* shall not apply to organisations having internal regulations on the protection of classified information.

(4) Prior to the service under paragraph (3) *c)*, the court, the prosecutor or the investigating authority shall verify whether the statement made by the addressee is true to the facts. For this, the court, the prosecutor or the investigating authority may also consult the officer in charge of classified information.

(5) The reproduction of documents containing a state secret or official secret and the management of such copy shall be governed by the following provisions:

a) If observance of the Act on the Protection of State Secrets and Official Secrets by those listed in subsection (1) cannot be ensured, the persons entitled thereto shall be provided with a copy of the document containing a state secret or official secret, however, they shall not be entitled to take this copy out of the room designated at the court, the prosecutor's office or the investigating authority for storing classified information,

b) The copy shall be kept at the court of hearing, the prosecutor or the investigating authority, however, it shall be ensured that the copy may be examined by the persons entitled thereto during official hours without restrictions, and that the copy is made available to the same persons in the official premises of the court during the hearing of the case.

Official requests for information

Section 71. (1)[99] The court, the prosecutor and the investigating authority may contact central and local government agencies, authorities, public bodies, business organisations, foundations, public endowments and public organisations to request the supply or transmission of information, data or documents, and may prescribe a time limit for fulfilling such request ranging between a minimum of eight and maximum of thirty days. Encrypted [100] data and information made unrecognisable in any other manner shall be restored in their original condition by the supplier prior to communication or delivery, or made cognisable to the requestor thereof. Data supply shall be free of charge. Unless stipulated otherwise by law, the organization contacted shall fulfil the request within the prescribed deadline or state the reason for non-compliance therewith.

(2) The court, the prosecutor and the investigating authority may also contact the local government and other authorities for the supply of documents.

(3) Requests concerning the provision of personal data shall only extend to the amount and type of data indispensable for the achievement of the objective of the request. The request shall precisely state the purpose of the data supply and scope of data required.[101]

(4) If the personal data coming to the notice of the requestor as a result of the request are not relevant for the achievement of the objective of the request, the data shall be deleted.

(5) If the personal data specified in subsection (4) are contained in the original copy of a document, an abstract shall be made on the data relevant for the achievement of the objective of the request, and simultaneously the document shall be returned to the sender.

(6)[102] If the organization contacted fails to fulfil the request within the prescribed deadline, or unlawfully refuses to fulfil the request, a disciplinary penalty may be imposed. In the event

[99] The text of Section 71. (1) was established by Section 47 (1) of Act I of 2002.
[100] See Government Decree No. 43/1994 (III. 29.) Korm.
[101] See Act LXIII of 1992.
[102] Section 71. (6)–(8) were enacted by Section 47 (2) of Act I of 2002.

of unlawful refusal to comply with the request, the coercive measures stipulated herein may also be ordered in addition to imposing the disciplinary penalty, provided that the conditions set forth by law are met.

(7) If the organization requested is unable to fulfil the request on account of being prohibited by law [103], no further procedural action towards such organization may be taken to obtain the information possessed by it.

(8) If the conditions set forth in the Act on the Admission and Stay of Foreign Citizens[104] are otherwise not fulfilled, the prosecutor and the court may make a motion to the responsible authority to issue a permission for the admission and stay of the foreign citizen, and in consideration of this foreign citizen his/her relative, whose testimony may hold evidence which presumably would not be available otherwise.

Document management[105]

Section 71/A. (1) The documents of the case shall be numbered in the order of their production or arrival to the court, the prosecutor or the investigating authority. In the course of the investigation, other document management rules may also be adopted.

(2) The documents of the case shall be filed together and sealed with the seal of the court, the prosecutor or the investigating authority at the place of filing. If documents of the case and the attachments thereto cannot be filed together, it shall be ensured that such attachments are kept and remain identifiable in some other way.

(3) Upon recognising, or establishing the fact that a document was lost or destroyed, a report shall be submitted to the chairman of the court, the head of the prosecutor's office, the head of the investigating authority and the competent prosecutor not later than at the end of the following working day. The chairman of the court, the head of the prosecutor's office, the head of the investigating authority shall order to seek or replace the lost or destroyed document. To this end, the persons participating in the proceedings may be heard and copies may be obtained.

(4) It is not required to replace the documents of the case, if the proceedings have been concluded with a decision made on the basis of the lost or destroyed documents. In such a case, it is sufficient to obtain a certified copy of the decision.

Consolidation and severance of criminal cases

Section 72. (1) If more than one defendant is involved in the same criminal action, as a rule, they may be prosecuted in a single criminal procedure.

(2) Furthermore, cases may be consolidated if the joint examination thereof is deemed justified due to the subject or the participants of the proceedings, or for other reasons.

(3) If the establishment of liability in a single procedure would be difficult due to the high number of defendants or for other reasons, the cases shall be dealt with separately.

(4) The documents of the separated case shall be forwarded to the competent court, prosecutor or investigating authority of jurisdiction.

Search for unknown persons, or persons and objects with unknown locations[106]

[103] See e.g. Section18 (3) of Act XLVI of 1993.
[104] See Act XXXIX of 2001.
[105] Section 71/A. and its subtitle was enacted by Section 37 of Act II of 2003.
[106] Section 73. and its subtitle was established by Section 48 of Act I of 2002.

Section 73. (1) The fact that the location of the defendant is unknown shall not be an obstacle of the proceedings. In such a case, the court, the prosecutor and the investigating authority shall take measures to locate the place of stay of the defendant; to this end, they may order an investigation to establish the residence or place of stay, or the apprehension of the defendant, and in the cases specified herein, issue a warrant of arrest.

(2) For the establishment of the residence or place of stay, the reregister of personal data and addresses shall be consulted[107]. Apprehension shall be the responsibility of the police in adherence to the rules set forth in separate legal regulations[108], or – in the cases stipulated by the Act governing its operation[109] – by the Border Guard.

(3) In the case of criminal acts punishable with imprisonment and in other cases set forth herein, located and apprehended defendants may be ordered to be brought before a specific court, prosecutor or investigating authority (warrant of arrest). The person searched under a warrant of arrest shall be arrested after having been located, and within 24 hours, brought before the prosecutor or investigating authority having issued the warrant of arrest or designated therein, and shall be brought before the court having issued the warrant of arrest or the court designated therein within 72 hours.

(4) Should an authority or an official person gain cognisance of the residence or place of stay of a defendant against whom the actions specified in subsections (1) and (3) have been ordered, they shall inform the court, prosecutor or investigating authority that issued the order thereof.

(5) The orders specified in subsections (1) and (3) shall be withdrawn, if the reason for their issue ceases to exist. The party having issued the order shall take prompt measures for such withdrawal. Apprehension ordered by the investigating authority may also be cancelled by the prosecutor. If the reason for apprehension ceases to exist during court proceedings, the order may also be withdrawn by the court.

(6) If the residence or place of stay, or the identity of a suspect in a criminal action is unknown, a warrant of apprehension may be issued in order to establish the residence or place of stay, or the identity of the suspect. Moreover, in order to establish the residence or place of stay, the court or the prosecutor may order the apprehension of a person whose testimony is required in the court proceedings. The warrant of apprehension shall be withdrawn when the reason for issuing the said ceases to exist.

(7) The court, the prosecutor or the investigating authority may order a search for an object with an unknown location, if it may be seized by law, or if it was ordered to be seized or sequestrated. The order shall be withdrawn when the reason thereof ceases to exist.

(8) In the course of court proceedings, the actions set forth in this Section may also be taken by the chairperson of the council and – with the exception of the issue of a warrant of arrest – the secretary of the court.

Cost of criminal proceedings

Section 74. (1) The cost of criminal proceedings shall mean

a)[110] the cost advanced by the state from the commencement of the proceedings until the end of the enforcement of the sentence, in the course of proceedings for extraordinary legal remedy and special proceedings,

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[107] See Section 8 (4) and Section 24 (1) of Act LXVI of 1992.
[108] See Act XVIII of 2001, and Decrees of the Ministry of Interior No. 20/2001 (X. 11.) BM and 21/2001 (X. 11.) BM.
[109] See Section 4 (1) 5 of Act XXXII of 1997.
[110] The text of Section 74. (1) a) was established by Section 49 (1) of Act I of 2002.

b) out-of-pocket expenses incurred by the defendant, victim, private party, substitute private accuser and the private accuser, and the legal representatives of the defendant and the victim, even if such costs have not been advanced by the state, and

c) out-of-pocket expenses and fees of the officially appointed counsel for the defence and the representatives of the victim, the private party and the substitute private accuser, if they have not been advanced by the state.

(2)[111] The cost referred to in paragraph (1) *a)* shall include, in particular, the costs related to the attendance of the witnesses, fees and cost reimbursements established for experts and consultants, costs related to the transportation and storage of seized objects and the fee and cost reimbursement of interpreters.

(3) If, based on the income and property of the defendant, he/she is presumably unable to cover the cost of criminal proceedings, and has certified the above in compliance with the provisions of the relevant legal regulation, the court or the prosecutor may decide on a personal exemption from paying the costs at the request of the defendant or the counsel for the defence. In the event of a personal exemption,

a) the court, the prosecutor or the investigating authority will appoint a counsel for the defence upon the request of the defendant [Section 48. (2)],

b) the defendant and the officially appointed counsel for the defence will receive one copy of the documents requested on the criminal case free of charge,

c) the fee and verified out-of-pocket expenses of the officially appointed counsel for the defence is paid by the state.

(4) The appeal against a decision on the personal exemption from the payment of costs or the part of a decision ordering the payment of the costs shall have a delaying effect.

(5)[112] Costs incurred as a result of bringing a person to court (Section 162) or the attendance of police as specified in the relevant legal regulation may not be included in the costs of criminal proceedings. The reimbursement of the costs due to bringing the person to court shall be governed by a separate legal regulation[113].

Title III DISCLOSURE OF INFORMATION, PROVIDING INFORMATION TO THE GENERAL PUBLIC IN THE COURSE OF CRIMINAL PROCEEDINGS [114]

Section 74/A (1) Information to the press may be provided by the following persons: prior to the conclusion of the investigation, the member of the investigating authority authorised to do so in the relevant legal regulation; prior to the indictment, the prosecutor or the person authorised thereby; and during the court procedure, the person authorised by the Act on the Legal Status and Remuneration of Judges.

(2) The press shall be entitled to provide information on public court hearings.

(3) Disclosure of information to the press shall be refused if this would violate a state secret or official secret, or would jeopardise the successful conclusion of the proceedings in any way.

Section 74/B (1) Any sound or video recordings at the court hearings shall be subject to the permission of the presiding judge, and sound or video recordings of persons present at the hearing – with the exception of the members of the court, the keeper of the minutes, the prosecutor and the counsel for the defence – shall be subject to the consent of the person concerned. The presiding judge may refuse to grant permission or may withdraw the

[111] The text of Section 74. (2)-(4) was established by Section 49 (2) of Act I of 2002.
[112] Section 74. (5) was enacted by Section 49 (3) of Act I of 2002
[113] See Joint Decree of the Ministry of Interior, Ministry of Justice and Ministry of Finance No. 2/1986 (IV. 21.) BM-IM-PM.
[114] Title III of Chapter VI and Sections 74/A-74/B were enacted by Section 38 of Act II of 2003.

permission at any stage of the court procedure in order to ensure an uninterrupted and undisturbed trial.
(2) The press shall not provide information and no information may be disclosed to the press of hearings or parts of hearings conducted in camera, unless the publicity of a hearing was denied due to reasons stipulated in Section 245 (5).
(3) Unless an exception is granted by this Act, the documents of pending or concluded criminal proceedings may only be inspected by persons authorised to do so herein.
(4) Documents specified in subsection (3) above may be subject to research according to the rules set forth in the Act on Public Deeds, Public Archives and the Protection of Documents in Private Archives[115] prior to the classification period specified therein.
(5) With the exception of the case specified in Section 74/A above, information may be disclosed to any party having legal interest in conducting the procedure or in the result thereof, permission for the inspection of the documents or the provision of the necessary information – after the justification of the legal interest therein – shall be granted by the prosecutor prior to filing the bill of indictment, and by the presiding judge during the court procedure.

Chapter VII EVIDENCE

Title I GENERAL RULES OF EVIDENCE

Object of proof

Section 75[116] (1) Evidence shall cover the facts which are relevant to the application of criminal statutes and legal regulations on criminal proceedings. The objective of gathering evidence shall be the thorough and complete elucidation of the true facts.

(2) Evidence may also extend to facts significant for the adjudication of ancillary issues – with special regard to civil claims – of the criminal proceedings.

(3) Facts of common knowledge and facts officially known by the acting court, the prosecutor or the investigating authority need not be proven.

(4)[117] Persons participating in the procedure shall be obliged and entitled to co-operate in the evidentiary procedure in the cases and in the manner set forth in this Act.

Means of evidence

Section 76 (1) Means of evidence shall be the testimony of the witness, the expert opinion, physical evidence, documents and the pleadings of the defendant.

(2) Documents and physical evidence produced or obtained by an authority – performing, in its own scope of competence, its responsibilities specified by law – prior to the institution of the criminal proceedings may be utilised in the course of the criminal proceedings.

Legality of evidence

Section 77 (1) Evidence shall be traced, gathered, secured and used in compliance with the provisions of this Act. The specific method of performing certain acts of the evidentiary procedure, examination and recording of means of evidence, and conducting the evidentiary procedure may be stipulated by law.

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[115] Please refer to Act LXVI of 1995.
[116] The second sentence of Section 75 (1) was enacted by Section 50 (1) of Act I of 2002.
[117] Section 75 (4) was enacted by Section 50 (2) of Act I of 2002.

(2) In the course of the acts of the evidentiary procedure, the human dignity, the personality rights and right of reverence of those involved shall be respected, and unnecessary disclosure of data on privacy shall be prohibited.

Evaluation of evidence

Section 78 (1) In the course of criminal proceedings, all means of evidence specified by law and all evidentiary procedures may be used without restriction. However, the use of certain means of evidence may also be statutory.

(2) Neither the means of evidence nor proofs have a legally prescribed probative force.

(3) The court and the prosecutor shall freely weigh each piece of evidence separately and collectively and establish the conclusion of evidence based on their belief thus formed.

(4) Facts derived from means of evidence obtained by the court, the prosecutor or the investigating authority by way of committing a criminal action, by other illicit methods or by the substantial restriction of the procedural rights of the participants may not be admitted as evidence.

Title II A TESTIMONY OF THE WITNESS

Section 79 (1) Those persons may be heard as a witness who may have knowledge of the fact to be proven.

(2)[118] Unless an exemption is provided for in this Act, anyone summoned as a witness shall give testimony.

(3)[119] At the request of the witness, the acting court, prosecutor or investigating authority shall establish and refund the cost – to the extent specified in a separate legal regulation[120] – incurred in connection with the appearance of the witness. The witness shall be advised of this in the subpoena and at the time of the conclusion of the examination.

Section 80 [121] The witness may retain a lawyer to act in his interest, if deems it necessary for obtaining information of his rights. The witness shall be advised of this in the subpoena.

Obstacles to testifying as a witness

Section 81 (1) The following may not be heard as witnesses:

a) clergymen and churchmen on issues subject to the obligation of professional secrecy,

b) the counsels for the defence on issues which have come to their cognisance or which they have communicated to the defendant in their capacity as a counsel for the defence,

c) who apparently cannot be expected to give correct testimony due to their physical or mental condition.

(2) Those who have not been relieved from the obligation of secrecy may not be heard as witnesses on issues classifying as state or official secrets.

(3) [122] In the case specified in subsection (2) the person entitled for classification as stipulated in the Act on State or Official Secrets shall decide on granting the relief or maintaining the secrecy obligation based on the request of the prosecutor or the court. The request for relief shall indicate, in a manner suitable for identification, the issues regarding which the relief is requested.

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[118] The text of Section 79 (2) was established by Section 51 of Act I of 2001.

[119] Pursuant to the first sentence of Section 308 (2) of Act I of 2002, the original Section 79 (3) shall be repealed and not enter into force, simultaneously, the second sentence of the same Section amended the numbering of the original Section 79 (4) to Section 79 (3).

[120] Please refer to Decree No. I/1969 (.8.) IM of the Ministry of Justice.

[121] The text of Section 80 was established by Section 52 of Act I of 2002.

[122] The text of Section 81 (3) was established by Section 55 of Act I of 2002. Please refer to Act LXV of 1995.

Section 82 (1) The following may refuse to testify as a witness:

a) the relative of the defendant,

b) [123] those who – with the exception of subsection (4) – would incriminate themselves or their relatives, on the related issues, even if they have not refuse to testify under item *a),*

c) those – excluding the case of secrecy obligation set forth in 81 (2) – who are bound by secrecy owing to their profession or public office, if their testimony would violate such secrecy obligation, unless they have been relieved by a person authorised pursuant to a separate legal regulation, or unless the person authorised pursuant to a separate legal regulation is obliged to transmit the data subject to secrecy obligation under a separate legal regulation at the request of the court, the prosecutor or the investigating authority.

(2) Prior to the examination, the witness shall be advised of the grounds from exemption as well as of his rights. Both the advice and the response of the witness thereto shall be entered into the minutes. Upon the failure to give such advice, the testimony of the witness may not be admitted as an evidence.

(3) Decision on the legitimacy of the refusal to testify shall fall in the competence of the acting court, the prosecutor or the investigating authority.

(4) [124] No one may refuse to testify as a witness pursuant to subsection (1) *b),* whose response would be self-incriminating in connection with a criminal offence the report on which was rejected under Section 175 (1), or the investigation of which was terminated under Section 192 (1). Further, no one may refuse to testify as a witness pursuant to subsection (1) *b),* against whom the investigation [Section (1) 190 *f)*] or the criminal proceedings were terminated by the court [Section 332 (1) *e)*], if their response would be self-incriminating in respect of criminal offences which ceased to be indictable for reasons stipulated in Section 147 (4), Section 255/A, Section263/C (2), Section 283/A (2), Section300/E (3), Section 303 (4) or Section 329/B (4) [125]of the Penal Code.

(5) Proceedings may not be ordered to be resumed due to the criminal offence stated in the testimony of the witness pursuant to subsection (4) [Section 191 (2)], nor may the testimony of the witness regarded as new evidence for a re-trial [Section 392 (1) *a)*]. This provision shall apply to criminal offences revealed in the course of the testimony of the witness, for which no criminal proceedings had been instituted against the witness, but the report on the criminal offence revealed in the testimony may be rejected, or the related investigation or proceedings may be terminated on any ground.

Section 83 [126](1) The obstacles to testifying as a witness shall be recognised both if they had existed during the commission of the criminal offence and at the time of the examination. Upon the existence of a ground for exemption under Section 82 (1) *b)* the witness may also refuse to testify – with the exception of the case set forth in Section 82 (4) – if the commission of the criminal offence in question had been established by way of a final decision, or the prosecutor has postponed filing an indictment against the witness. Regardless of the refusal to give testimony as a witness, the minutes taken in the earlier stages of the proceedings – when the person to be heard as a witness at the hearing had been a defendant – may be read out during the court procedure.

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[123] The text of Section 82 (1) b) and c) was established by Section 54 (1) of Act I of 2002.

[124] Section 82 (4) and (5) was enacted by Section 54 (2) of Act I of 2002.

[125] Pursuant to Section 88 (2) of Act II of 2003, the text of 82 (4) reading "in Section 255, 263/C (2), 283/A (3), or Section 329/B" as amended to read as follows: "Section 147 (4), Section 255/A, Section263/C (2), Section 283/A (2), Section300/E (3), Section 303 (4) or Section 329/B (4)".

[126] The text of Section 83 was established by Section 55 of Act I of 2002.

(2) The exemption of the witness specified in Section 81 (1) *a)* and *b)* h– unless they were granted a relief from the obligation of secrecy – shall remain valid even after the cessation of the underlying relationship. In such a case, the witness may not be examined in respect of issues to be proven but subject to the secrecy obligation.

(3) If the witness has not been relieved from the obligation of secrecy specified in Section 82 (1) *c)*, he shall be bound by such obligation for the time period stipulated in a separate legal regulation.

Section 84 The testimony of witnesses examined in violation of the provisions of Section 83 shall not be admitted as evidence.

Examination of the witness

Section 85 (1) Each witness shall be examined separately.

(2) At the commencement of the examination, the witness shall be requested to state the following: his name, date and place of birth, mother's name, place of residence and place of stay, occupation, personal identification document number and whether he is a relative of the defendant or the victim, or whether he is interested or partial in the case for other reasons. The witness shall be obliged to respond to such questions even if otherwise he may refuse to testify.

(3) At the commencement of the examination, it shall be elucidated whether there is any obstacles to testifying as a witness (Sections 81–82). In the absence of obstacles to testify as a witness, the witness shall be warned about his obligation to tell the truth to his best knowledge and conscience and warned of the consequences of giving false evidence. Both the advice and the response of the witness thereto shall be entered into the minutes.

(4) The lawyer acting on behalf of the witness may attend the examination and may inform the witness of his rights, however, the lawyer may not perform any other activity, not may he influence the testimony. After the examination, the lawyer may inspect the minutes taken and may make comments thereon either in writing or verbally.

(5) [127]The court, the prosecutor or the investigating authority may permit the witness to make a written testimony following or in lieu of the oral examination. In such a case, the witness shall write his testimony in his own hands and sign it, affixes his certified electronic signature on the testimony taken in the form of a computer file, or the testimony of the witness written in any other form is certified by a judge or a notary public. Regardless of making a written testimony, subsequently, the witness may be summoned by the court, the prosecutor or the investigating authority for an examination, if deemed necessary.

(6) If the witness makes his testimony without an oral examination, or after an oral examination in writing, the written testimony shall indicate that the witness was aware of the obstacles to testifying (Sections 81 and 82) and the consequences of giving false evidence. The witness shall be advised thereof simultaneously with permitting the provision of a written testimony, by informing him of the obstacles to testifying and the consequences of giving false evidence.

Section 86 (1) Persons under fourteen years of age may only be heard as a witness if the evidence expected to be provided by his testimony cannot be substituted by any other means. Upon the examination of such persons, the warning about the consequences of giving false evidence shall be omitted.

(2) Those who have limited capacity to understand the meaning of refusing to testify as a witness due to their mental or other state, may only be heard as a witness if they wish to

[127] Section 85 (5) and (6) was enacted by Section 56 of 2002.

testify and their legal representative or the relative designated by the witness consents thereto. The legal representative or the representative or the relative designated by the prospective witness may detain a lawyer to act on behalf of the witness.

(3) In the event of a conflict of interests between the witness and the legal representative thereof, the rights stipulated in subsection (2) shall be exercised by the court of guardians.

Section 87 Before the trial, the witness may be heard at court, if

a) the witness is in a condition directly jeopardising his life,

b) there is reasonable cause to believe that the witness cannot attend the trial.

Section 88 [128](1) In the course of the examination, the witness shall answer the questions asked from him, however, the witness shall also be granted the opportunity to state his testimony as a comprehensive whole; in the course of this – while observing the rules pertaining to the protection of the witness – it shall also be elucidated how the witness learnt of the facts included in his testimony. The cause for any discrepancy from the former testimony of the witness shall be elucidated. Upon the repeated examination of the witness in the same stage of the proceedings, the personal data of the witness – unless they have changed in the meantime – need not be recorded once again.

(2) Upon the request of the witness, the designated parts of his testimony shall be included in the minutes literally.

Sections 89–92 [129]

Coercive measure against the witness

Section 93 Witnesses illegitimately refusing to testify or co-operate in the procedural action despite being warned about the consequences, may be subject to the imposition of a disciplinary penalty and obliged to pay the costs caused.

Section 94 If the witness refuses to testify on the ground of exemption, the appeal of the dismissal thereof shall have a dilatory effect.

Title III

PROTECTION OF THE WITNESS

Section 95 In order to protect the life, physical integrity or personal freedom of the witness as well as to ensure that the witness fulfils the obligation of giving testimony and the testimony is given without any intimidation, the witness shall be provided protection as specified in this Act.

Confidential treatment of the personal data of the witness

Section 96 (1)[130] It may be requested by the witness or the lawyer acting on behalf of the witness, or ordered ex officio that the personal data of the witness [Section 85 (2)] – except for his name – be handled separately and confidentially among the documents. In exceptionally justified cases, the confidential treatment of the name of the witness may also be ordered. In such cases the data of the witness treated confidentially may only be inspected by the court proceeding in the case, the prosecutor and the investigating authority.

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[128] The first sentence of Section 88 (1) was established by Section 57 of Act I of 2002.

[129] Pursuant to Section 308 (2) of Act I of 2002, Sections 89–92 and the subtitles preceding Section 89 and Section 91 shall be repealed and not enter into force.

[130] The first sentence of Section 96 (1) was established by Section 58 (1) of Act I of 2002.

(2)[131] With the effect of the order concerning the confidential treatment of the personal data of a witness

a) the court, the prosecutor and the investigating authority proceeding in the case shall ensure that the data of the witness treated confidentially may not become known from other data of the procedure,

b) the court, the prosecutor and the investigating authority establishes the identity of the witness by way of examining documents suitable for identification,

c) the confidential treatment of the personal data of the witness may only be terminated with the consent of the witness.

(3)[132] From the time of ordering the confidential treatment of the personal data of the witness, the copies of documents containing the personal data of the witness may only be given to the participants in the criminal proceedings without the personal data of the witness.

Specially protected witness

Section 97 A witness may be declared specially protected if

a) his testimony relates to the substantial circumstances of a particularly serious case,

b) the evidence expected by his testimony cannot be substituted,

c)[133] the identity, the place of stay and the fact that he is intended to be heard by the prosecutor or the investigating authority is not known by the accused and the counsel for the defence,

d) the exposure of the identity of the witness would seriously jeopardise the life, limb or personal freedom of either the witness or the relatives thereof.

Personal protection of the participants of criminal proceedings [134]

Section 98 (1) In exceptionally justified cases the chairperson of the panel of the court proceeding in the case, the prosecutor or the investigating authority may initiate that the defendant, the counsel for the defendant, the victim, the other interested party, the representative of the victim and the other interested party, further, the witness, the expert, the advisor, the interpreter, the official witness, or another person in consideration of any of those listed, be protected as specified in a separate piece of legislation[135].

(2) The request may be submitted to the court, prosecutor or investigating authority proceeding in the case, while a verbal request shall be recorded in a report.

(3) The personal protection of the staff of the court, the prosecutor's office, the investigating authority and the penal institution or another person in consideration of the above may be initiated by the president of the court, the head of the prosecutor's office, the head of the investigating authority or the commander of the penal institution, respectively.

(4) The documents pertaining to personal protection shall be kept together with the documents of the criminal case. With the exception of the decision regarding the request and initiation, the documents shall be handled confidentially.

Regulations pertaining to persons participating in the witness protection program [136]

Section 98/A The participation of the defendant, victim and witness in the witness protection program specified in a separate piece of legislation[137] shall not affect their

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[131] The text of Section 96 (2) was established by Section 58 (2) of Act I of 2002.
[132] Section 96 (3) was enacted by Section 58 (3) of Act I of 2002.
[133] The text of Section 97 c) was established by Section 59 of Act I of 2002.
[134] Section 98 and the subtitle thereof were established by Section 60 of Act I of 2002.
[135] Please refer to Government Decree No. 34/1999. (II. 26.).
[136] Section 98/A and the subtitle thereof were enacted by Section 61 of Act I of 2002.
[137] Please refer to Act LXXXV of 2001.

respective rights and obligations related to the criminal proceedings; and in respect of the participants of the program, the provisions of this Act shall apply with the following derogation:

a) persons participating in the program shall be summoned or notified by way of the body responsible for his protection, further, official documents to be served on such persons may only be delivered by way of the body responsible for their protection,

b) persons participating in the program shall state their original personal identification data during criminal proceedings, but give the address of the body responsible for their protection as their place of residence or stay,

c) no one – including the authorities – may be provided with a copy of documents containing the personal data of persons participating in the program and any information regarding such persons, unless they hold the permission by the body responsible for the protection of such persons,

d) costs incurred in connection with the appearance and participation of persons participating in the program may not be accounted for as cost of criminal proceedings,

e) the witness and the defendant may refuse to give testimony regarding data that imply their new identity or new place of residence or stay.

Title IV

THE EXPERT OPINION

Employment of an expert

Section 99 (1) An expert shall be employed if the establishment or evaluation of a fact to be proven requires special knowledge.

(2) It is statutory to employ an expert if

a)[138] if the fact to be proven or the issue to be decided on is the mental disability of a person or the addiction of a person to alcohol or narcotic substances,

b) if the fact to be proven or the issue to be decided on is involuntary medical treatment or the necessity thereof,

c) if the identification is performed by way of biological tests,

d) upon the exhumation of a deceased person.

(3) Experts may be employed the court, the prosecutor and – with the exception of the cases set forth in subsection (2) *a)* and *b)* – by the investigating authority.

Section 100 (1) An expert shall be employed by way of an assignment. The order on the assignment of an expert shall state

a) the subject to be examined by the expert and the issues to be answered by the expert,

b) the documents and objects to be handed over to the expert, or, if this is not possible, the place and time where the documents and objects may be inspected,

c) the deadline for submitting the expert opinion.

(2) An urgent partial examination required for the preparation of the expert opinion may also be performed without an assignment order, upon the verbal instruction of the prosecutor or the investigating authority.

Section 101 (1) As a rule, one expert shall be employed. If required by the nature of the examination, more than one experts may be employed. In such cases, the order on assignment may designate only the head of the expert team and authorise him to involve other experts.

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[138] The text of Section 99 (2) a) was established by Section 62 of Act I of 2002.

(2) Two experts shall be employed when the subject of the examination is the cause and circumstances of death or the mental state of a person. The employment of more than one experts may be rendered statutory by law in other cases as well.

The expert

Section 102[139] (1) As an expert, the court, the prosecutor and the investigating authority may assign a forensic expert [140] listed in the register of experts, or, if this is not feasible, a person or institution (ad hoc expert) possessing the adequate knowledge.

(2) The professional issues in which a specific institution or body of experts is entitled to give opinion may be defined in a separate piece of legislation.[141] In the event of the assignment of an institution or body, the head thereof shall designate the expert to act.

(3) The assignor, the defendant, the counsel for the defendant and the victim shall be notified of the assignment of an expert by the assignor, or of the designation of the acting expert by the institution or the head of the expert body within eight days of serving the assignment; and if the expert has been assigned by the court, the court shall also notify the prosecutor.

Exclusion of an expert

Section 103 (1) The following may not act as an expert:

a) those who have participated in the case as a defendant, counsel for the defendant, a victim, complainant or a representative thereof, or who is a relative of the above,

b) those who have acted in the case as a judge, prosecutor or a member of the investigating authority, or who is a relative thereof,

c) those who have participated in the case as a witness,

d) at the examination of the cause and circumstances of the death and at the exhumation the medical doctor having treated the deceased immediately prior to the death thereof and the medical doctor who pronounced the person dead,

e)[142] the expert of an expert institution or a member of an expert body, if the ground for exclusion specified in item *a)* exists in respect of the head of the institution or the expert body,

f) those who have been employed in the case as an advisor,

g) who cannot be expected to form an unbiased expert opinion for other reasons.

(2)[143] The expert shall immediately report the existence of any ground for exclusion to the assignor; in the case of the assignment of an institution or a body, the report shall be made through the head thereof.

(3) The decision on the exclusion of an expert shall be adopted by the court, prosecutor or investigating authority proceeding in the case.

(4) The provisions of Sections 83–84 shall be appropriately applied to experts.

Professional examination

Section 104 (1) The expert shall be obliged to make a contribution to the case and to give an expert opinion.

(2)[144] For substantial reasons, the expert may be relieved of the assignment by the decision of the court, prosecutor or investigating authority proceeding in the case. The expert – in the

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[139] The text of Section 102 was established by Section 63 of Act I of 2002.

[140] Please refer to Government Decree No. 53/1993. (IV. 2.).

[141] Please refer to Section 11 (3) and Annex No. 3 of Decree No. 2/1988. (V. 19.) IM of the Ministry of Justice.

[142] Section 103 (1) e) was established by Section 64 (1) of Act I of 2002.

[143] Section 103 (2) was established by Section 64 (2) of Act I of 2002.

event of the assignment of an institution or body, through the head thereof – shall notify the assignor if

a) the professional issue does not fall within the scope of his professional knowledge,

b) pursuant to a separate piece of legislation, specific institution or body is entitled to give an expert opinion on the professional issue,

c) he is materially hindered in performing the expert activity, thus especially by the lack of the conditions for the undisturbed performance of the activity or the partial examinations.

Section 105 (1) The expert shall give an opinion based on a professional examination. The expert shall conduct the examination by using the tools, procedures and methods available according to the present state of science and modern professional knowledge.

(2) The expert shall be obliged and entitled to get acquainted with all data required for the fulfilment of his task, for this purpose, the expert may inspect the documents of the case, be present at the procedural actions, and may request information from the defendant, the victim, the witnesses and the other experts involved in the proceedings. If required for the performance of the tasks, the expert may request further data, documents and information from the assignor. With the authorisation of the assignor, the expert may inspect and test, and take sample of subjects not handed over to him.

(3) In the course of the examination, the expert may examine and ask questions from persons and may inspect and test objects. Upon inspecting an object which changes or is destroyed due to the test, if possible, the expert shall save a part of the object in its original state so that it can still be identified and/or its origin established.

(4) The assignor may specify the examinations to be performed by expert in the presence of the assignor.

(5) The expert shall notify the assignor if any measure or procedural action needs to be performed within the scope of authority of the assignor.

(6)[145] The expert shall be entitled to remuneration for the professional examination, the preparation of the expert opinion and appearance before the court, the prosecutor or the investigating authority based on a subpoena, further, the expert shall be entitled to the reimbursement of the verified out-of-pocket expenses incurred in the course of his actions.[146] The remuneration of the expert shall be established in a decision by the assignor, or the court, prosecutor or investigating authority proceeding in the case, based on the tariff schedule submitted by the expert, after receipt of the expert opinion or – if the expert is heard – the hearing, but not later than within thirty days.

(7) The decision establishing the remuneration of the expert shall be subject to a separate legal remedy.

Obligation to provide assistance during the professional examination

Section 106 (1)[147] Any professional examination affecting the inviolability of the person to be examined may only be conducted upon a separate order by the assignor. The defendant and the victim shall submit themselves to the professional examination or treatment, unless it involves an operation or an examination procedure qualifying as such. The victim shall facilitate the performance of the professional examination in other ways (e.g. by supplying

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[144] The introductory part of the second sentence of Section 104 (2) was established by Section 64 (3)of Act I of 2002.

[145] Section 105 (6) and (7) was enacted by Section 65 of Act I of 2002.

[146] Please refer to Decree No. 3/1986. (II. 21.) IM of the Ministry of Justice.

[147] The last sentence of Section 106 (1) was enacted by Section 66 of Act I of 2002.

information) as well. Upon a separate order by the assignor, the defendant, the victim and the owner of the object of inspection shall tolerate that the thing in his possession be subjected by the expert to an examination – even if this involves damage to or destruction of the object.

(2) The damage caused by the professional examination shall be subject to indemnification, as specified in a separate legal regulation.

(3) If the defendant fails to fulfil the obligation of assistance, coercive measures may be applied. If the victim fails to fulfil the obligation of assistance, a disciplinary penalty may be imposed.

(4) The provisions of (1)–(3) above pertaining to the victim shall also apply to the witness, however, the provisions of Sections 81 and 82 shall prevail.

Diagnosis of mental state

Section 107 (1) If the expert opinion concludes that assessment of the mental state of the defendant requires a longer time, the court – before the submission of the indictment, at the motion of the prosecutor – shall order the observation of the defendant's mental state. Detained defendants shall be referred to the Forensic Diagnostic and Mental Institution, while defendants at liberty to the psychiatric in-patient institution specified by law[148]. The duration of the observation may be one month; the court may extend this deadline on one occasion by one month upon the opinion of the institution performing the observation.

(2) The appeal submitted owing to the order of a diagnosis of mental state shall not have a delaying effect, unless the defendant is at liberty.

(3)[149] In the course of the observation of the mental state of a defendant at liberty, the personal freedom of the defendant may be restricted in compliance with the provisions of the Act on Health Care [150]. If the defendant evades the observation of his mental state, the psychiatric institution shall forthwith notify the court ordering the diagnosis.

Submission of the expert opinion

Section 108 (1) The expert opinion may be presented in the form of an oral statement by the expert, or submitted in writing, within the deadline set by the court, the prosecutor or the investigating authority.

(2) The expert opinion shall include:

a) information regarding the subject, the procedures and tools of the examination as well as the changes in the subject of the examination (diagnosis),

b) a brief description of the examination method,

c) a summary of professional assessments (professional assessment of facts),

d) conclusions drawn from the professional assessment of facts and the answers given to the questions raised (opinion).

(3) The expert shall provide the expert opinion in his own name.

(4) If several experts have participated in the examination, the name of the expert having performed any given examination shall be indicated in the opinion. If several experts arrive at the same conclusion, they may submit an expert opinion jointly (joint expert opinion). In professional issues covering various fields of expertise, the experts may combine their expert opinions (combined expert opinion).

(5) The written expert opinion shall be signed by the expert. If the assigned expert is an institution or body, the head thereof shall also sign the expert opinion.

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[148] Please refer to Section 52 (3) of Decree No. 2/1988. (V. 19.) IM of the Ministry of Justice.

[149] Section 107 (3) was enacted by Section 67 of Act I of 2002.

[150] Please refer to Chapter X of Act CLIV of 1997.

(6)[151] Unless the expert needs to be summoned, the expert needs only be notified of subsequent procedural actions, if he requested so concurrently with the submission of the written expert opinion. The expert shall be advised thereon in the assignment order.

(7) The defendant, the witness or the victim may request that in the expert opinion pertaining to the them the part specified in subsection (2) *a)* above be handled confidentially. Such request may also be submitted by the counsel for the defendant and the lawyer acting on behalf of the witness.

(8)[152] The statement of the defendant made in front of the expert concerning the act underlying the proceedings, which constitute a part of the expert opinion under subsection (2) *a)* above, may not be admitted as evidence.

Section 109 If the expert opinion is incomplete, unclear, contradicts itself or it is required for other reasons, the expert shall – at the request of the court, the prosecutor or the investigating authority – provide the relevant information or complement the expert opinion.

Hearing of the expert

Section 110 (1) Before an expert makes an oral statement, his identity and the absence of any reason for his exclusion shall be verified. Ad hoc expert shall be warned of the consequences of providing a false expert opinion. The warning and the response of the expert to the warning shall be included in the records. After the expert has presented the expert opinion, he may be cross-examined.

(2) Prior to stating the expert opinion at a trial, the forensic expert shall be reminded of his oath of service.

(3)[153]

Employment of another expert

Section 111[154] (1) If the information requested from the expert or the complemented expert opinion still fails to bring the desired result, or it is necessary for other reasons, another expert shall be assigned.

(2) In the course of the investigation the defendant and the counsel for the defendant may motion for the assignment of another expert. Decision on the assignment shall fall within the scope of authority of the prosecutor.

(3) In the event of a decision concerning involuntary treatment in a mental institution, another expert shall also be assigned upon a motion by the defendant, the legal representative or spouse, or the co-habitor or counsel for the defendant thereof.

(4) If the prosecutor or the investigating authority has assigned an expert in the course of the investigation and the accused or the defendant thereof submits a motion to this effect within fifteen days following the delivery of the indictment [Section 263 (2)], the court shall assign another expert to examine the same fact. This provision shall not be applicable, if the court has also assigned an expert in the case, or the involvement of the person (institution, body) invited by the defendant or the counsel as an expert has been permitted by the court or the prosecutor.

(5) If the expert opinions prepared based on the same examination material regarding the same fact to be proven differ on a professional issue which has a substantial bearing on a decision in the case, and such difference cannot be clarified by requesting information from

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[151] Section 108 (6) was established by Section 68 (1)of Act I of 2002.

[152] Section 108 (8) was established by Section 68 (2) of Act I of 2002.

[153] Pursuant to Section 308 (2) of Act I of 2002, Section 110 (3) shall be repealed and shall not enter into force.

[154] The text of Section 111 was established by Section 69 of Act I of 2002.

the experts, complementing the expert opinion or hearing the experts in the presence of each other (Section 125), the court, the prosecutor or the investigating authority may order, either ex officio or upon a motion, that a new expert opinion be obtained.

(6) The expert opinion obtained pursuant to subsection (5) shall take a position in respect of the cause of difference among the expert opinions, whether any of the expert opinions should be complemented and whether another expert opinion should be obtained in the case.

Section 112 (1) The defendant and the counsel for the defendant may advise the prosecutor or the court that they intend to obtain and submit an expert opinion.

(2) The decision on the involvement of the person (institution, body) invited by the defendant or the counsel for the defendant to prepare an expert opinion shall fall within the scope of authority of the court or the prosecutor. The expert invited – after having been recognised in his capacity as such – may participate in the professional examinations; in the course of the court procedure, he shall be entitled to the same rights and bound by the same obligations as the expert assigned by the court or the prosecutor.

(3) If the court or the prosecutor refuses to involve the person invited, the opinion prepared may be used according to the rules pertaining to documents.

Consequences of non-compliance with the expert's obligations

Section 113 (1) If the expert refuses to co-operate or provide an opinion for no justified reasons after having been warned of the consequences thereof, in addition to imposing a disciplinary penalty, the expert may be obliged to pay the resulting costs.

(2) A disciplinary penalty may also be imposed on the expert if he delays the submission of the expert opinion for no justified reasons.

(3) If the expert refuses to deliver an opinion by referring to his exemption, the expert shall not be ordered to co-operate until the appeal against the decision denying the exemption is judged.

The interpreter

Section 114 (1)[155] If a person whose native language is not Hungarian, intends to use in the course of the proceedings their native language, or – pursuant to and within the scope of an international agreement promulgated by law – their regional or minority language, an interpreter shall be employed. If the use of the native language involved unreasonable difficulties, the use of another language defined by the person not commanding the Hungarian language as a language spoken Known, shall be provided for by way of an interpreter.

(2) As a rule, deaf or numb persons shall be heard either by way of an interpreter, or by way of written communication.

(3) The provisions of this Act pertaining to experts shall also apply to interpreters, provided that only persons having the qualification stipulated in a separate legal regulation [156] may be employed as an interpreter. The term "interpreter" shall include translators as well.

Opinion of the probation officer [157]

114/A. Section (1) Before a punishment or measure is imposed, or the filing of an indictment is postponed, as the case may be, the court and the prosecutor may order that an opinion from the probation officer be obtained. The obligation to obtain an opinion from the

[155] The text of Section 114 (1) was established by Section 70 of Act I of 2002.

[156] Please refer to Decree No. 24/1986. (VI. 26.) MT of the Council of Ministers and Decree No. 7/1986. (VI. 26.) IM of the Ministry of Justice on the implementation thereof.

[157] Section 114/A and the subtitle thereof were enacted by Section 39 of Act II of 2003.

probation officer may be stipulated by law. The opinion of the probation officer shall be prepared by the probation officer.

(2) The opinion of the probation officer shall depicts the facts and circumstances characterising the personality and living conditions of the defendant – thus, in particular, the family conditions, state of health, any addictions, dwelling conditions, level of education, skill, place of work or, failing this, data on the employment, income and financial status of the defendant – and presents the relationship between the facts and circumstances revealed and the commission of the criminal offence.[158]

(3) In the opinion the probation officer provides information on possibilities of work suiting the capabilities of the defendant, or on health or welfare institutions which could provide for the defendant, and may also propose that a special rule of conduct be ordered in respect of the defendant.

(4) If the court or the prosecutor orders so, the opinion of the probation officer shall also include whether the defendant agrees to comply with the prospective rules of conduct or obligations and whether the victim agrees with the compensation to be granted.

(5) The probation officer shall be obliged and entitled to learn all data necessary to prepare the opinion, and for this purpose may inspect the documents of the case, and request information from the defendant, the victim, the witnesses and other persons involved in the proceedings. If necessary for the fulfilment of his duty, the probation officer may request further data, documents and information from the prosecutor or the court.

(6) The provisions of this Act pertaining to the expert shall also apply to the probation officer preparing the opinion of the probation officer, provided that Section 105 (6) and (7), Sections 106–107 and Sections 111–113 shall not be applicable to the probation officer.

Title V

PHYSICAL EVIDENCE AND DOCUMENTS

Physical evidence

Section 115 (1) Physical evidence shall be all objects (things) suitable for proving the facts to be proven, thus in particular, objects bearing the marks of the commission of the criminal offence or having been created through the criminal offence, objects used as a tool for the commission of the criminal offence and the subject of the criminal offence.

(2) For the purposes of this Act, physical evidence shall include documents, drawings and any objects recording data by way of a technical, chemical or other methods. The provisions of this Act pertaining to documents shall be construed as pertaining to data media as well.

Documents

Section 116 (1) Document shall mean all means of evidence prepared and suitable for proving that a fact or data is true, that an even has taken place or that a statement has been made.

(2) The provisions pertaining to documents shall also apply to abstracts made from documents and to objects produced in compliance with the method specified in Section 115 (2) for the purpose of verifying that a fact or data is true, that an even has taken place or that a statement has been made.

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[158] Please also refer to Chapter II of Decree No. 17/2003. (VI. 24.) IM of the Ministry of Justice.

(3)[159]

Title VI

TESTIMONY OF THE DEFENDANT

Section 117 (1)[160] Prior to the commencement of the questioning of the defendant, his identity shall be verified, therefore, the defendant shall be requested to state the following: his name, date and place of birth, mother's name, place of residence and place of stay, personal identification document number and citizenship The defendant shall be obliged to respond to such questions even if otherwise he refuses to testify.

(2)[161] At the commencement of the questioning, the defendant shall be advised that he is not under the obligation to testify, that he may refuse to testify or to respond to any of the questions in the course of the questioning, but may freely decide to testify at any time even if he has previously refused to do so. The defendant shall also be warned that anything he says or provides may be used as evidence. The warnings and the response of the defendant shall be included in the records. In the absence of such warnings, the testimony of the defendant may not be admitted as a means of evidence.

(3) The questioning of the defendant shall start with questions concerning the occupation, place of work, education, family conditions, income and financial status, further, to former punishments and – depending on the subject of the proceedings – military rank and honours. This is followed by the detailed interrogation of the defendant.

(4)[162] If the defendant refuses to testify, he shall be advised that this fact does not interfere with the continuation of the proceedings. If the defendant chooses to testify, he shall be warned against falsely accusing others with the commission of a criminal offence in the testimony. No further questions may be asked from the defendant in respect of the criminal offence he refused to testify to, and the defendant may not be confronted with the other defendants or the witness, unless he decides to testify beforehand. The refusal to testify shall not affect the right of the defendant to ask questions, or to make objections or motions.

(5) If the defendant wishes to testify, the possibility thereof shall be granted.

Section 118 (1)[163] The defendant shall be granted the opportunity to state his testimony as a comprehensive whole; thereafter, the defendant may be cross-examined. The cause for any discrepancy from the former testimony of the defendant shall be elucidated.

(2) Unless provided otherwise by this Act, in the event of the defendant admits the commission of the criminal offence, other evidence shall also be obtained.

(3) The defendants shall be heard separately. The defendant may write his testimony with his own hands or otherwise, this shall be attached to the documents of the case.

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[159] Pursuant to Section 308 (2) of Act I of 2002, Section 116 (3) shall be repealed and shall not enter into force.

[160] The second sentence of Section 117 (1) was enacted by Section 71 (1) of Act I of 2002.

[161] The first and second sentences of Section 117 (2) were established by Section 71 (2) of Act I of 2002.

[162] The third and fourth sentences of Section 117 (4) were enacted by Section 71 (3) of Act I of 2002.

[163] The text of Section 118 (1) was established by Section 72 of Act I of 2002.

Title VII

EVIDENTIARY PROCEDURES

Inspection

Section 119 (1) An inspection may be ordered and conducted by the court or the prosecutor, if the elucidation or establishment of a fact to be proven requires the examination of a person, an object or site, or the observation of an object or site.

(2)[164] If deemed necessary, an expert may be involved in the inspection.

(3) During the inspection the conditions material for establishing the criminal offence shall be entered in the records in detail. At the time of the inspection, all physical means of evidence shall be tracked down and gathered, and their proper safe-keeping ensured. Inasmuch as it is possible or necessary, audio and/or video records, drawings or drafts should also be made of the object of the inspection, and they shall be attached to the records.

(4) If the object of the inspection cannot transported to the court, the prosecutor or the investigating authority, or if this would result in significant difficulties or costs, the inspection shall be carried out on the scene.

(5)–(6)[165]

Section 120 (1) The court, the prosecutor or the investigating authority shall question the defendant and the witness on the scene (questioning on the scene), they are required – even after previous hearings – to make a statement on the scene of the criminal offence, and show the spot where the criminal offence took place, other spots having a connection with the criminal offence, physical means of evidence or the course of events during the criminal offence.

(2) Prior to being questioned on the scene, the defendant or the witness shall be asked about the conditions of noticing the given site, act or physical means of evidence and how would they recognise them.

Reconstruction

Section 121 (1) The court or the prosecutor shall order and stage a reconstruction, if they wish to establish or verify whether an event or occurrence could, in fact, take place at a specific place and time, in a specific way or under specific circumstances.

(2) As much as possible, the reconstruction shall take place under the actual or assumed conditions as the investigated event or occurrence happened or might have happened.

Presentation for identification

Section 122 (1)[166] The court or the prosecutor shall order and perform a presentation for identification, if this is required to identify a person or an object. The defendant or the witness shall be shown at least three persons or objects for identification. In the absence of other means of identification, the defendant or the witness may be presented a photo or other audio or video records of the person or object.

(2) Prior to the presentation for identification, the person to make the identification shall be questioned in detail concerning the conditions of noticing the given person or object, his relationship with the person or the object, and the known distinguishing marks thereof.

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[164] The text of Section 119 (2) was established by Section 73 of Act I of 2002.

[165] Pursuant to Section 308 (2) of Act I of 2002, Section 119 (5) and (6) shall be repealed and shall not enter into force.

[166] The text of Section 122 (1) was established by Section 74 of Act I of 2002.

(3) In the event of presentation of persons, individuals not involved in the case and not known by the person to make the identification shall be lined up, who have the same main distinguishing marks – thus, especially, same gender, similar age, built, complexion, personal hygiene level and clothing – as the given person. In the case of objects, the object to be identified shall be placed among similar objects. The positioning of the given persons or objects within the group may not be significantly different than the that of the others or conspicuous.

(4) Even if there are several persons making the identification, the presentation shall take place separately, in the absence of the others.

(5) If required for the protection of the witness, the presentation for identification shall take place under conditions preventing the person presented from identifying or noticing the witness. In the event of an order to handle the personal data of the witness confidentially, this shall be ensured during the presentation for identification as well.

Section 123 (1) The rules pertaining to the inspection shall apply to the reconstruction and the presentation for identification as appropriate.

(2) The court or the prosecutor may also request the co-operation of the investigating authority for performing an inspection, reconstruction and presentation for identification. The investigating authority shall perform the requests of the court by the deadline.

(3) Unless provided for otherwise by the prosecutor, the investigating authority may also order and perform an inspection, reconstruction and presentation for identification.

(4)[167] The defendant, the witness, the victim and other person shall be obliged to submit to the inspection, reconstruction and presentation for identification, and make the object in their possession available for the purpose of inspection, reconstruction and presentation for identification. In order to fulfil these obligations, coercive measures may be applied in respect of the defendant, and disciplinary penalty may be imposed on the victim and other person.

(5) As a rule, the procedure of the inspection, reconstruction and presentation for identification shall be recorded by an audio or video recorder or other equipment. The audio or video recordings shall be attached to the documents of the case; and they may not be used for any other purpose than their intended use.

Confrontation

Section 124 (1) If the testimonies given by the defendant(s) and the witness(es) are contradictory, if necessary, the conflict may be resolved by way of confrontation. Those confronted shall present their statement orally and may be permitted to ask questions from one another.

(2)[168] If required for the protection of the witness or the defendant, the confrontation of the witness or the defendant shall be omitted.

(3) Persons under fourteen years of age may only be involved in the confrontation, if it will not cause apprehension.

Concurrent hearing of experts

Section 125 Differences in the opinion of the experts may be clarified by way of a hearing them in the presence of the other experts.

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[167] Section 123 (4) and (5) was enacted by Section 75 of Act I of 2002.

[168] The text of Section 124 (2) was established by Section 76 of Act I of 2002.

Chapter VIII
COERCIVE MEASURES

Title I

CUSTODY

Section 126 (1) Taking the defendant into custody means a temporary deprivation of the defendant of his freedom.

(2) The custody of the defendant may be ordered upon a reasonable suspicion that the defendant has committed a criminal offence subject to imprisonment – thus, in particular, if the defendant is caught in the act – provided that a probable cause exists to believe that the pre-trial detention of the defendant is to follow.

(3) The defendant may be retained in custody for a period of maximum seventy-two hours. After the lapse of this period, the defendant shall be released, unless the court has ordered his pre-trial detention. The defendant shall be released, if the court has not made a decision concerning his pre-trial detention during the period of the custody.

(4) Unless the conditions have changed, the defendant may not be taken into custody twice for the same criminal offence.

(5) The period of custody shall also include the time spent by the defendant in lawful detention prior to the issuance of the order for taking him into custody.

Section 127 (1) Custody may be ordered and terminated by the court, the prosecutor or the investigating authority.

(2) If the defendant has been taken into custody on the order of the investigating authority, it shall advise the prosecutor thereon within twenty-four hours.

(3) A person caught in *flagrante delicto* may be captured by anyone, however, the capturer shall hand over the delinquent to the investigating authority without delay; or, if this is unfeasible, notify the police.

Section 128 (1) The relative of the defendant designated by the defendant shall be notified of the warrant of custody and the place of detention within twenty-four hours; in the absence of such a relative, notification made be made to another person designated by the defendant.

(2) Children of minor age of the defendant remaining without supervision, or any other person being looked after by the defendant shall be delivered to the care of a relative or an appropriate institution. The settling arrangements for minors shall be made through the Court of Guardians, while in the case of other persons being looked after by the defendant, the notary of the local government. Actions shall be taken to secure the property and home of the defendant left unattended.

(3) When a soldier is taken into custody [Section 122 (1) of the Penal Code] his commanding officer shall also be notified thereof.

Title II

PRE-TRIAL DETENTION

Conditions for pre-trial detention

Section 129 (1) Pre-trial detention means the judicial deprivation of the defendant of his freedom prior to the delivery of the final decision.

(2) The pre-trial detention of the defendant may take place in a proceeding related to a criminal offence punishable by imprisonment, and only under the following conditions:

a)[169] the defendant has escaped, or has attempted to escape, or absconded from the court, the prosecutor or the investigating authority, or another procedure has been launched against the defendant for committing a deliberate criminal offence also punishable by imprisonment,

b) owing to the risk of an escape or hiding, or for other reasons, there is reasonable cause to believe that the presence of the defendant in procedural actions cannot be otherwise ensured,

c) there is reasonable cause to believe that if left at liberty, the defendant would frustrate, obstruct or jeopardise the evidentiary procedure, especially by means of influencing or intimidating the witnesses, or by the destruction, falsification or secretion of physical evidence or documents,

d) there is reasonable cause to believe that if left at liberty, the defendant would accomplish the attempted or planned criminal offence or commit another criminal offence punishable by imprisonment.

Ordering pre-trial detention

Section 130 (1) The decision on ordering pre-trial detention – prior to filing the indictment and at the motion of the prosecutor made in compliance with the procedure set forth in Title VI of Chapter IX – shall fall under the competence of the court.

(2)[170] Instead of pre-trial detention, the court may order home curfew or house arrest as well.

(3) If conducting a criminal proceeding is subject to a private motion, pre-trial detention may not be ordered prior to lodging such private motion.

Term of the pre-trial detention

Section 131 (1)[171] Pre-trial detention ordered prior to filing the indictment may continue up to the decision of the court of first instance during the preparations for the trial, but may never be longer than one month. Pre-trial detention may be extended by the investigating judge by three months on each occasion, but the overall period may still not exceed one year after the order of pre-trial detention. Thereafter, pre-trial detention may be extended by the county court acting as a single judge by two months on each occasion, in compliance with the procedural rules pertaining to investigating judges.

(2) Prior to filing the indictment, the prosecutor shall make a motion to the court for the extension of the pre-trial detention five days before the expiry of the deadline of the pre-trial detention.

(3) The appeal lodged against the decision of the investigating judge shall be adjudicated by the panel of second instance of the county court, while an appeal against the decision of the county court acting as a single judge shall be adjudicated by the panel of the tribunal.

(4)[172] After filing the indictment, pre-trial detention ordered or maintained by the court of first instance may continue up to the announcement of the conclusive decision made by that

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[169] Section 129 (2) a) was established by Section 77 (1) of Act I of 2002.
[170] Section 130 (2) was established by Section 77 (2) of Act I of 2002.
[171] The last sentence of Section 131 (1) was established by Section 78 (1) of Act I of 2002.
[172] Section 131 (4) was established by Section 78 (2) of Act I of 2002.

court, while pre-trial detention ordered or maintained by the court of first instance after the announcement of its conclusive decision, or ordered or maintained by the court of appeal may continue up to the conclusion of the procedure with a final decision, but no longer than the term of imprisonment imposed by the appealable decision. Should the conclusive decision of the court of first instance be repealed and the court of first instance be ordered to conduct a new procedure, pre-trial detention ordered or maintained by the court of appeal may continue up to the decision of the court of first instance delivered in the course of the repeated procedure.

Section 132 (1)[173] If the period of the pre-trial detention ordered or maintained after filing the indictment, its justification shall be reviewed

a) by the court of first instance if such detention exceeds six months and the court of first instance has not delivered a conclusive decision yet,

b) by the court of appeal, if the period of the pre-trial detention has exceeded one year.

(2) After the lapse of the time period specified in subsection (1) b), the justification of the pre-trial detention ordered or maintained after filing the indictment shall be reviewed by the court of appeal at least once in every six months.

(3)[174] When the period of the pre-trial detention reaches three years, it shall terminate, unless it was ordered or maintained after the announcement of the conclusive decision, or unless a repeated procedure is in progress owing to a repeal in the case.

Judgement of a motion to terminate pre-trial detention

Section 133 (1) The court shall examine the motion to terminate the pre-trial detention in its merit, and deliver a decision thereon with the explanation of the reasons. Repeated motions may be rejected by the court without substantial justification, unless the defendant or the counsel for the defendant cites new circumstances.

(2) If three months has elapsed either from the order or the extension of the pre-trial detention, the second sentence of subsection (1) may not be applied.

Measure after ordering pre-trial detention

Section 134 If the measures regulated in Section 128 have not been taken at the time of taking the defendant into custody, they shall be taken without delay by the investigating authority (before the indictment is filed) or the court (if the indictment has been filed) after the questioning of the detainee.

Execution of the pre-trial detention

Section 135 [(1)[175] *Pre-trial detention shall be spent in a penal institution.*

(2) In exceptional cases, prior to the filing of the indictment, the person in pre-trial detention may also be held in a police cell – for a period of maximum thirty days – based on a court decision; and if justified in order to take an investigatory action, based on the decision of the prosecutor on two occasions – for a period of maximum fifteen days in each case.]

(3)[176] The defendant held in pre-trial detention may not be restricted in exercising his procedural rights. The defendant shall be granted the opportunity to contact his defence

[173] The text of Section 132 (1) and (2) was established by Section 40 of Act II of 2003.
[174] The text of Section 132 (3) was established by Section 79 of Act I of 2002.
[175] Pursuant to Section 308 (4) of Act I of 2002, Section 135 (1) and (2) shall enter into force on January 1, 2005. Up to that time, to the location of the pre-trial detention, Section 116 (1) and (3) of Law–Decree on the Penal service shall apply.
[176] Section 135 (3) was established by Section 41 (1) of Act II of 2003.

counsel, and, in the case of foreign citizens, the representative of the consulate of his native country. The defendant held in pre-trial detention may only be subjected to restrictions following from the nature of the criminal proceeding, or required by the rules of the institution executing the detention. The detailed rules of executing the pre-trial detention are specified in separate legal regulations.

(4)[177] If it is provable that after the pre-trial detention has been effectuated the defendant abuses his right to communicate with his defence counsel and

a) prepares to escape,

b) endeavours to obstruct the procedure, by means of influencing or intimidating the witnesses, or by the destruction, falsification or secretion of physical evidence or documents, or

c) solicits for the commission of another criminal offence punishable by imprisonment,

the court – at the motion of the prosecutor prior to filing the indictment – may exclude the defence counsel from the procedure.

Extraordinary procedure, termination of pre-trial detention

Section 136 (1) The court, the prosecutor and the investigating authority shall make all efforts to reduce the term of the pre-trial detention as much as possible. If the defendant is held in pre-trial detention, an extraordinary procedure shall be conducted.

(2)[178] The pre-trial detention shall terminate if its term has expired and has not been extended or maintained, if the procedure has come to a final conclusion, if the investigation has been terminated, if its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension, or if pressing charges has been postponed; further, it shall be terminated if the cause for ordering the detention has ceased to exist.

(3) Up to the time of filing the indictment, the pre-trial detention may also be terminated by the prosecutor.

Title III

HOME CURFEW AND HOUSE ARREST[179]

Home curfew[180]

Section 137 (1) The home curfew restricts the right of the defendant to free movement and free choice of dwelling; the person subjected to a home curfew may not leave the specified area or district nor may he change his place of residence or stay without permission.

(2)[181] Home curfew may be ordered when taking into account the nature of the criminal offence, the personal circumstances and family conditions of the defendant – with special regard to the health condition or old age of the defendant – or his conduct during the proceedings, this way the objectives otherwise desired to be attained through pre-trial detention, can also be realised.

(3) The home curfew is ordered by the court. In its decision ordering the home curfew the court may require the defendant to report to the police at specific intervals, and may also make other restrictions to ensure the realisation of the objective of the home curfew.

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[177] The text of Section 135 (4) was established by Section 80 of Act I of 2002.
[178] Section 136 (2) was established by Section 41 (2) of Act II of 2003.
[179] The text of Title II of Chapter VIII was established by Section 82 (1) of Act I of 2002.
[180] The subtitle of Section 137 was enacted by Section 82 (2) of Act I of 2002.
[181] Section 137 (2) was established by Section 82 (3)of Act I of 2002.

(4)[182] Adherence to the restrictions ordered in the scope of the home curfew shall be controlled by the police, while compliance with the orders in a home curfew imposed on professional soldiers and soldiers serving under a contract [Section 122 (1) of the Penal Code] shall be controlled by his commanding officer, or in his absence, another superior officer.

(5) If ordered prior to filing the indictment, the home curfew may continue up to the decision of the court of first instance during the preparations for the trial, if ordered or maintained thereafter, it may continue up to the announcement of the conclusive decision of the court of first instance; if ordered or maintained by the court of first instance after the announcement of the conclusive decision, it may continue up to the conclusion of the appeal procedure, while home curfew ordered or maintained by the court of appeal may continue up to the conclusion of the procedure with a final decision.

(6)[183] If the court ordered the home curfew prior to the filing of the indictment, and the prosecutor did not press charges during the subsequent six months, the court shall review the necessity to maintain the curfew at the motion of the prosecutor to be lodged five days prior to the lapse of the deadline.

(7) If during the term of the home curfew, substantial changes in the living conditions of the defendant necessitate his leaving the area or region affected by the prohibition or changing his place of stay or residence, prior to the filing of the indictment the curfew may be partially lifted by the prosecutor or thereafter by the court at the request of the defendant. The decision concerning the partial lift of the home curfew may allow the defendant to leave the area or region affected by the prohibition once, periodically or regularly for a specific reason and to a specific destination, or to change his place of stay or residence.

(8)[184] A home curfew shall terminate if its term has expired and has not been extended, if the investigation has been terminated, if its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension, or if pressing charges has been postponed or the procedure has been concluded with a final verdict; further, it shall be terminated if the cause for its order has ceased to exist. Up to the time of filing the indictment, the home curfew may also be terminated by the prosecutor.

House arrest[185]

Section 138[186] (1) In the event of a house arrest, the defendant may only leave the dwelling designated by the court and the enclosed area attached to it for the reason, at the time and within the distance specified in the court decision, thus especially, for the purpose of complying with everyday basic necessities or medical treatment.

(2) The order, period, maintenance and termination of house arrest as a coercive measure shall be governed by the provisions pertaining to the order, extension, maintenance and termination of pre-trial detention [Section 131, Section 132 (1) and (2), Section 136 (2) and (3)].

(3) The court may also require the police to monitor – with the consent of the defendant – compliance with the provisions of the house arrest with a device tracing the movement of the defendant. Monitoring compliance with the provisions of a house arrest is regulated in a separate legal regulation.[187]

(4) No house arrest may be ordered in respect of a soldier [Section 122 (1) of the Penal Code] throughout the duration of his military service.

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[182] Section 137 (4) and (5) was established by Section 82 (4).of Act I of 2002.
[183] Section 137 (6)–(8) was enacted by Section 82 (5).of Act I of 2002.
[184] The text of the first sentence of Section 137 (8) was established by Section 42 of Act II of 2003.
[185] The subtitle of Section 138 was enacted by Section 83 of Act I of 2002.
[186] The text of Section 138 was established by Section 83 of Act I of 2002.
[187] Please refer the Joint Decree No. 6/2003. (IV. 4.) IM–BM of the Ministry of Justice and the Ministry of Interior.

Section 139[188] If the defendant violates the rules of the home curfew or house arrest, or fails to attend a procedural action when required by a subpoena without giving sufficient reasons therefor in advance or after the cessation of the obstacle, fails to provide sufficient justification therefor without delay, the defendant may be taken into custody, furthermore, the order for his house arrest may be changed to pre-trial detention, and the order for home curfew to house arrest or pre-trial detention, or, if this is deemed unnecessary, a disciplinary penalty may be imposed.

Title IV

TEMPORARY INVOLUNTARY TREATMENT IN A MENTAL INSTITUTION

Section 140 (1) Temporary involuntary treatment in a mental institution means the judicial deprivation of a mentally disabled defendant of his freedom without a final court decision.

(2) Temporary involuntary treatment in a mental institution may be ordered when there is reasonable cause to assume that an order for the involuntary treatment of the defendant in a mental institution is required.

(3) The order for the temporary involuntary treatment in a mental institution shall be governed by the rules pertaining to ordering pre-trial detention [Section 130 (1)].

Section 141 (1) In the case of pre-trial detainees, concurrently with ordering the temporary involuntary treatment in a mental institution, pre-trial detention shall be terminated.

(2) If the pre-trial detainee required psychiatric treatment, but there is no ground to order a temporary involuntary treatment in a mental institution, the pre-trial detention – at the order of the court – shall be executed in the Forensic Diagnostic and Mental Institution.[189]

Section 142 (1) The temporary involuntary treatment in a mental institution ordered prior to filing the indictment may continue up to the decision of the court of first instance during the preparations for the trial.

(2) If, during the period of six months elapsed from the commencement of the temporary involuntary treatment the prosecutor does not file an indictment, the justification of the temporary involuntary treatment in a mental institution shall be reviewed by the court. The review shall be conducted at the motion to be lodged five days prior to the lapse of the deadline by the prosecutor.

(3)[190] After the lapse of one year following the commencement of the temporary involuntary treatment in a mental institution, its justification shall be reviewed by the county court acting as a single judge, until the indictment is filed in compliance with the procedural rules pertaining to investigating judges. The review shall be conducted at the motion to be lodged five days prior to the lapse of the deadline by the prosecutor.

(4) The appeal against the decision of the court under subsection (2) shall be adjudicated by the panel of second instance of the county court, while an appeal against the decision of the county court under subsection (3) shall be adjudicated by the panel of the tribunal.

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[188] The text of Section 139 was established by Section 84 of Act I of 2002.
[189] Please refer to Decree No. 36/2003. (IX. 3.) IM of the Ministry of Justice.
[190] The text of the first sentence of Section 142 (3) was established by Section 85 of Act I of 2002.

Section 143 (1)[191] After filing the indictment, temporary involuntary treatment in a mental institution ordered or maintained by the court of first instance may continue up to the announcement of the conclusive decision made by that court, temporary involuntary treatment ordered or maintained by the court of first instance after the announcement of its conclusive decision may continue up to the conclusion of the appeal procedure, while temporary involuntary treatment in a mental institution ordered or maintained by the court of appeal may last up to the conclusion of the procedure with a final decision.

(2) The review of a temporary involuntary treatment in a mental institution ordered or maintained after filing the indictment shall be governed by the provisions of Section 132 (1) and (2).

Section 144 (1) Temporary involuntary treatment in a mental institution shall be provided in the Forensic Diagnostic and Mental Institution.

(2) To the execution of the order for a temporary involuntary treatment in a mental institution the provisions of Section 135 (3) and (4) shall be applied as appropriate. The person receiving the temporary involuntary treatment may communicate with his legal representative verbally without control, or, if there is reasonable cause to suspect that this would frustrate the proceedings, under control.

Section 145 (1)[192] The temporary involuntary treatment in a mental institution shall terminate if its term has expired, if the investigation has been terminated, if its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension, or if the procedure has come to a final conclusion; further, it shall be terminated if the cause for ordering the treatment has ceased to exist.

(2) Up to the time of filing the indictment, the temporary involuntary treatment in a mental

institution may also be terminated by the prosecutor.

(3)[193] The order for the temporary involuntary treatment in a mental institution may also be appealed by the spouse and legal representative of the defendant, who will also have the right to lodge a motion for the termination of such involuntary treatment.

Title V

CONFISCATION OF THE TRAVEL DOCUMENT [194]

Section 146[195] (1) Up to the time of filing the indictment, in response to the motion of the prosecutor, the court may order the confiscation of the travel document of the defendant, if the criminal offence underlying the procedure is liable to imprisonment for a term of three years of more by law, and the confiscation of the travel document is justified to ensure the presence of the defendant in the procedural actions. With the exception of the cases specified in subsection (3) below, the person whose travel document was ordered to be confiscated by the court shall not be allowed to travel abroad.

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[191] The text of Section 143 (1) was established by Section 86 of Act I of 2002.
[192] Section 145 (1) was established by Section 43 (1) of Act II of 2003.
[193] Section 145 (3) was enacted by Section 43 (2) of Act II of 2003.
[194] The text of Title V of Chapter VIII was established by Section 87 of Act I of 2002.
[195] The text of Section 146 was established by Section87 of Act I of 2002.

(2) When the confiscation of a travel document is ordered, the court, the prosecutor or the investigating authority proceeding in the case shall contact the passport authority specified in the Act on travelling abroad, in order to arrange for the withdrawal of the travel document.[196]

(3) Up to the time of filing the indictment the prosecutor, thereafter the court may, at the justified request of the defendant, consent to the permission of the passport authority granted to the defendant to travel abroad for a specified time period and/or to a specific destination.

(4) The court shall revoke the order for the confiscation of the travel document, if the cause therefor has ceased to exist, or if the criminal proceedings have been concluded with a final decision. If the investigation is terminated, or pressing charges is postponed, or if the cause for the confiscation has ceased to exist prior to the filing of the indictment, ending the confiscation falls under the competence of the prosecutor.

(5) The prosecutor or the court – as appropriate – shall notify the passport authority on ending the confiscation of the travel document. Based on the notification, the passport authority shall return the travel document to the defendant, unless the return of the travel document to the possession of the defendant is regulated otherwise in another legal regulation.

(6) Upon an order to take the defendant into custody, the travel document of the defendant shall be seized, but it shall be returned to the defendant after the termination of the custody. If the defendant was released from custody without an order of pre-trial detention, temporary involuntary treatment in a mental institution, home curfew or house arrest, but the confiscation of his travel document is nevertheless justified pursuant to subsection (1) above, the decision on the confiscation of the travel document shall be made within seventy-two hours after the termination of the custody. Until this decision is adopted, the travel document of the defendant may be retained.

(7) Upon an order for pre-trial detention, temporary involuntary treatment in a mental institution, home curfew or house arrest, the court, the prosecutor or the investigating authority proceeding in the case shall contact the passport authority without delay in order to cause the travel document withdrawn. If the travel document is available, it shall be forwarded to the passport authority together with the notification. The transmission of the travel document to the passport authority shall not be subject to any legal remedy.

(8) Unless the court or the prosecutor permitted the placement of a security deposit, the provisions set forth in subsections (1) to (7) shall also be applied, as appropriate, to the confiscation of the travel document of a foreign defendant, provided that the travel document of a foreign citizen shall be forwarded to the immigration control authority in order to have it retained. [197]

(9) When a Hungarian citizen also has a travel document issued by a foreign authority, the order for the confiscation thereof shall be made simultaneously with the confiscation of the Hungarian travel document.

Title VI[198]

BAIL

Section 147 (1) In the cases specified in Section 129 (2) *b)* the court may omit the order for the pre-trial detention of the defendant and may terminate the previously ordered pre-trial

[196] Please refer to Act XII of 1998.
[197] Please refer to Section 63 of Act XXXIX of 2001.
[198] Pursuant to Section 308 (3) of Act I of 2002, the entry into force of Title VI of Chapter VIII should have been regulated by a separate law. However, since the said provision has been repealed, the entry into force of this legal institution was stipulated by Section 88 (2) a) of Act II of 2003.

detention, if – considering the criminal offence and the personal circumstances – it has probable cause to believe that the presence of the defendant in procedural actions may be ensured by the deposit of bail. Bail may be offered and provided by the defendant or another obligor instead of him.

(2)[199]

(3) The motion to accept the bail offered may be submitted by the defendant or the counsel for the defendant to the court competent to make a decision on pre-trial detention. The court shall hold a meeting on the acceptance of the bail offered and hear the prosecutor, the defendant, the counsel for the defendant and the person who offered the bail. If the counsel for the defendant does not attend the meeting despite the notification, the meeting may be held in his absence.

(4)[200] In its decision concerning its acceptance of bail, the court shall determine the amount of bail taking into consideration the personal circumstances and financial status of the defendant. Concurrently with the acceptance of bail, the court may also order a home curfew, house arrest and the confiscation of the travel document of the defendant.

(5) The order for the elimination or termination of the pre-trial detention of the defendant may be appealed by the prosecutor.

(6) Bail accepted the court in a final decision shall be deposited in cash at the court, and thereafter the defendant shall be forthwith released.[201]

(7)[202] In the event that the motion for the acceptance of bail is rejected, the defendant or the counsel for the defence may only lodge a new motion for the acceptance of bail with reference to new circumstances. If the defendant or the counsel for the defendant fails to cite new circumstances in the repeated motion, the court may reject it without substantial justification.

Section 148 (1) The court may order the pre-trial detention of a defendant who is at liberty or was released on bail, if

a) the defendant has failed to attend a procedural action when required by a subpoena without giving sufficient reasons therefor in advance or after the cessation of the obstacle, fails to provide sufficient justification therefor without delay, or

b) after the acceptance of bail, another cause for ordering the pre-trial detention of the defendant has arisen.

(2) The amount of bail shall be refunded to the obligor, if

a) the defendant – for a reason other than that provided in subsection (1) *a)* – is arrested,

b)[203] the prosecutor terminated the investigation, if its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension, or the prosecutor postponed to press charges, or

c) the court concluded the procedure with a final decision.

(3) If a penalty for imprisonment is imposed, bail may be refunded when the execution of the penalty has commenced.

(4) The right of the obligor for the refund of the bail shall be forfeited if the pre-trial detention of the defendant is ordered due to the reason specified in subsection (1) *a)*.

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[199] Pursuant to Section 88 (2) a) of Act II of 2003, Section 147 (2) shall be repealed and shall not enter into force.
[200] The second sentence of Section 147 (4) was established by Section 44 (1) of Act II of 2003.
[201] Please refer to Decrees No. 27/2003. (VII. 2.) IM and No. 9/2002. (IV. 9.) IM of the Ministry of Justice.
[202] Section 147 (7) was established by Section 44 (2) of Act II of 2003.
[203] The text of Section 148 (2) b) was established by Section 45 of Act II of 2003.

Title VII

SEARCH, A BODY SEARCH AND SEIZURE

Search

Section 149 (1)[204] Search means the search of a house, flat, other premises or an enclosure attached thereto, the vehicles parked there, as well as the examination of a computer system or a computer media containing data recorded by such system; the search is conducted in order to enhance the efficiency of the proceedings.

(2) A search may be ordered when there is reasonable cause to believe that it will result in:

a) apprehending a person having committed a criminal offence,

b) uncover the traces of a criminal offence,

c)[205] finding means of evidence, or property subject to confiscation or forfeiture.

(3)[206] A search may be ordered by the court, the prosecutor or – unless the prosecutor provides for otherwise – the investigating authority; the court and the prosecutor may request the assistance of the investigating authority for conducting the search. In the cases specified in subparagraph (2) *b)* and *c)*, inasmuch as possible, the search warrant shall indicate the means of evidence and the property subject to confiscation or forfeiture, desired to be found during the search.

(4)[207] As a rule, the search shall be conducted in the presence of the person affected, who shall be advised of the warrant prior to the commencement of the search; further – if the purpose of the search is to find a designated or known means of evidence, a property subject to confiscation or a person – the person affected shall be demanded to surrender the property being the subject of the search, to make available the data stored on the computer system or data medium, or to surrender the designated person. If the person affected obeys and surrenders the property being the subject of the search, makes the data stored on the computer system or data medium available, or surrenders the designated person, the search may not be continued unless there is reason to suspect that other means of evidence or other property subject to confiscation or forfeiture could also be found in the course of the search.

(5) If the person affected or his representative or appointed relative is not present during the search, a person – who is reasonably believed to be able to properly protect the interests of the person affected by the search – shall be appointed to protect the interest of the person affected b the search.

(6) The search of the office of a notary public [208] a law office[209] or a health institution [210] – unless its sole objective is to apprehend a person having committed a criminal offence [(subsection 2) *a)*] – prior to the filing of the indictment shall be ordered by the court. The search may only be conducted in the presence of the prosecutor.

(7) The prosecutor may direct a search pursuant to subsection (6) above without a court warrant, if the delayed performance of the search jeopardises the realisation of the objectives set forth in subsection (2).

(8) In the case regulated in subsection (7) the court warrant shall be obtained subsequently. Should the court reject the motion, the results of the search may not be admitted as evidence.

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[204] Section 149 (1) was established by Section 88 (1)of Act I of 2002.

[205] Section 149 (2) c) was established by Section 88 (2)of Act I of 2002.

[206] The text of the first and second sentences of Section 149 (3) was established by Section 88 (3) of Act I of 2002 and Section 46 of Act II of 2003, respectively.

[207] Section 149 (4)–(7) was established by Section 88 (3) of Act I of 2002.

[208] Please refer to Act XLI of 1991.

[209] Please refer to Act XI of 1998.

[210] Please refer to Section 3 g) of Act CLIV of 1997.

Body search

Section 150 (1)[211] Body search means the examination of the clothing and body of the defendant and a person who is reasonably believed to keep in his possession means of evidence, or property subject to confiscation or forfeiture, in order to find such means of evidence, or property subject to confiscation or forfeiture. In the course of the body search, the vehicle, package and other objects being at the disposal of the person subjected to the body search may also be examined.

(2) The body search shall be ordered by the prosecutor or the investigating authority. If the body search is ordered by the prosecutor, the search shall be conducted with the assistance of the investigating authority.

(3)[212] If the objective of the body search is to find a designated object, the person to be searched shall first be demanded to surrender the subject of the search, and if such demand is obeyed, the body search shall be omitted.

(4) The body of the person searched may only be examined by a person of the same gender, moreover, only persons of the same gender may be present during the search. This provision shall not apply to medical doctors participating in the search.

(5) The body search may be attended by a person staying at the site of the search and designated by the person searched, unless the presence of such person jeopardised the interests of the investigation.

Seizure

Section 151 (1)[213] Seizure means divesting the owner of a property of his right of disposal thereover by way of dispossession in order to obtain evidence or ensure confiscation or forfeiture of the property.

(2) The court, the prosecutor or the investigating authority shall order the seizure of the property, computer system or data medium containing data recorded by such system, if it

a) constitutes a means of evidence,

b) may be subject to confiscation or forfeiture of property by law.

(3) Seizure of documents kept in the office of a notary public, a law firm or a health institution shall be ordered by the court.

(4) Seizure of mail and new communication not delivered to the addressee as yet as well as of documents of the editorial office of printed matters shall be ordered prior to filing the indictment by the prosecutor, or thereafter the court. Until the decision is made, the consignment may only be subject to retention.

(5) If seizure is ordered by the court or the prosecutor, they may request the assistance of the investigating authority for the execution of the order.

(6)[214] If the prosecutor or the investigating authority is not entitled to order the seizure, but immediate action is required, the property may be taken into custody. In this case, the order for seizure shall be obtained subsequently, as early as possible from the party entitled to issue it. The property shall be released from custody and returned to the owner if seizure is not ordered by the party entitled to issue such order.

Section 152 (1)[215] In order to effectuate the seizure, the owner of the property, computer system or data medium containing data recorded by such system or the data manager shall be demanded to surrender the subject of the seizure or, when appropriate, make the data recorded

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[211] Section 150 (1) was established by Section 89 (1)of Act I of 2002.
[212] Section 150 (3) was established by Section 89 (2)of Act I of 2002.
[213] Section 151 (1)–(4) was established by Section 90 (1) of Act I of 2002.
[214] Section 151 (6) was established by Section 90 (2) of Act I of 2002.
[215] Section 152 (1) was established by Section 91 (1) of Act I of 2002.

by a computer system available. Failure to obey the above demand voluntarily may be subject to disciplinary penalty, provided however, that no disciplinary penalty may be imposed on the defendant, a person entitled to refuse to testimony as a witness and persons who may not be heard as a witness. The refusal to surrender the property shall not prevent obtaining the property or data recorded by a computer system by way of a search or body search. The person affected shall be warned of the above.

(2) Letters and other written communication between the defendant and the counsel for the defendant, and the notes of the counsel for the defendant pertaining to the case may not be seized.

(3) Letters and other written communication between the defendant and a person who may refuse to testify as a witness under Section 82 (1) may not be seized, when they are kept by the latter person.

(4) Documents the contents of which may be subject to the refusal of a testimony may not be seized, either, when they are kept by the person who may reuse to testify as a witness. This restriction shall also apply to the papers and properties kept at the official premises of a person who may refuse to testify as a witness pursuant to Section 82 (1) *c)*.

(5)[216] The restrictions set forth in subsections (3) and (4) shall not apply, if

a) the person entitled to refuse to testify as a witness is suspected on reasonable grounds to be an accomplice, an accessory, an abettor, or a receiver in the case,

b) the property to be seized is the instrument of the criminal offence,

c) the person entitled to refuse to testify as a witness voluntarily surrenders the property after being advised of the provisions of subsections (3) and (4).

Section 153 (1) It shall be ensured that the contents of documents are not disclosed to unauthorised persons.

(2)[217] If the prosecutor is not present at the detection of a document in respect of which its holder believes to have the right to refuse to testify as a witness pursuant to Section 82 (1) *b)* and the owner of the document or the defence counsel, representative or appointed representative thereof denies his consent to examine the contents of the document, the data medium containing the document or the document itself shall be handed over in a sealed envelope to the investigating authority, which will then forward the document in the sealed envelope to the prosecutor without examination. If the above solution is not feasible, the investigating authority shall arrange for the safekeeping of the document by applying Section 154 (3) as appropriate. After the examination of the document, the prosecutor shall make a decision on the seizure thereof, or – in the case of documents falling under the scope of Section 151 (3) – on submitting the motion for the seizure thereof to the court. Should the prosecutor or the court not order the seizure, the document may not be admitted as a means of evidence either in that case or in other criminal proceedings.

(3) At the request of the owner of the document, a certified copy shall be issued on the document seized, unless this jeopardises the interests of the procedure.

Section 154 (1)[218] Any property seized shall be deposited; if it is unsuitable for depositing or other important reasons justify it, its safe-keeping shall be arranged in another manner. [219] In the latter case, a document or photograph reflecting the unique features of the property related to the criminal offence shall be attached to the file of the case. In the event of an order

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[216] Section 152 (5) was established by Section 91 (2) of Act I of 2002.

[217] The text of Section 153 (2) was established by Section 92 of Act I of 2002.

[218] The last sentence of Section 154 (1) was enacted by Section 93 of Act I of 2002.

[219] Please refer to Joint Decree No. 11/2003. (V. 8.) IM–BM–PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance.

for the seizure of real property, seizure shall be effected in compliance with the rules of sequestration.[220]

(2) The property seized shall be listed in a report or other document indicating their quantity, value, condition and other features making them suitable for individual identification.

(3) The property seized shall be kept in a way ensuring that the property is reserved unchanged and easily identifiable, and that prevent the disappearance of any traces of the criminal offence or the exchange of the property seized.

Section 155 (1)[221] Seizure shall be terminated by the court, the prosecutor or the investigating authority, if it does not serve the interests of the procedure any longer; while seizure shall be terminated if the investigation has been terminated, or if its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension. In lieu of the termination of seizure, actions stipulated in another legal regulation shall apply, if the possession of the property seized violates the law. Prior to filing the indictment, seizure ordered by the court may also be terminated by the prosecutor.

(2) Upon terminating seizure, the property shall be returned to the person who can authentically verify having been the owner of the property seized at the time of the commission of the criminal offence.

(3) If no person exists to whom the property shall be returned under subsection (2) and the files of the procedure contain no data thereon, either, the property shall be returned to the person whose announced claim for the property seems justified.

(4) In the absence of a person to whom the property shall be returned under subsection (3), or the files of the procedure contain no data on such claim, the property shall be returned to the person from whom it was seized.

(5) Any property seized may only be returned to the defendant, if no other person exists to whom it may be returned under subsections (2) to (4).

(6)[222] Based on a court decision, the property seized from the defendant shall become state property, if the identity of the person to whom it is due beyond doubt cannot be established. late claimants may claim the return of the property or the amount realised on the sale thereof. The application of the claim shall be decided upon by the court having the competence and jurisdiction under the Code of Civil Procedure.

(7)[223] Upon the termination of seizure, if the property cannot be returned in kind, the amount realised on its preliminary sale, reduced by handling and storage expenses and increased by the prevailing statutory interest computed until the day of refund shall be refunded. In the case of dutiable goods, the amount realised on the sale shall be paid following the settlement specified in the customs regulations. Any excess claims may be enforced by the beneficiary according to the rules of civil law. In the event of unfounded seizure, the amount realised on its preliminary sale may not be reduced by handling and storage expenses. The above shall be stated in the decision of the court, prosecutor or investigating authority making the decision on the termination of seizure.

(8) If the property seized has no value and is not claimed by anyone, it shall be destroyed after the termination of the seizure.

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[220] Please refer to Act LIII of 1993.

[221] The text of the first sentence of Section 155 (1) was established by Section 47 of Act II of 2003.

[222] Section 155 (6) was established by Section 94 (1).of Act I of 2002.

[223] Section 155 (7) was enacted by Section 94 (2) of Act I of 2002, which concurrently amended the numbering of the original subsection (7) to subsection (8).

Preliminary sale and confiscation of seized property [224]

Section 156 (1) The court shall order the sale of the property seized, if

a) it is liable to fast deterioration,

b) it is unsuitable for long-term storage.

(2) The court may also order the sale of the property seized, if

a)[225] handling, storage and safekeeping of the property – taking into consideration in particular, the value or the foreseeably long term of the storage thereof – involves unreasonable and high expenses,

b) the value of the property significantly diminished owing to the foreseeably long term of the storage thereof.

(3) If subsections (1)–(2) apply, the property seized may only be sold, if no lawful claim has been received for the return thereof.

(4) The amount realised on the sale of the property seized shall replace the property seized.

(5)[226] If the possession of the seized property threatens public order or violates the law, the court – until the indictment is filed, at the motion of the prosecutor – shall order its confiscation, simultaneously with taking samples therefrom, if deemed necessary.

Retention of seized property

Section 157 (1)[227] The property to be returned to the defendant may be retained to ensure coverage for a fine as main or ancillary penalty, forfeiture of property, costs of criminal proceedings or civil claims imposed on him; such retention shall be regulated in the conclusive decision.

(2) Retention ensuring the satisfaction of a civil claim shall be terminated if the private party failed to request distraint within sixty days following the expiry of the agreed date of performance, or after being instructed to use other legal means to enforce the civil claim, fails to prove within sixty days that he has filed a request for a precautionary measure in a civil suit.

Common rules

Section 158 (1) Measures taken in order to conduct a search, body search and seizure shall be effected with due respect to the person affected, if possible, between the hours of 6:00 A.M. and 24:00 P.M. of the day. Due care shall be exercised in order to prevent the disclosure of private circumstances not connected with the criminal proceedings and unnecessary damage.

(2) The report on the measure shall indicate the place and circumstances where and under which the physical evidence or other property or object was found.

(3) Anyone interfering with the measure taken in order to effect the search, body search or seizure may be forced to tolerate such measures and – with the exception of the defendant – be subject to a disciplinary penalty.

(4) The investigating authority shall execute the orders of the court concerning a search, body search and seizure by the deadline.

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[224] The subtitle of Section 156 was established by Section 95 (1) of Act I of 2002.
[225] Section 156 (2) a) was established by Section 95 (2)of Act I of 2002.
[226] Section 156 (5) was enacted by Section 95 (3)of Act I of 2002.
[227] The text of Section 157 (1) was established by Section 96 of Act I of 2002.

Title VIII[228]

ORDER TO RESERVE COMPUTER DATA

Section 158/A (1) Compulsion to reserve data means the temporary restriction of the right of disposal of a person possessing, processing or managing data recorded by a computer system (hereinafter: computer data) over specific computer data, in order to investigate and prove a criminal offence.

(2) The court, the prosecutor or the investigating authority shall order the reservation of computer data constituting a means of evidence or required to trace any means of evidence or the establishment of the identity or location of a suspect.

(3) From the time of being notified of the order, the obliged party shall reserve the data recorded by the computer system designated in the order, and ensure its safe storage, if necessary, separately from other data files. The obliged party shall prevent the modification, deletion, destruction of the computer data, as well as the transmission and unauthorised copying thereof and unauthorised access thereto.

(4) The party ordering the reservation of data may affix its advanced electronic signature on the data to be reserved. If the reservation of the data at its original location considerably hindered the activity of the obliged party to process, manage, store or transmit data, the obliged party may, with the permission of the issuer of the order, ensure reservation by copying the data into another data medium or computer system. After the copy has been made, the issuer of the order may wholly or partially relieve the restrictions concerning the data medium and computer system holding the original data.

(5) While the measure is in effect, the data to be reserved may solely be accessed by the court, prosecutor or investigating authority having issued the order, and – with their respective permission – the person possessing or managing the data. The person possessing or managing the data to be reserved may only be provide information of such data with the express permission of the issuer of the order during the effect of the measure.

(6) The obliged party shall forthwith notify the issuer of the order if the data to be reserved has been modified, deleted, copied, transmitted or viewed without authorisation, or an indication of an attempt of the above has been observed.

(7) After issuing the order for reservation, the issuer shall start to review the affected data without delay, and depending on its findings, and either order the seizure of the data by copying them to the computer system or other data medium, or terminate the order for their reservation.

(8) The obligation to reserve data shall be in effect until the seizure of the data, but no longer than for three months. The obligation to reserve the data shall terminate if the criminal proceeding has been concluded. The obliged party shall be advised of the conclusion of the criminal proceeding.

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[228] Title VIII of Chapter VIII and Section 158/A was enacted by Section 97 of Act I of 2002, which concurrently amended the original numbering of Titles VIII–IX of Chapter VIII to Titles IX–X.

Title IX [229]

SEQUESTRATION AND PRECAUTIONARY MEASURE[230]

Sequestration [231]

Section 159 (1)[232] Sequestration means the suspension of the right of disposal over sequestered assets and property rights. Sequestration may be ordered by the court.

(2)[233] If the proceeding regards a criminal offence where forfeiture of property may be applied, or if a civil claim is enforced and there is reasonable ground to fear that its satisfaction will be frustrated, sequestration may be ordered on the entire property of the defendant, designated part thereof or certain assets in order to ensure coverage for the above. Sequestration may be ordered in respect of the property, property part or individual asset which may be subject to forfeiture of property but which is not in the possession of the defendant. The registration of the sequestration in authentic records shall be arranged for without delay. In the absence of authentic records as specified in a separate legal regulation, the business organisation affected by the sequestration shall be notified.

(3)[234] Sequestration to secure a civil claim enforced by a private party shall be subject to the motion of the private party. In the course of the investigation, sequestration may also be effected at the motion of the victim and the government agency specified in Section 54 (5).

(4) The sequestration shall be released, if

a)[235] the cause for ordering it has ceased to exist, if the investigation has been terminated or its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension, unless the claimant of the sequestered asset or the right of disposal over property rights initiated civil proceedings to uphold his claim within sixty days thereafter,

b) sequestration was ordered to secure coverage for a specific sum of money, and this amount has been deposited,

c)[236] the proceeding has been concluded without applying forfeiture of property, or the civil claim has been dismissed,

d) upon winning a civil claim, the private party failed to request distraint within thirty days following the expiry of the agreed date of performance,

e) after the civil claim has been referred to other legal ways, the prosecutor or the private party fails to prove the enforcement of their claim within sixty days.

(5)[237] The deadline specified in subsection (4) *a), d)* and *e)* shall be calculated from the communication of the decision on releasing the sequestration, terminating the investigation, awarding the civil claim or referring the claim to other legal way.

(6)[238] The order for the seizure of a real property shall be executed in compliance with the rules of sequestration.

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[229] The original numbering of Title VIII was amended to Title IX by Section 97 of Act I of 2002.
[230] The text of this Title was established by Section 98 (1) of Act I of 2002.
[231] This subtitle was enacted by Section 98 (2) of Act I of 2002.
[232] The first sentence of Section 159 (1) was established by Section 98 (3) of Act I of 2002.
[233] The first sentence of Section 159 (2) was established by Section 98 (4) of Act I of 2002.
[234] The second sentence of Section 159 (3) was established by Section 98 (5) of Act I of 2002.
[235] Section 159 (4) a) was established by Section 48 (1)a Act II of 2003.
[236] Section 159 (4) c) was established by Section 98 (6) of Act I of 2002.
[237] Section 159 (5) was enacted by Section 98 (7) of Act I of 2002, and its text established by Section 48 (2) of Act II of 2003.
[238] Section 159 (6) was enacted by Section 98 (7) of Act I of 2002.

Precautionary measure

Section 160[239] (1) Precautionary measure is taken to effect sequestration, with the aim to temporarily prevent the defendant or other interested party from exercising their right of disposal over their movable or real property, securities representing property rights, funds managed by a financial institution under a contract or due share or ownership interest in a business organisation.

(2) The prosecutor or the investigating authority may apply precautionary measure, if probable cause exists to believe that the conditions for sequestration prevail and the defendant attempts or there is reasonable cause to believe that the defendant has attempted to conceal the property specified in subsection (1), to transfer, alienate or encumber the rights of disposal thereover.

(3) As a precautionary measure, the investigating authority or the prosecutor shall seize the property specified in subsection (1), or requests the authorities listed in Section 61 to take the actions falling under their scope of competence. The authorities shall take immediate action and notify the investigating authority or the prosecutor thereof without delay.

(4) The investigating authority or the prosecutor may also contact agencies and business organisations other than those listed in Section 61 in order to freeze the property of the defendant and to register the precautionary measure. The agencies contacted shall forthwith register the request to effect the precautionary measure, arrange the freezing of the property and notify the requesting investigating authority or the prosecutor thereof.

(5) Precautionary measure may primarily be implemented against a person whose right of disposal would be suspended by the sequestration. However, it may also be implemented against other persons who maintain contact with, or there is reasonable cause to believe that would contact the defendant in order to conceal the property or to transfer or alienate the rights of disposal thereover.

(6) After the registration of the precautionary measure, the subject of the measure shall tolerate the temporary suspension of his right of disposal.

(7) Following a precautionary measure, an order for sequestration shall be motioned for without delay with the notification of the person affected – unless this jeopardises the effectuation thereof. In the absence of a court order for sequestration, the precautionary measure shall be annulled without delay.

Title X [240]

SECURING THE ORDER OF PROCEEDINGS

Disciplinary penalty

Section 161 (1) In the cases specified in this Act, in the interest of maintaining order or due to the violation of procedural obligations, a disciplinary penalty may be imposed in the range of one thousand Forints to two hundred thousand Forints, or, in especially grave or recurring cases, up to five hundred thousand Forints.

(2) The amount of the disciplinary penalty shall be established taking into consideration the gravity and consequences of the underlying act.

(3) The decision on the imposition of a disciplinary penalty shall fall in the competence of the court and the prosecutor.

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[239] The text of Section 160 was established by Section 99 of Act I of 2002.

[240] The numbering of the original Title IX was amended to Title X by Section 97 of Act I of 2002.

(4) The appeal against the imposition of the disciplinary penalty shall have a dilatory effect.

(5)[241] Upon defaulting the payment of the disciplinary penalty imposed pursuant to Section 69 (1) *b)* or *c)*, (2) and (5), Section 93, Section 106 (3), Section 113 (1) or (2), Section 123 (4), Section 152 (1), Section 158 (3), Section 185 (3), Section 245 (4) and Section 343 (1), it may be replaced by a court to confinement. When replacing disciplinary penalty with confinement, the amounts ranging between one thousand to five thousand Forints shall be converted into one day of confinement each. Confinement effected in lieu of the payment of the disciplinary penalty may not be shorter than one day, nor longer than one hundred days. The obligor shall be warned thereof in the decision imposing the disciplinary penalty.

(6) The decision of the replacement of the disciplinary penalty imposed by the prosecutor shall be made by the investigating judge competent at the seat of the prosecutor's office based on the documents.

(7) The decision on the replacement of the disciplinary penalty with confinement under subsections (5) and (6) may not be appealed. The execution of the confinement shall be governed by the legal regulations pertaining to administrative offences, provided that the confinement may only be postponed or interrupted if the obligor requires hospital treatment and only for the duration thereof. The confinement shall be spent in a penal institution.

Bench warrant

Section 162 (1) Arrest based on a bench warrant is an action restricting personal freedom in order to compel the attendance of the person before the court, the prosecutor or the investigating authority or in a procedural action.

(2) The warrant for the arrest of persons specified by law shall be made by the court, the prosecutor or the investigating authority.

(3)[242] The arrest shall be executed by the police. The arrest may also be executed by another investigating authority acting in its own jurisdiction in the case investigated. The police officer or the investigating authority shall accompany the person affected to the place designated in the bench warrant; in order for this, if necessary, they may apply coercive or other measures in compliance with the law governing their operation.

(4) As a rule, the arrest shall be executed between the hours of 6:00 A.M. and 24:00 P.M. of the day.

(5) Instead of the arrest, the court, the prosecutor or the investigating authority may also order the police officer to oversee that the person affected starts on his way, if there is reasonable cause to believe that the objective of the arrest can thus be attained.

(6) For the arrest of a soldier [Section 122 (1) of the Penal Code], his commanding officer shall be contacted.

(7)[243] The costs of the arrest, as specified in a separate legal regulation [244] shall be borne by the person arrested.

Application of bodily force

Section 163 (1) The court, the prosecutor or the investigating authority ordering a procedural action may decide to apply bodily force if there is reasonable cause to believe that

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[241] Section 161 (5)–(7) was enacted by Section 49 Act II of 2003.
[242] Section 162 (3) was established by Section 100 (1)of Act I of 2002.
[243] Section 162 (7) was enacted by Section 100 (2) of Act I of 2002.
[244] Please refer to Joint Decree No. 2/1986. (IV. 21.) BM–IM–PM of the Ministry of Interior, the Ministry of Justice and the Ministry of Finance.

this is required in order to ensure a procedural action or to effect an evidentiary action. The application of bodily force may also be ordered by the court, the prosecutor or the investigating authority performing the procedural action or the evidentiary action.

(2) Bodily force may be applied against the defendant, the victim, the witness and other persons obstructing the procedural action.

(3) For the application of bodily force, the court and the prosecutor shall primarily use the police. [245]

(4) In exceptional cases, the prison guard attending the procedural action of the court may also be used to apply bodily force, this however, shall not extend to bodily force applied in the interest of an evidentiary action.

PART TWO

Chapter IX

THE INVESTIGATION

Title I

GENERAL PROVISIONS

Basic provision

Section 164 (1) Unless otherwise provided for in this Act, criminal proceedings shall commence with an investigation.

(2) The aim of the investigation is to conduct an inquiry into the criminal offence, identify the offender, a well as to locate and secure the means of evidence. The facts of the case shall be probed to such an extent that enables the accuser to decide on presenting a case for the prosecution. [246]

The relationship of the prosecutor and the investigating authority

Section 165 (1) The investigation shall be conducted according to the orders of the prosecutor. The prosecutor shall instruct the investigating authority. The prosecutor shall have the right to examine the records of the investigating authorities specified in a separate legal regulation and to use the data therein. In order to perform certain investigatory actions, the prosecutor may request the help of the investigating authority, even if the investigation is conducted by the prosecutor himself.

(2) The investigating authority shall perform the instructions of the prosecutor regarding the investigation of the case by the deadline and inform the prosecutor verbally or in writing – as instructed – on ordering the investigation and the status of the case. If the investigating

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[245] Please refer to Section 34 of Act XXXIV of 1994 on the Police and Section 53 of Decree No. 3/1995. (III. 1.) BM of the Ministry of Interior on the Police Code of Conduct, and in respect of the law enforcement agencies, Section 13 (4) and Section 18 of Act CVII of 1995 on Law enforcement agencies.

[246] For the detailed rules of investigation, please refer to Joint Decree No. 23/2003. (VI. 24.) BM–IM of the Ministry of Interior and the Ministry of Justice and Joint Decree No. 17/2003. (VII. 1.) PM–IM of the Ministry of Finance and the Ministry of Justice.

authority finds that a procedural action is necessary but the decision thereon falls in the competence of the court or the prosecutor, it shall inform the prosecutor thereof immediately.

(3) The prosecutor may instruct the investigating authority to prepare for his decisions.

(4) The provisions of subsections (1) to (3) shall also be applied if the investigating authority conducts the investigation independently pursuant to Section 35 (2).

(5) The prosecutor may give the instructions and the investigating authority may provide information verbally or in writing. At the request of the investigating authority instructions shall be communicated in writing.

The minutes

Section 166 (1) Unless provided otherwise in this Act, the prosecutor and the investigating authority shall take minutes on the investigatory actions, including the measures implemented by the prosecutor and the investigating authority. The minutes shall be drawn up by the keeper of minutes or a member of the investigating authority.

(2) The minutes shall contain

a) the name of the authority proceeding in the case,

b) the description of the criminal offence underlying the proceeding and the name of the suspect,

c) the place and time of the investigatory action,

d) the name of the prosecutor, the member of the investigating authority, the person participating in the proceeding and the representative thereof, the witness, the lawyer acting on behalf of the witness, the official witness and the keeper of minutes present,

e) the name of the defendant and witness questioned and the expert heard, as well as other personal data specified in this Act.

(3)[247] The minutes shall contain the brief description of the course of the investigatory action so that it can also serve as the basis of verifying compliance with the procedural rules. The testimony of the suspect and the witness as well as motions and observations made during the investigatory action shall be detailed to the necessary extent in the minutes. The person questioned may motion for a word-by-word transcription of his testimony. If the prosecutor or the investigating authority considers the motion unjustified, they may reject it, and shall simultaneously advise the person questioned of the provisions set forth in Section 85 (5) and (6); both the rejection of the motion and the advice shall be included in the minutes.

(4) If the expert presents the expert opinion verbally, the inclusion thereof in the minutes shall be governed by the provisions of subsection (3).

(5) The minutes shall be signed by the prosecutor or the member of the investigating authority performing the investigatory action and the keeper of minutes. The suspect, the witness and the interpreter shall sign each page of the minutes. If the suspect, the witness or the interpreter refuses to sign the minutes, both the fact of the refusal and the stated or known reason therefor shall be included in the minutes.

(6) The request of the suspect, the counsel for the defence, the victim, other interested party, the witness or the lawyer acting on behalf thereof attending the investigatory action request the inclusion of an event or statement related to the procedure in the minutes, this may only be rejected if the prosecutor or the member of the investigating authority is not cognisant of such occurrence.

(7)[248] The minutes shall be corrected or supplemented, as necessary, by the prosecutor or the member of the investigating authority, who shall sign such corrections and supplements and notify those interested thereof. Those who attended the investigatory action may motion for the correction or supplementation of the minutes after learning the contents thereof. The

[247] Section 166 (3) was established by Section 101 (1) of Act I of 2002.

[248] The second and third sentences of Section 166 (7) were enacted by Section 101 (2) of Act I of 2002.

correction shall be noted in the minutes with the indication of the date, or the rejection of the motion shall be entered in the records.

Section 167 (1) The prosecutor and the investigating authority may order the recording of the investigatory action by shorthand, a video or audio recorder or other equipment, at the motion of the suspect, the counsel for the defence or the victim filed simultaneously with an advance payment of the costs. Such recording shall not substitute the minutes, however, in the case of the concurrent voice and video recording made by the prosecutor or the investigating authority the minutes shall only contain the names of those present, and the place, time and other conditions of the recording. [249]

(2) The note of the stenographer, the video or audio record or the recording made of the investigatory action by other means shall be kept according to the provisions of a separate legal regulation.

(3) To the stenographer, the provisions pertaining to experts shall be applied.

The report

Section 168 (1) Unless the prosecutor provides otherwise, the member of the investigating authority may also prepare a report on his investigatory actions in lieu of the minutes. The prosecutor may order the repetition of certain investigatory actions and drawing up minutes thereon.

(2) The report shall contain the data specified in Section 166 (2) *a)–c)* and *e)*, the identification of the procedural actions implemented and the brief description thereof so that it can also serve as the basis of verifying compliance with the procedural rules. The report on the questioning of the suspect and the witness shall contain the gist of their testimony.

(3) The report shall be signed by the member of the investigating authority implementing the action.

The decision

Section 169 (1)[250] The prosecutor or the investigating authority shall make a decision on the following: exclusion (Section 32, Section 39), the dispensation of the counsel for the defendant from the appointment and the establishment of the fee of the appointed defence counsel [Section 48 (6) and (9)], the judgement of the application for justification (Section 66), compulsion to bear the costs resulting from omission or absence (Section 69), the dismissal of the claim of the witness and the expert for exemption [Section 94, Section 113 (3)], the assignment of an expert (Section 100, Section 111), the exclusion of an expert (Section 103), relief of the expert from the assignment (Section 104), the establishment of the expert fee [Section 105 (6)], coercive measures (Chapter VIII) – with the exception of an arrest on bench warrant (Section 162) and the application of bodily force (Section 163) –, the rejection of a complaint (Section 174), the suspension of the proceeding (Section 188), the termination of the investigation (Section 190, Section 192); further, the prosecutor shall also adopt a decision on the involvement of an expert (Section 112), the extension of the deadline of the investigation (Section 176), the partial omission of the investigation (Section 187) and the evaluation of a protest [Section 195 (4)]. The prosecutor or the investigating authority may adopt other measures in the form of a decision as well.

(2) The decision shall contain the name and the personal data suitable for the identification of person to whom the disposition applies. The decision shall indicate

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[249] For the detailed rules, please refer to Joint Decree No. 23/2003. (VI. 24.) BM–IM of the Ministry of Interior and the Ministry of Justice and Joint Decree No. 17/2003. (VII. 1.) PM–IM of the Ministry of Finance and the Ministry of Justice.

[250] Section 169 (1) was established by Section 102 (1)of Act I of 2002.

a) the name of the prosecutor or the investigating authority,

b) a criminal offence underlying the proceeding,

c) the disposition stated in the decision and the underlying legal regulation,

d)[251] whether it is subject to legal remedy, as well as the deadline and the investigating authority, prosecutor's office or court at which it must be filed.

(3) The decision shall be briefly justified by stating the facts leading to the disposition therein.

(4) The decision shall be recorded in minutes or put into writing in another manner, and communicated to the party to whom it concerns as well as to the party whose procedural rights are affected thereby. The counsel for the defence shall also be informed of decisions communicated to the suspect. The decision shall be handed over to those present and also communicated verbally; in other cases it shall be served on the parties concerned.

(5) In the event of a confusion of names or numbers, a calculation error or other clerical errors, the prosecutor or the investigating authority may order the correction thereof both in response to a motion or ex officio. The correction shall be noted in the decision. To the notification of the correction, the provisions of Section 166 (7) shall apply as appropriate.

Title II

INSTITUTING CRIMINAL PROCEEDINGS BY AN INVESTIGATION

The ground for starting an investigation

Section 170 (1) The investigation starts either based on data coming to the cognisance of the prosecutor or the investigating authority within his official competence or the member of the investigating authority in his official capacity, or on a complaint.

(2)[252] The investigation is ordered by the prosecutor or the investigating authority, who/which shall prepare a memorandum thereon. The memorandum shall indicate the underlying criminal offence – if the person against whom the complaint was filed (potentially suspected offender) is known – the subject person of the investigation and the starting date of the investigation. If the investigation is initiated due to a complaint, as a rule, the order of the investigation shall be noted on the document recording the complaint.

(3)[253] The decision on ordering an investigation shall be adopted within three days following receipt of the complaint, unless the complaint is rejected. The investigating authority shall notify the prosecutor of the investigation ordered or complaint rejected within twenty-four hours. If the complaint was not lodged by the victim, but the person of the victim is known, he shall also be informed of the order for the investigation. The persons to receive notification on the order for starting or terminating an investigation in addition to those specified in this Act are stipulated in a separate legal regulation.

(4)[254] The investigation may commence without an order, if the prosecutor or the investigating authority implements an investigatory action in order to secure the means of evidence, identify the suspect, prevent the suspect from absconding, conclude the criminal offence or commission of a further criminal offence or for other high-priority reasons. The fact and date of starting the investigation shall be recorded in a memorandum subsequently without delay.

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[251] Section 169 (2) d) was enacted by Section 102 (2)of Act I of 2002.

[252] The second sentence of Section 170 (2) was established by Section 103 (1) of Act I of 2002.

[253] The second, third and fourth sentences of Section 170 (3) were enacted by Section 103 (2) of Act I of 2002.

[254] The first sentence of Section 170 (4) was established by Section 103 (3)of Act I of 2002.

(5)[255] The investigatory action stipulated in subsection (4) may be conducted by any investigating authority, however, it shall notify the investigating authority having competence and jurisdiction without delay.

(6) No investigation may be launched due to the forgery of public deeds (Section 274 of the Penal Code), if the forged or falsified travel document or the authentic travel document issued to the name of another person is used by a foreign citizen to enter the territory of the country, provided that an immigration control procedure may be instituted. This provision shall not apply, if an investigation must be started against the same foreign citizen for the commission of another criminal offence as well.

A complaint

Section 171 (1) Anyone may lodge a complaint concerning a criminal offence. It is obligatory to lodge a complaint, if failure to do so constitutes a criminal offence.

(2) Members of the authority and official persons, further, if prescribed by a separate legal regulation, public bodies shall be obliged to lodge a complaint – also identifying the offender, if his person is known – concerning a criminal offence coming to their cognisance within their scope of competence. The means of evidence shall be attached to the complaint, or, if this is not practicable, their safekeeping shall be arranged for.

Section 172 (1) Generally, the complaint shall be made with the prosecutor or the investigating authority verbally or in writing. Verbal complaints shall be recorded in minutes. The complaint shall be forthwith entered into the records.

(2) The complaint may be received by other authorities and the court as well, but they shall forward it to the investigating authority. If the complaint required prompt action, its receipt may not be rejected.

(3) If the complaint was not filed with the prosecutor or investigating authority having competence and jurisdiction in the case, it shall still be taken over and recorded in minutes, and be forwarded to the party entitled to act.

(4) To complaints communicated by way of a telephone or other technical equipment the provisions stipulated in subsection (1) above shall apply as appropriate.

The private motion

Section 173 (1) In the case of a criminal offence which may only be prosecuted based on a private motion, no criminal proceedings can be instituted unless the entitled party lodges a complaint. Any statement of the party putting forward the private motion requiring the offender to be held liable under criminal law shall be regarded as a private motion.

(2) A statement shall be obtained from the party entitled to file a private motion, if it is realised after the start of the investigation that the criminal offence may only be prosecuted based on a private motion.

(3) The private motion shall be put forward within thirty days after the party entitled to make a private motion learnt the identity of the offender. In the case specified in subsection (2) this deadline shall be calculated from the day when the party entitled to make a private motion gained cognisance of the request. The relative of a deceased victim may file the private motion during the period until the lapse of the deadline.

(4) An application for the justification for defaulting the deadline putting forward a private motion may only be submitted, if the criminal offence is subject to public prosecution.

[255] Section 170 (5) and (6) was enacted by Section 103 (4) of Act I of 2002.

Rejection of the complaint

Section 174 (1) The prosecutor shall reject the complaint coming to his cognisance within three days in a decision, if the following can be established from the complaint itself:

a) the action does not constitute a criminal offence,

b) the suspicion of a criminal offence is absent,

c) a ground for the preclusion of punishability exists (Section 22 of the Penal Code),

d) no proceeding may be instituted due to death, statutory limitation or pardon [Section 32 *a)–c)* of the Penal Code],

e) there is no private motion, request or complaint,

f) the action has already been adjudicated by a final decision.

(2) In the cases specified in subsection (1) *a)–b)* and *d)–f)* and when punishability is precluded because the offender is a child [Section 22 *a)* of the Penal Code], the complaint may also be rejected by the investigating authority.

(3) The complaint may not be rejected, if

a) an order for involuntary treatment in a mental institution appears necessary,

b)[256] regardless of punishability, confiscation or forfeiture of property may be applied, unless the evidence to institute a procedure for confiscation or forfeiture of property are available.

(4) The rejection of the complaint shall be notified to the complainant and the party having filed a private motion. The investigating authority shall send its decision on the rejection of the complaint to the prosecutor without delay.

(5)[257] If, at the time of rejecting the complaint pursuant to subsection (1) *c)*, the prosecutor reprimands the defendant (Section 71 of the Penal Code), upon the protest of the reprimanded person an investigation shall be ordered, unless the complaint was rejected on other grounds.

Section 175 (1) If there are reasonable grounds to suspect that a criminal offence has been committed, the prosecutor or – with the permission of the prosecutor – the investigating authority may reject the complaint, if the person who may be reasonably suspected of having committed the criminal offence co-operates in the investigation of or proving the case or another criminal offence to such an extent that the interests of national security or law enforcement takes priority over the interest to enforce the claim of the state under criminal law.

(2)[258] If there are reasonable grounds to suspect that a criminal offence has been committed, the prosecutor shall reject the complaint in a decision, if the person who may be reasonably suspected of having committed the criminal offence is an covert investigator [Section 178 (2)], who committed the action in line of duty in the interest of law enforcement, and the latter interest takes precedence over the interest to enforce the claim of the state under criminal law.

(3) Upon rejecting the complaint pursuant to subsections (1) or (2), compensation for the damage imputable to the offender under civil law shall be paid by the state. If compensation is required to be awarded in a civil suit, the legal ground of the claim for compensation shall be assumed.

(4) In a civil suit the state shall be represented by the minister of justice. Prior to the adjudication of the claim, the court proceeding in the civil suit shall obtain the statement of the prosecutor's office which made the decision on the rejection of the complaint concerning the action committed to the injury of the plaintiff and the damage caused by such action. The

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[256] Section 174 (3) b) was established by Section 104 (1) of Act I of 2002.
[257] Section 174 (5) was enacted by Section 104 (2) of Act I of 2002.
[258] Section 175 (2)–(4) was established by Section 105 (1)of Act I of 2002.

statement of the prosecutor may not extend to facts which suggest the person of the or the reason for terminating the investigation.

(5)[259] If the complaint is rejected pursuant to subsection (1) or (2), the decision shall comprise a purview and the date. The purview contains the description of the criminal offence, the fact that the complaint was rejected, and information on the methods to enforce a claim for damage sustained in connection with the criminal offence against a state.

(6) The complaint may not be rejected pursuant to subsection (1) or (2), if the person specified in subsection (1) or the covert investigator can be reasonably suspected of having committed a criminal offence involving deliberate murder.

(7) The criminal proceeding instituted against the person specified in subsection (1) or the covert investigator shall be separated from the case in which the evidence uncovered by the person specified in subsection (1) or the covert investigator is intended to be used.

Title III

THE RULES OF INVESTIGATION

Deadline of the investigation

Section 176[260] (1) The investigation shall commence within the shortest possible period and concluded within two months following its order or start. If justified by the complexity or an insurmountable obstacle, the deadline of the investigation may be extended by two months by the prosecutor, and after the lapse of that deadline, by the county prosecutor general up to the lapse of one year from the commencement of the criminal proceedings.

(2) After one year, the deadline of the investigation may be extended by the Prosecutor General. If the investigation is conducted against a specific person, the extension may not be longer than two years following the questioning of the suspect under Section 179 (1).

(3) If the prosecutor conducts the investigation, its deadline may be extended by the head of the prosecutor's office by two months, by the superior prosecutor up to the lapse of one year from the commencement of the criminal proceedings and thereafter by the Prosecutor General up to the deadline specified in subsection (2).

Implementing an investigatory action without a decision

Section 177[261] In urgent cases, the prosecutor and the investigating authority may forthwith implement the coercive measures which they are entitled to otherwise order (Section 126, Section 149, Section 150, Section 151, 158/A Section) and may order evidentiary actions (Section 119, Section 121, Section 122) (high priority investigatory action). The minutes concerning the procedural action shall indicate the fact of urgency and the underlying conditions.

Other data collecting activities of the investigating authority

Section 178[262] (1) After the commencement of the criminal proceeding, the investigating authority may collect data in order to establish the existence and location of means of evidence; in the course of this activity, it may use the law enforcement databases of the police specified in a separate legal regulation,[263] it may, according to the rules of official requests (Section 71) request documents, data and information from any third party, further, it may

[259] Section 175 (5)–(7) was enacted by Section 105 (2) of Act I of 2002.
[260] The text of Section 176 was established by Section 106 of Act I of 2002.
[261] The text of Section 177 was established by Section 107 of Act I of 2002.
[262] The text of Section 178 was established by Section 108 of Act I of 2002.
[263] Please refer to Act XXXIV of 1994.

request an investigation from the head of the complaining or victim government or local government body, public body, business organisation, foundation, public foundation or civil organisation or the agency entitled to investigate, may inspect the scene of the criminal offence, may employ an advisor, and check the data obtained. In the course of collecting data, the investigating authority may select a person or object by presenting a photograph or picture recorded on another data medium and request information regarding the presented person or object.

(2) In the course of collecting data, the investigating authority may – with the permission of the prosecutor – use a member of the investigating authority who conceals his capacity (covert investigator), and may also perform data collection – according to the law governing its operation – not subject to judicial permit.

(3) The member of the investigating authority having collected the data shall prepare a report on this activity. To the contents of the report, the provisions stipulated in Section 168 (2) and (3) shall apply. The report on data collection under subsection (2) shall be signed by the head of the investigating authority.

(4) If the prosecutor intends to use the result of the data collection activity of the investigating authority, he shall attach the report thereon to the records of the investigation. After the report on the data collection activity of the investigating authority has been attached to the records of the investigation, it may be used as evidence according to the rules pertaining to documents (Section 116).

Section 178/A [264] (1) After ordering the investigation, if deemed necessary owing to the nature of the case, the prosecutor or the investigating authority (with the consent of the prosecutor) may request data – according to the rules of official requests – on the suspect (the person against whom the complaint was filed, the potentially suspected offender) from the tax authority, organisations providing communication services, organisations managing medical and related data, as well as from organisations managing data classified as bank secret, securities secret, fund secret or business secret, in order to uncover the facts of the case. The investigating authority may request data from the road transport register and land register without obtaining the consent of the prosecutor. The supply of data may not be refused.

(2) If reasonable ground exists to suspect that a specific person has committed a criminal offence, the data in the criminal records [265] on this person shall be obtained and – if the conditions specified in a separate legal regulation exist – also the data from the records of the co-ordination centre for the prevention of organised crime. [266]

(3) The investigating authority – with the consent of the prosecutor – may take over personal data specified in a separate legal regulation, produced in the course of the activities of the prosecutor's office to enforce criminal law and managed in the records of the prosecutor's office, as well as data from the records of the penal service. [267]

(4) The data received pursuant to subsections (1) to (3) may only be used, if the prosecutor presses charges against the person on whom data was collected. If the prosecutor does not press charges, the data received shall be deleted.

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[264] Section178/A was enacted by Section 109 of Act I of 2002.

[265] Please refer to Act LXXXV of 1999 and Joint Decree No. 7/2000. (II. 16.) BM–IM of the Ministry of Interior and the Ministry of Justice.

[266] Please refer to Act CXXVI of 2000.

[267] Please refer to Act LXXX of 1994 and Act CVII of 1995.

Questioning of the suspect

Section 179 (1)[268] If based on available data reasonable ground exists to suspect that a specific person has committed a criminal offence, the prosecutor or the investigating authority (unless the prosecutor provides for otherwise) shall interrogate the suspect in compliance with Sections 117 and 118. Detained suspects shall be interrogated within twenty-four hours. The deadline shall be computed from the time when the suspect was brought before the investigating authority.

(2) At the beginning of the questioning, the suspect shall be informed of the gist of the suspicion as well as of the applicable legal regulations.

(3) The suspect shall be advised of the right to choose a defence counsel or to request the appointment thereof. If the participation of the counsel for the defence in the procedure is obligatory, the suspect shall be warned that upon failing to retain a counsel for the defence within three days, the defence counsel will be appointed by the prosecutor or the investigating authority. If the suspect states his intention of not retaining a defence counsel, the prosecutor or the investigating authority shall forthwith appoint one.

(4)[269]

Section 180 (1) The suspect may not be asked a question containing the answer, the statement of a yet unproven fact, or a promise violating the law.

(2) Without the consent of the suspect, his testimony may not be examined with the help of a polygraph.

Questioning of the witness

Section 181 (1)[270] The witness shall be questioned by the prosecutor or the investigating authority (unless the prosecutor provides for otherwise) in compliance with Sections 79 to 88. The witness may not be asked a question prohibited by Section 180 (1), or a question suggesting the reply.

(2) The complainant may be questioned as a witness. If the complaint contains the statement of the complainant, the questioning of the complainant as witness may be omitted.

(3)[271]

Participation of an advisor

Section 182 (1)[272] The prosecutor and the investigating authority may employ an advisor at investigatory actions, if special knowledge is required for uncovering, obtaining, collecting or recording means of evidence, or the prosecutor or the investigating authority requests information concerning a professional matter.

(2) It is obligatory to employ an advisor, if the testimony of the defendant is examined with the help of a polygraph during the investigation.

(3) If in the course of his procedure, the advisor needs to perform acts affecting the inviolability of the body of a person, the prosecutor or the investigating authority shall make a separate decision thereon.

(4) the provisions pertaining the exclusion of the prosecutor and a member of the investigating authority shall apply to the advisor as appropriate.

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[268] The last sentence of Section 179 (1) was enacted Section 50 by of Act II of 2003.
[269] Pursuant to Section 308 (2) of Act I of 2002, Section 179 (4) shall be repealed and shall not enter into force.
[270] The text of the second sentence of Section 181 (1) was established by Section 110 of Act I of 2002.
[271] Pursuant to Section 308 (2) of Act I of 2002, Section 181 (3) shall be repealed and shall not enter into force.
[272] Section 182 (1) was established by Section 111 (1)of Act I of 2002.

(5)[273] The contribution of the advisor shall be recorded in minutes which shall be attached to the records of the investigation.

The official witness

Section 183 (1)[274] During the inspection, reconstruction, presentation for identification, seizure, search and body search, and the presentation of the minutes taken during the questioning of an illiterate person, the prosecutor and the investigating authority – in response to the motion of the suspect, the counsel for the defence, the person affected by the inspection, the person subjected to seizure, search or body search and the illiterate person – shall employ an official witness, unless an insurmountable obstacle thereto exists. The parties interested shall be advised of the above. The prosecutor and the investigating authority may also employ an official witness at the above listed procedural actions ex officio. The official witness shall verify the course and results of the investigatory action where he was present.

(2) Prior to the investigatory action the official witness shall be informed of his rights and obligations. The investigatory action shall be conducted in a way that enables the official witness to monitor it. The official witness may make observations regarding the investigatory action.

(3) The official witness employed shall be – if possible – an uninterested party who can conceive and verify the performance of the investigatory action. The prosecutor proceeding in the case and the member of the investigating authority may not be an official witness; the employee of the prosecutor's office or investigating authority proceeding in the case may only participate as an official witness, if there is an insurmountable obstacle to employ another person.

(4) No one may be compelled to participate in the procedural actions as an official witness.

(5) The minutes taken regarding the investigatory action shall indicate the name and address of the official witnesses and whether they are interested or uninterested. If the official witness is an employee of the prosecutor's office or the investigating authority, the minutes shall contain his position or rank instead of the address. Any observation made by the official witness in the course of the investigatory action shall also be noted in the minutes.

(6)[275] The provisions pertaining to the reimbursement of the costs of a witness shall also apply to the official witness.

Presence in investigatory actions

Section 184 (1) In addition to the prosecutor, the member of the investigating authority and the keeper of minutes, only those may be present in an investigatory action whose presence is permitted by this Act.

(2)[276] If the suspect is questioned by the prosecutor or the investigating authority, the defence counsel may be present at the questioning. The counsel for the defence may attend the questioning of a witness if this was motioned for by himself or the suspect he defends, as well as the confrontation held with the participation of such a witness. The counsel for the defence attending the questioning may ask questions from the suspect and the witness.

(3) A detained suspect may consult his defence counsel prior to his questioning.

(4) The investigatory action may be attended by the person on practice as a full-time student of the faculty of law of the department of public administration and law, if his

[273] Section 182 (5) was enacted by Section 111 (2) of Act I of 2002.
[274] Section 183 (1) was established by Section 112 (1) of Act I of 2002.
[275] Section 183 (6) was enacted by Section 112 (2) of Act I of 2002.
[276] The second and third sentences of Section 184 (2) were established by Section 51 (1) of Act II of 2003.

presence permitted by the prosecutor or the investigating authority, and consented to in writing by the suspect, witness or victim present.

(5)[277] The questioning of a foreign citizen as a suspect or witness may be attended by the official of the consulate of his country. [278]

(6) Pursuant to an international treaty promulgated by law, in the event of a procedure instituted

a) against a foreign citizen suspect or

b) due to criminal offence committed to the injury of a foreign citizen victim

the presence of a member of the authority of the foreign state in the investigatory action shall be allowed. Notification may be omitted if any delay would pose a danger. In such a case, the authority of the foreign state shall be notified of the concluded investigatory action subsequently, without delay. [279]

(7)[280] In the case of investigatory actions which may be attended by the counsel for the defence, he may be accompanied or substituted by an apprentice lawyer.

(8) Pursuant to a separate legal regulation or an international treaty, the member of the investigating authority of the foreign state may attend the investigatory actions.

Section 185 (1)[281] The suspect, the counsel for the defence and the victim may attend the hearing of the expert, the inspection, reconstruction and presentation for identification, may make motions and observations, and may ask questions from the expert. The notification of the above persons of the investigatory action may be omitted in exceptional cases, if justified by the urgent nature of the investigatory action. Notification shall be omitted, if it resulted in the disclosure of the confidential data of the witness to the suspect, the counsel for the defence and the victim.

(2) The suspect may be summoned to attend the inspection and reconstruction, in which case these investigatory actions may not be conducted in his absence.

(3) The prosecutor and the investigating authority may remove a person from the site of the investigatory action whose presence obstructs the procedure, and may compel to be present at the site of the investigatory action to facilitate the investigation. Those interfering with the procedural order or fail to be present at the site may be subjected to a disciplinary penalty.

Section 186 (1) Those having the right to be present in the investigatory action may forthwith inspect the minutes taken thereon.

(2) The suspect, the counsel for the defence and the victim may inspect the expert opinion during the investigation as well, but they may only inspect other documents if this does not injure the interests of the investigation.

(3) The suspect and the counsel for the defence shall be entitled to receive a copy of the documents they may inspect.

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[277] Section 184 (5) and (6) was enacted by Section 113 of Act I of 2002.

[278] Please refer to Law–Decree No. 13 of 1987 on the Promulgation of the Treaty on Consular Relations signed in Vienna on April 24, 1963.

[279] Please refer to a the Treaty between the governments of the Republic of Hungary and the United States of America concerning the activities of the armed forces of the United States of America in the territory of the Republic of Hungary, and Act XLIX of 1997 on the ratification and promulgation of the implementing Agreements, constituting the enclosure thereof.

[280] Section 184 (7) and (8) was enacted by Section 51 (2) of Act II of 2003.

[281] The first sentence of Section 185 (1) was established by Section 52 of Act II of 2003, and its last sentence was enacted by Section 114 of Act I of 2002.

(4)[282] The copy of the documents produced, obtained, filed or attached in the course of the investigation and containing the testimony or personal data of the victim or the witness, shall not indicate the personal data of either the victim or the witness. No copy may be issued of the draft decisions of the prosecutor or the investigating authority or of the documents created in the course of communications between the prosecutor and the investigating authority pursuant to Section 165 (1) to (3).

Partial omission of the investigation

Section 187 (1) After the questioning of the suspect, the prosecutor may, in a decision, dispense with further investigation into a criminal offence having no significance for the purpose of liability, due to the commission of another, graver criminal offence.

(2) The decision on the partial omission of the investigation shall be notified to the victim, the complainant and the party who put forward a private motion. If the decision concerns a larger number of people, it may also be communicated with the method specified in Section 67 (3).

Suspension of the investigation

Section 188 (1) The prosecutor shall suspend the investigation in a decision, if

a) the suspect is absconding or is abroad, and the procedure cannot be continued in his absence,

b) the suspect cannot participate in the procedure due to a permanent and grave illness, or a mental disease acquired after the commission of the criminal offence,

c) the identity of the offender cannot be established during the investigation,

d) a decision needs to be obtained on preliminary issues for conducting the procedure,

e) the action of the foreign authority in response to the request of legal aid is required and no further investigatory action needs to be conducted in Hungary,

f)[283] the decision on instituting criminal proceedings needs to be obtained because the criminal offence was committed by a foreign citizen abroad, or

g)[284] in respect of a case falling under its jurisdiction, the international criminal court

requests the Hungarian authority to transfer the criminal proceeding.

(2)[285] The procedure shall be continued if the cause for its suspension has ceased to exist or in the case specified in subsection (1) *g)*, if the act promulgating the charter of the international criminal court or the act on the execution of the obligations arising from such charter provides so.

(3) The prosecutor may set a maximum one year deadline

a) for the return of a person staying abroad,

b) for the submission of the claim of the interested party, in order to decide on the personal status thereof,

c) if the investigation is suspended pursuant to subsection (1) *e)*.

(4) If the deadline set by the prosecutor has elapsed without result, the procedure shall be resumed.

(5) The decision on the suspension of the investigation shall be notified to the suspect if his location is known, the counsel for the defence, the complainant and the victim.

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[282] The text of Section 186 (4) was established by Section 115 of Act I of 2002.
[283] Section 188 (1) f) was established by Section 116 (1)of Act I of 2002.
[284] Section 188 (1) g) was enacted by Section 53 (1) of Act II of 2003.
[285] Section 188 (2) was established by Section 53 (2) of Act II of 2003.

(6)[286] After the suspension of the investigation – with the exception of the case specified in subsection (1) *a)* – investigatory action directly affecting the person of the suspect (offender) may not be conducted.

(7) The period of suspension shall not be calculated in the deadline of the investigation.

Section 189 (1) The investigating authority may suspend the investigation in a decision in the cases stipulated in Section 188 (1) *a), c)* and *e)*. The investigating authority shall forward its decision concerning the suspension of the investigation to the prosecutor without delay.

(2) In the case specified in Section 188 (1) *c)* the prosecutor and the investigating authority shall register the case, and upon obtaining further data on the identity of the offender, shall resume the investigation.

Termination of the investigation

Section 190 (1) The prosecutor shall terminate the investigation in a decision, if,

a) the action does not constitute a criminal offence,

b) if, based on the data of the investigation, the commission of a criminal offence cannot be established and continued procedure is not expected to yield any result,

c) if the criminal offence was not committed by the suspect, or based on the data of the investigation it cannot be established whether the criminal offence was committed by the suspect,

d) a ground for the preclusion of punishability exists, unless it appears necessary to order involuntary treatment in a mental institution,

e) due to the death of the suspect, statutory limitation or pardon,

f) due to other grounds for the preclusion of punishability stipulated by law,

g) there is no private motion, request or complaint and they cannot be subsequently submitted,

h)[287] the action has already been adjudicated by a final decision, including the case regulated in Section 6 of the Penal Code,

i) after the lapse of two years from the commencement of an investigation related to a specific person [Section 176 (2)].

(2) In the cases specified in subsection (1) *a), e), g)* and *h)* and if punishability is precluded because the offender is a child [Section 22 *a)* of the Penal Code], the investigation may also be terminated by the investigating authority. The investigating authority shall forward its decision concerning the termination of the investigation to the prosecutor without delay.

(3) Upon the termination of the investigation, the cost of criminal proceedings shall be borne by the state; the suspect shall be compelled to bear the costs incurred due to his defaulted obligations.

(4) The decision on the termination of the investigation shall be notified to the suspect, the counsel for the defence, the victim, the complainant and the person who put forward a private motion.

Section 191 (1) Unless an exception is made in this Act, the termination of the investigation shall not prevent the subsequent resumption of the proceeding in the same case.

(2)[288] The resumption of the proceeding shall be ordered by the prosecutor, while if the investigation was terminated by the prosecutor, by the superior prosecutor. If the suspect was

[286] Section 188 (6) was established by Section 116 (2) of Act I of 2002.
[287] Section 190 (1) h) was established by Section 53 (3) of Act II of 2003.
[288] The text of Section 191 (2) was established by Section 117 of Act I of 2002.

reprimanded (Section 71 of the Penal Code), the prosecutor and the superior prosecutor, respectively, shall repeal the decision on the termination of the investigation.

(3) If no objection was raised to the termination of the investigation, or the superior prosecutor did not order the resumption of the investigation, this may only be ordered by the court against the person who was the subject of the previously terminated investigation.

(4) If the court has rejected the motion for the resumption of the investigation, a repeated motion requesting the resumption of the investigation on the same ground may not be filed.

(5)[289] If the complaint was rejected pursuant to Section 175 (1) or the investigation terminated pursuant to Section 192 (1), a Section 82 (5), the investigation or the resumption thereof may be ordered by the competent prosecutor.

Termination of the investigation concerning a co-operating suspect and a covert investigator

Section 192 (1) If there are reasonable grounds to suspect that a criminal offence has been committed, the prosecutor or the investigating authority (with the permission of the prosecutor) may terminate the investigation, if the person who may be reasonably suspected of having committed the criminal offence co-operates in the proving the case or another criminal offence to such an extent that the interests of national security or law enforcement takes priority over the interest to enforce the claim of the state under criminal law.

(2)[290] If there are reasonable grounds to suspect that a criminal offence has been committed, the prosecutor shall terminate the investigation in a decision, if the person who may be reasonably suspected of having committed the criminal offence is a covert investigator [Section 178 (2)], who committed the action in line of duty in the interest of law enforcement, and the latter interest takes precedence over the interest to enforce the claim of the state under criminal law.

(3) The investigation may not be terminated pursuant to subsection (1) or (2), if the person specified in subsection (1) or the covert investigator can be reasonably suspected of having committed a criminal offence involving deliberate murder.

(4) In the event that the investigation is terminated pursuant to subsection (1) or (2), the provisions of Section 175 (3) to (5) shall be applied as appropriate. However, the termination of the investigation shall not prevent the subsequent resumption of the proceeding in the same case. (Section 191).

(5)–(7)[291]

Inspection of the documents of the investigation

Section 193 (1)[292] After the conclusion of the investigation, the prosecutor or (unless the prosecutor provides for otherwise) the investigating authority shall hand over to the suspect and the counsel for the defence the laced documents of the investigation in a room designated for this purpose. The suspect and the counsel for the defence shall be enabled to inspect all documents – with the exception of those treated confidentially – that may serve as the basis for pressing charges.

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[289] Section 191 (5) was enacted by Section 53 (4) of Act II of 2003.

[290] The text of Section 192 (2)–(4) was established by Section 118 of Act I of 2002.

[291] Pursuant to Section 308 (2) of Act I of 2002, Section 192 (5)–(7) shall be repealed and shall not enter into force.

[292] The first sentence of Section 193 (1) was established by Section 53 (5) of Act II of 2003.

(2)[293] The deadline for the inspection of the documents shall be notified to the suspect and the counsel for the defence, the detained suspect – at his own request – shall be brought to the designated room by the closing date. The suspect and the counsel for the defence may motion for the supplementation of the investigation, make other motions and observations and request copies of the documents. The suspect shall be advised of this right.

(3) The decision on the motion of the suspect or the counsel for the defence shall be made by the prosecutor or the investigating authority.

(4)[294] The suspect and the counsel for the defence shall be entitled to inspect the documents specified in subsection (1) even after the closing date.

(5) If the procedural action set forth in subsection (1) was conducted by the investigating authority, it shall, within fifteen days thereafter, forward the documents to the prosecutor.

(6)[295] After conducting the procedural action set forth in subsection (1) the victim shall be notified of the possibility to inspect the documents of the investigation and exercise his other rights related to the investigation.

Section 194 (1) The minutes taken regarding the hand-over of the documents of the investigation in compliance with Section 193 (1) shall contain

a) the description of the documents handed over to the suspect and the counsel for the defence, and the time of the start and finish of the inspection,

b) the motions and observations made by the suspect and the counsel for the defence,

c) if applicable, the fact that the suspect or the counsel for the defence has not exercised his right granted under Section 193 (1).

(2)[296]

Title IV

Legal remedies in the course of the investigation

Section 195 (1) Anyone affected by the dispositions in the decision of the prosecutor or the investigating authority may protest it within eight days following its communication.

(2) The decision assigning an expert and the decision permitting the involvement of a person assigned by the suspect or the counsel for the defence to prepare an expert opinion shall not be subject to a protest [Sections 111 and 112].

(3) Unless an exception is provided for in this Act, the protest shall have no dilatory effect. In exceptionally justified cases the party having made the decision or judging the protest may postpone the execution of the decision until the protest is judged.

(4) If the party having adopted the decision does not sustain the protest within three days, it shall be submitted without delay to the party who is entitled to judge it. The protest against the decision of the prosecutor shall be judged by the superior prosecutor, while the protest against the decision of the investigating authority shall be judged by the prosecutor within fifteen days of receipt, or, in the case of a decision on termination, within thirty days in a decision.

(5) The party having filed the protest – in the case of repealing or modifying a decision, those to whom the decision had been communicated – shall be advised of whether the protest was admitted or rejected. With the exception of the cases stipulated in subsection (6), the decision admitting or rejecting the protest may not be subject to further legal remedies.

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[293] The first sentence of Section 193 (2) was established by Section 119 (1)of Act I of 2002.
[294] Section 193 (4) and (5) was established by Section 119 (2) of Act I of 2002.
[295] Section 193 (6) was enacted by Section 119 (2) of Act I of 2002.
[296] Pursuant to Section 308 (2) of Act I of 2002, Section 194 (2) shall be repealed and shall not enter into force.

(6) Against the decision concerning the rejection of the protest against decisions made under Section 149 (3), Section 150 (2), Section 151 (4) and Section 153 (2), and the decision of the prosecutor adopted under Section 151 (2) a motion for review may be filed with the prosecutor's office having made the latter decisions within eight days of delivery; the prosecutor's office shall forward the motion for review, together with the documents and its own motion to the court within three days.

(7) The legal remedy against an urgent investigatory action shall be governed by the provisions of subsections (1) to (4).

Section 196 Anyone being affected by the measure or omitted measure of the prosecutor or the investigating authority may make an objection thereto. The protest shall be considered as an objection, if it is late or was not written by the entitled person. Based on the objection, the prosecutor or the investigating authority shall take the necessary and justified measures.

Section 197[297] (1) If the prosecutor terminated the investigation pursuant to Section 190 (1) *e)*, because punishability has become precluded owing to a pardon initiated ex officio, the suspect may request the resumption of the investigation within eight days following the communication of the decision concerning the termination of the investigation; in such cases the investigation shall be resumed.

(2) The criminal proceeding shall be resumed if the suspect, in his protest against the decision on the termination of the investigation claims that reprimand has been prejudicial, there was no other reason for terminating the criminal proceeding. The suspect shall be advised thereof in the decision.

Section 198 (1) If the complaint was lodged by the victim, he may file a protest against the decision rejecting the complaint and request an order for the investigation within eight days following the communication of the decision.

(2) If the prosecutor terminated the investigation, the victim may file a protest in order to resume the proceeding within eight days following the communication of the decision.

Section 199 (1) Based on the protest, the prosecutor or the superior prosecutor shall

a) repeal the decision on the rejection of the complaint or on the termination of the investigation, and decides to order or resume the investigation or to press charges, or

b) rejects the protest if it is found unfounded.

(2)[298] After the rejection of the protest, the victim may act as a substitute private accuser, if

a) the complaint was rejected pursuant to Section 174 (1) *a)* or *c)*, or

b) the investigation was terminated pursuant to Section 190 (1) *a)–d)* or *f)*.

(3) The victim may not act as a substitute private accuser, if punishability is precluded because the offender is a child or mentally disabled, or upon the death of the offender.

[297] The original Section 197 was amended to Section 197 (1) by Section 120 (1) of Act I of 2002, which concurrently inserted a subsection (2) in Section 197.

[298] Section 199 (2) and (3) was established by Section 120 (2)of Act I of 2002.

Title V

COVERT DATA GATHERING SUBJECT TO JUDICIAL PERMIT[299]

General rules

Section 200 (1) In order to establish the identity, locate or arrest the offender or to find means of evidence, from the time the investigation is ordered until the documents thereof are presented, subject to a judicial permit, the prosecutor and the investigating authority may, without informing the person concerned:

a) keep under surveillance and record the events in a private home with a technical device,

b) learn and record with a technical device the contents of letters, other pieces of mail as well as communications made by way of a telephone line or other means of communication,

c) learn and use data transmitted and stored by way of a computer system (hereinafter: covert data gathering).

(2) After the order for the investigation has been issued, the prosecutor and the investigating authority shall perform covert data gathering which is subject to a judicial permit in compliance with this Act.

(3) The provisions set forth in this Title shall not apply to covert intelligence gathering performed prior to the order for an investigation, which is subject to a judicial permit or the permit of the minister of justice; such activity shall be conducted by authorised organisations in compliance the rules governing them and separate legal regulations. [300]

(4) If covert intelligence gathering has commenced under a separate legal regulation issued pursuant to a judicial permit or the permit of the minister of justice prior to the order for an investigation, but then an investigation is ordered, thereafter covert intelligence gathering may only be continued in compliance with the provisions of this Act as secret data gathering.

(5) For the purposes of subsection (1) *a)* "private home" means a home, other premises or objects used for dwelling, rooms belonging to the home but not intended to be used for dwelling, the enclosed area attached thereto, as well as any other premises or areas not open for the (general) public.

Section 201 (1) Covert data gathering may be applied if the proceedings are conducted upon the suspicion of a criminal offence, or an attempt of or preparations for a criminal offence which

a) has been committed intentionally and punishable by five years' or more imprisonment,

b) is related to trans-boundary crime,

c) has been committed to the injury of a minor,

d) has been committed repeatedly or in an organised manner (including criminal offences committed for profit, in a criminal organisation and conspiracy),

e) is related to narcotics or substances qualifying as such,

f) is related to counterfeiting of money or securities,

g) has been committed with a weapon.

(2) If the investigation is conducted by the prosecutor [Section 28 (4) *e)*, Section 29, Section 474 (2)–(4)], covert data gathering may also be performed in the case of criminal offences not listed in subsection (1).

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[299] Title V of Chapter IX of the Act and Sections 200–206 were established by Section 121 of Act I of 2002.

[300] Please refer to Act XXXIV of 1994, Act C of 1995, Act CXXV of 1995 and Act XXXII of 1997.

Section 202 (1) The subject of covert data gathering may primarily be the suspect, or the person who may be suspected of having committed the criminal offence based on the available data of the investigation.

(2) Other persons may be subjected to covert data gathering, if data indicate that they have culpable communications with the person specified in subsection (1) or there is reasonable ground to suspect the same. The fact that an outsider is unavoidably affected shall not be an obstacle to covert data gathering.

(3) Covert data gathering may only be conducted in the private home and office of a lawyer acting as the defence counsel in a case, and in connection with the telephone line, other means of communication and correspondence (including electronically transmitted mail) of the lawyer, if there is reasonable ground to suspect that the lawyer has committed a criminal offence related to the case in progress against the defendant.

(4) Covert data gathering may be conducted in the visitors' room for lawyers within a police detention room or the in a penal institution, if there is reasonable ground to suspect that the lawyer has committed a criminal offence related to the case in progress against the defendant.

(5) The provisions set forth in subsections (3) and (4) shall also apply to persons who may not be heard as a witness pursuant to Section 81 (1) *a)* and those who may refuse to testify under Section 82 (1).

(6) Even in the cases specified in Section 201 and subsections (1) to (5), covert data gathering may only be conducted if obtaining evidence by other means reasonably appear to be unlikely to succeed if tried or would involve unreasonable difficulties, and there is probable cause to believe that evidence can be obtained by covert data gathering.

Judicial permit

Section 203 (1) Covert data gathering shall be permitted by the court at the motion of the prosecutor in compliance with the procedure set forth in Title VI of this Chapter.

(2) The motion shall contain the following:

a) the name of the prosecutorial body or investigating authority conducting the investigation, the date of the order for the investigation, the case number, if applicable, the type of covert intelligence gathering conducted prior to the order for the investigation or during the submission of the motion, the name of the organisation conducting or having conducted such covert intelligence gathering and the data having been obtained thereby,

b) the location planned to be subjected to covert data gathering, including, in the case of eavesdropping, the phone number,

c) the name or data suitable for the identification of the person planned to be subjected to covert data gathering, as well as the description of the means and method of covert data gathering to be applied,

d) the duration for which covert data gathering is planned to be maintained, specified in calendar days and hours,

e) detailed description substantiating the conditions for the application as specified in Sections 201 and 202, thus especially the description of the underlying criminal offence and the data establishing suspicion that the criminal offence has been committed, the circumstances justifying that covert data gathering is indispensable, the objective thereof and facts establishing probable cause to believe that the evidence may be obtained by the means or method to be applied in the course of covert data gathering,

f) if applicable, the reason for and the date of an exigent order [subsection (6)].

(3) The supporting documents shall be attached to the motion. Upon the submission of a motion for prolongation, the documents produced since the previous permit shall also be presented.

(4) The court shall adopt a decision within seventy-two hours following the submission of the motion. When the court fully or partially accepts the motion, it shall determine the subject person, the means and methods of covert intelligence gathering and the time period for which the above means and methods may be applied in respect of such subject person.

(5) Covert data gathering may be permitted for a maximum period of ninety days; upon a repeated motion, this period may be extended for a further ninety days on one occasion. If the court accepts the motion and by the time of the permit the starting day of covert data gathering as indicated in the motion has already passed, the actual starting day shall be the date of the permit.

(6) If the permission procedure caused a delay that would jeopardise the success of covert data gathering, the prosecutor may, for maximum period of seventy-two hours, order covert data gathering (exigent order). In this case, simultaneously with the order, the motion for the permit shall also be submitted. If the court has rejected the motion, a new exigent order may not be issued based upon the same facts.

Performance of covert data gathering

Section 204 (1) Covert data gathering is performed by the organisation specified in a separate Act.[301] If the subject of covert data gathering ordered in the course of an investigation conducted by the prosecutor's office is a criminal offence committed by a sworn officer of national security services, the prosecutor may also request the affected national security service to perform covert data gathering.

(2) The organisations forwarding, processing and managing communications services, pieces of mail and computer data shall be obliged to provide for the conditions of performing covert data gathering and co-operate with the authorities authorised to perform covert data gathering. The obligations of organisations providing communications services and forwarding mail and the detailed rules of co-operation are set forth in a separate legal regulation.[302]

(3) Covert data gathering shall be forthwith terminated by the prosecutor or the head of the investigating authority, if

a) in the case of an exigent order, the court has rejected the motion,

b) the objective specified in the permit has been achieved,

c) the time period specified in the permit has lapsed,

d) the investigation has been terminated,

e) its maintenance is unlikely to yield any result.

(4) Within eight days following the end of covert data gathering, the prosecutor or investigating authority having performed covert data gathering shall destroy the data which had been recorded but are of no interest for the objective of thereof, as well as the recorded data of persons not concerned in the case. If subsection (3) *a)* applies, the data recorded so far shall be immediately destroyed.

(5) A report (Section 168) shall be compiled on the performance of covert data gathering, detailing the process thereof, thus especially, the means and methods applied, the time period and location of the application, the natural persons, legal entities and organisations without a legal entity that had been affected by the covert data gathering, and the data obtained in the course of covert data gathering – and not destroyed pursuant to subsection (4) – as well as the method, source, place and time of obtaining the data. The report shall allow to establish whether the provisions in the court permit have been complied with. The report shall also state whether the covert data gathering have achieved its objective, or the reason for failure.

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[301] Please refer to Section 8 of Act CXXV of 1995.

[302] Please refer to Government Decree No. 75/1998. (IV. 24.) Korm.

The report shall be signed by the head of the prosecutorial body or investigating authority having performed the covert data gathering.

Disclosure of the results of covert data gathering

Section 205 (1) Protection of the data produced and recorded during covert data gathering shall be the responsibility of the prosecutor or the investigating authority having performed the covert data gathering, in compliance with the provisions of the Act on State and Official Secrets.

(2) While covert data gathering in progress and thereafter until the report thereon is filed by the prosecutor with the documents, the fact of performing covert data gathering, as well as the data produced and recorded in the course thereof may be disclosed only to the judge having issued the permit, the prosecutor and the investigating authority, further, by superior (senior officer) of the prosecutor and the investigating authority. Court documents related to the permission of covert data gathering may also be disclosed to the administrative superior of the judge having issued the permit, as specified in Section 207 (1).

(3) At the request of the judge having issued the permit, the prosecutor shall present the data obtained by covert data gathering until the time of such request. Should the judge establish that the permit has been misused, he shall, while in the event of other breach of law, he may terminate the covert data gathering. Such decision may not be appealed.

(4) The results of covert intelligence gathering performed prior to the investigation under a separate legal regulation [Section 200 (3)] – until they are used in the criminal proceedings – may be disclosed to the persons specified in separate Acts.

(5) After the conclusion of the covert data gathering, the prosecutor shall inform the person affected by the judicial permit of the fact that covert data gathering had been performed, unless criminal proceedings has been instituted against such person and unless such notification jeopardises the success of thereof.

Using the results of covert data gathering

Section 206 (1) If the prosecutor intends to use the result of covert data gathering as evidence in the criminal proceedings, the motion for the permit of the covert data gathering, the court decision and the report on the performance of covert data gathering shall be attached to the files of the investigation. If the documents are attached after disclosing the files of the investigation (Section 193), the suspect and the defence counsel shall be notified thereof and be allowed to examine the attached documents.

(2) After being attached to the files of the investigation, the report concerning the performance of covert data gathering may be used as evidence in accordance with the rules pertaining to documents (Section 116).

(3)[303] The results of covert data gathering may only be used for the purpose of other criminal proceedings, and the results of covert intelligence gathering performed prior to the order for an investigation subject to a judicial permit or the permit of the minister of justice, may only be used for criminal proceedings – notwithstanding the general rules [Section 76 (2)] – in the following cases:

a) if the conditions set forth in Section 201 also apply to the given, or the other criminal proceedings, and

b) the purpose of using the results corresponds to the original objective of covert data gathering or covert intelligence gathering.

(4) The results of covert data gathering may not be admitted as evidence, if covert data gathering was terminated pursuant to Section 204 (3) *a)* or *e)*, or Section 205 (3), or if the person affected by the covert data gathering – without a court permit – is the defence counsel

[303] The text of Section 206 (3) was established by Section 54 of Act II of 2003.

acting in the case, or a person who may not be heard as a witness or may refuse to testify under Section 82 (1).

Title VI

PROCEDURE OF THE INVESTIGATING JUDGE

Responsibilities of the investigating judge

Section 207 (1)[304] Prior to the filing of the indictment, the responsibilities of the court of first instance are performed by the judge designated by the president of the county court (investigating judge).

(2) The investigating judge shall decide on the following:

a)[305] before the indictment is filed, on motions concerning the coercive measures falling within the competence of the court [Section 129, Section 137, Section 138, Section 140, Section 146, Section 147, Section 149 (6) and (8), Section 151 (2), (3) and (6), Section 153 (2), Section 156, Section 159, Section 483], diagnosis of mental state (Section 107), and on the exclusion of the counsel for the defence [Section 45 (3)][306],

b) permitting and terminating covert data gathering [Section 203 (4) and (6); Section 205 (3)],

c) after the termination of the investigation, on resuming the same [Section 191 (3)],

d) at the motion of the prosecutor, on declaring the witness specially protected (Section 97),

e)[307] on the motion for the review of the decision rejecting the protest against the decisions made under Section 149 (3), Section 150 (2), Section 151 (4) or Section 153 (2) and of the prosecutor's order given according to Section 151 (2), as well as on replacing disciplinary penalty with confinement according to Section 161 (6).

(3)[308] At the motion of the prosecutor, prior to the filing of the indictment, the investigating judge shall hear the specially protected witness and the witness whose life is in imminent danger. The witness and the lawyer acting on behalf of the witness may file a motion for the hearing of the witness with the prosecutor. The investigating judge shall repeatedly hear the specially protected witness, if this is ordered by the court during the preparations or in the course of the hearing [Section 268 (2), Section 305 (3)].

(4) At the motion of the prosecutor, prior to the filing of the indictment, the investigating judge shall hear the witness under the age of fourteen, if there is reasonable ground to believe that questioning at the hearing would adversely affect his personal development. The legal representative, the ward and the lawyer acting on behalf of the witness may file a motion for the hearing of the witness with the prosecutor.

(5)[309] The prosecutor, the suspect and the counsel for the defence may file a motion for an evidentiary procedure, if there is reasonable ground to believe that the means of evidence thus obtained would not be available in the course of the court procedure, or would significantly change by that time, or would lose its quality as a means of evidence. The prosecutor, the suspect, the counsel for the defence, the lawyer acting on behalf of the witness, and the ward

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[304] Section 207 (1) was established by Section 122 (1)of Act I of 2002.
[305] Section 207 (2) a) and b) was established by Section 122 (2) of Act I of 2002.
[306] Pursuant to Section 88 (2) c) of Act II of 2003, in Section 207 (2) a) the words „[Section 45 (4).]" was amended to „[Section 45 (3)]".
[307] The text of Section 207 (2) e) was established by Section 55 of Act II of 2003.
[308] The third sentence of Section 207 (3) was enacted by Section 122 (3) of Act I of 2002.
[309] The second sentence of Section 207 (5) was enacted by Section 122 (4) of Act I of 2002.

and the legal representative of the minor witness may also make a motion for hearing the witness, or, in special cases, the suspect by way of a closed-circuit communications system.

(6)[310] Prior to the filing of the indictment, the procedures for the extension of pre-trial detention to over one year, and the review of temporary involuntary treatment in a mental institution shall be performed by the single judge of the county court in compliance with the provisions set forth in this Title.

Jurisdiction

Section 208 (1) The investigating judge shall proceed in the procedures conducted by prosecutor's offices located within the geographical jurisdiction of the county court, regardless of whether the adjudication of the criminal offence underlying the procedure falls within the competence of the local court or the county court.

(2) The president of the county court may designate an investigating judge at several local courts within the geographical jurisdiction of the county court, in such a case, the jurisdiction of the individual investigating judges is determined by the president of the county court. In the event of performing evidentiary acts, the investigating judge may also act outside his geographical jurisdiction.

General rules of procedure

Section 209 (1) The actions of the investigating judge shall be governed by the general rules pertaining to court procedures, unless provided otherwise in this Title.

(2) Consolidation and severance of the cases shall not be applied.

(3) The costs of the criminal proceedings incurred in the course thereof and advanced by the state according to Section 74 (1) *a)* shall be established by investigating judge but advanced by the prosecutor.

(4) In the event that the investigating judge deems that the investigation should be suspended or terminated, he shall notify the prosecutor thereof.

The session

Section 210 (1) The investigating judge shall hold a session, if the motion pertains to the following subjects:

a)[311] a coercive measure entailing the restriction or deprival of personal freedom (Section 129, Section 137, Section 138, Section 140, Section 146, Section 483),

b) extension of pre-trial detention for over six months after the order thereof,

c) acceptance of bail (Section 147),

d) order for the diagnosis of mental state (Section 107),

e) performance of an evidentiary act [Section 207 (3) to (5)].

(2) The session may be omitted, if the subject of the motion is ordering a diagnosis of mental state and the suspect cannot attend due to his health conditions or is incapable of exercising his rights.

(3) The investigating judge shall make a decision based on the documents

a) in issues not listed under subsection (1),

b) if the session is omitted pursuant to subsection (2),

c) if the motion was filed by a person unauthorised to do so.

(4) If necessary, the investigating judge shall hold a session even in the cases listed under subsection (3).

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[310] Section 207 (6) was enacted by Section 122 (5) of Act I of 2002.

[311] The text of Section 210 (1) a) was established by Section 123 of Act I of 2002.

Section 211 (1)[312] The investigating judge shall determine the date of the session. If the motion was filed by the prosecutor, he shall ensure the attendance of the suspect before the investigating judge and advise the counsel for the defence of the date and venue of the session. If the motion was filed by a party other than the prosecutor, the investigating judge shall arrange that the required documents are obtained and advise the party having submitted the motion, the prosecutor, the suspect and the counsel for the defence of the date and venue of the session.

(2) Should the party having submitted the motion fail to attend the session, the motion shall be deemed to be withdrawn. If the motion pertains to ordering temporary involuntary treatment in a mental institution, and due to his health condition the suspect is unable to attend the session or exercise his rights, the session may not be held in the absence of the counsel for the defence.

(3) At the session the party having submitted the motion shall present the evidence substantiating the motion in writing or orally. Those present shall be granted the opportunity to examine – within the limits set forth in Section 186 – the evidence of the party having submitted the motion. If the notified party does not attend the session, but had submitted his observations in writing, this document shall be presented by the investigating judge.

(4) The investigating judge shall examine whether the statutory requirements related to the motion have been met, whether there are any obstacles to the criminal proceedings and whether the motion is substantial beyond reasonable doubt. In the cases specified in Section 210 (1) *a)* and *b)* this examination shall also extend to the personal circumstances of the suspect.

(5)[313] The investigating judge may also hold the session by way of a closed-circuit communication system. The presence of the counsel for the defence at the session is obligatory, moreover, in the course of the session, the counsel for the defence shall be at the same place as the suspect. Sessions held by using a closed-circuit communication system shall be governed by the provisions stipulated in Sections 244/A-244/D.

Performance of an evidentiary act at the session

Section 212 (1) The party having submitted the motion to perform an evidentiary act shall provide for the conditions required therefor. If the session cannot be held in the official premises of the investigating judge, the motion shall indicate the venue of the session.

(2) At the start of the session, the investigating judge shall decide on the motion regarding the performance of the evidentiary act, giving the reasons for the decision.

Section 213 (1) At the examination of a witness whose life is in imminent danger, or who is believed, on reasonable grounds, to be unable to attend the hearing (Section 87), the suspect and the counsel for the defence, as well as the lawyer acting on behalf of the witness may also be present, unless this is prevented by the state of the witness. In such a case, the suspect and the counsel for the defence shall be advised of the session subsequently, provided that they shall be able to examine the minutes taken during the session at the prosecutor.

(2)[314] In addition to the investigating judge, the keeper of the minutes and – if necessary – the interpreter, the examination of a specially protected witness may only be attended by the prosecutor and the lawyer acting on behalf of the witness. In the course of the examination of a specially protected witness, the investigating judge shall ensure, and if required, verify, either with the help of the investigating authority or otherwise, the creditworthiness of the witness, the reliability of his knowledge and the circumstances that may influence credibility

[312] Section 211 (1) was established by Section 124 (1) of Act I of 2002.
[313] Section 211 (5) was established by Section 124 (2)of Act I of 2002.
[314] The text of Section 213 (2) was established by Section 125 of Act I of 2002.

of the testimony. The data thus obtained shall be indicated in the minutes taken at the examination. Of these minutes, an abstract shall be made which contains only the name of the investigating judge and the prosecutor (of those attending), the fact that the witness has been declared specially protected and the testimony of the specially protected witness. The investigating judge shall ensure that the abstract of the minutes taken on the testimony shall in no way imply the identity and the location of the specially protected witness. The abstract of the minutes shall be forwarded to the prosecutor. It shall be the prosecutor's responsibility to ensure that the abstract of the minutes is kept separately and handled confidentially until the filing of the indictment. The abstract of the minutes may only be disclosed to the prosecutor and the investigating authority prior to the filing of the indictment.

(3) In addition to those listed in subsection (2), the examination of a witness under the age of fourteen may also be attended by the legal representative and the ward of the witness. The suspect and the counsel for the defence shall be advised of the examination of the witness subsequently, provided that they shall be able to examine the minutes taken during the examination at the prosecutor.

(4) Upon a motion, the investigating judge may order the recording of the examination of the witness by an audio or video recorder or other equipment. Such recording shall not substitute the minutes. On the copy of the recording, the individual features of the witness suitable for identification (e.g.: face, voice) may be distorted by technical means. If the recording was made during the examination of a specially protected witness or a witness whose data are handled confidentially, the rules pertaining to confidential treatment shall also apply to such recordings.

The decision

Section 214 (1) Unless provided otherwise in this Act, the investigating judge shall deliver a decision with the explanation of the reasons within three days following the submission of the motion, in which he consents – either wholly or partially – to the motion or rejects the motion. The explanation shall include the substance of the motion, the brief description and classification of the criminal offence underlying the procedure and state whether the statutory requirements related to the motion exist or are absent. If the investigating judge rejects the motion, the motion may not be repeated on identical grounds.

(2) The decision shall be notified to the prosecutor, the party having submitted to the motion and – with the exception of the cases set forth in Section 207 (2) *b)* and (3) – the party to whom the provisions therein apply. The counsel for the defence shall also be informed of the decision notified to the suspect.

(3) The decision shall be communicated at the session by way of an announcement. If the investigating judge has adopted the decision based on documents, the decision shall be served immediately after it is made in writing. In the cases specified in Section 207 (2) *b)* and (3), service shall be governed by the provisions of Section 70 (1) *d)*.

Legal remedy

Section 215 (1) The decision of the investigating judge may be appealed by the party who was notified of such decision. Any appeal against a decision communicated by way of an announcement shall be lodged immediately after the announcement. Those entitled to appeal but have not been present at the announcement of the decision may lodge an appeal within three days following the session. Decisions communicated by way of a service may be appealed by those entitled within three days following the service thereof.

(2) The investigating judge shall forward the appeal against the decision to the county court competent to consider the appeals without delay after the receipt thereof or after the lapse of the deadline for appeals.

(3)[315] The appeal shall be considered by the panel of second instance of the county court.

(4) The following decisions may not be appealed:

a) decisions adopted pursuant to Section 207 (2) *a)* regarding a motion under Section 149 (6) and (8), Section 151 (3) and (6) and Section 153 (2) for a coercive measure falling within the competence of the court prior to the filing of the indictment,

b) decisions pertaining to Section 207 (2) *b)* and *e)* and (3) and (4),

c) decisions adopted under Section 212 (2).

(5) Regardless of an appeal, the order for a coercive measure entailing the restriction or deprival of personal freedom may be executed. The appeal of the prosecutor against the termination of a coercive measure entailing the restriction or deprival of personal freedom – unless termination was motioned by the prosecutor – based on documents shall have a dilatory effect.

(6) The investigating judge may omit the adoption of a decision concerning the consideration of an appeal against decisions listed under subsection (4) and an appeal against final decisions.

Chapter X

INDICTMENT

Measures after the presentation of the documents

Section 216[316] (1) Having performed the procedural action specified in Section 193 (1), or, of the action was performed by the investigating authority, within thirty days after receiving the documents, the prosecutor shall examine the files of the case and based on this, may

a) perform, or order the performance of further investigatory action,

b) may suspend the investigation,

c) may terminate the investigation,

d) may file an indictment, or make a decision on the partial omission of the indictment or on the postponement of an indictment.

(2) In exceptional cases, the deadline specified in subsection (1) may be extended by the head of the prosecutor's office by thirty days. In cases having an extensive scope, at the recommendation of the head of the prosecutor's office, the superior prosecutor may exceptionally permit a longer – but maximum ninety-day – deadline as well. In the case regulated in subsection (1) *a)*, the deadline shall be calculated from the performance of the investigatory action.

(3) If the prosecutor files an indictment after performing the investigatory action according to subsection (1) *a)* above, he shall ensure that prior to this, the suspect and the counsel for the defence may examine, in compliance with the provisions stipulated in Section 193, the documents made on the investigatory action. In other cases the possibility for the examination of the documents shall be granted at the motion of the suspect or the counsel for the defence.

The indictment

Section 217 (1) The prosecutor shall press charges by filing the indictment with the court.

(2) If necessary, the prosecutor may examine the suspect prior to filing the indictment.

(3) The indictment shall contain the following:

a) the personal data of the accused listed in Section 117 (1),

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[315] The text of Section 215 (3) was established by Section 126 of Act I of 2002.

[316] The text of Section 216 was established by Section 127 of Act I of 2002.

b) the description of the act being the subject of the indictment,

c) the classification of the subject of the indictment according to the Penal Code,

d) the existence of the condition required to launch the procedure under separate legal regulations (private motion, complaint, request, suspension of the right to immunity or privilege, consent to launching criminal proceedings),

e)[317] the legal regulations pertaining to the competence and jurisdiction of the court, as well as reference to the rules concerning the competence and jurisdiction of the prosecutor filing the indictment,

f) a proposal for imposing a punishment or applying a measure, if the prosecutor does not attend the hearing,

g) the civil claims announced and other motions,

h) a proposal concerning the persons to be summoned to the hearing and the persons to be notified thereof,

i) description of the means of evidence as well as the facts they prove,

j) a proposal for the order of taking evidence at the hearing.

Section 218 (1)[318] If at the time of filing the indictment a coercive measure entailing the restriction or deprival of personal freedom has been applied against the suspect, and the prosecutor deems the maintenance of such measure justified, the prosecutor shall file a motion to prolong the coercive measure. If the prosecutor motions for the maintenance of pre-trial detention, and the detainee has been subjected to restrictions in the course of the investigation, the motion shall also indicate the restrictions, which, in the opinion of the prosecutor, are justified to be maintained.

(2) If the accused committed a wilful criminal offence to the injury of his child, the prosecutor may recommend the court to terminate the parental right of custody of the accused.

(3) In the indictment, the prosecutor may submit a civil claim against the accused.

(4)[319] If the indictment is filed due to the abuse of narcotic substances (Sections 282-282/C of the Penal Code) and the court suspended the criminal proceedings having been earlier instituted against the suspect under Section 266 (6), the indictment shall also motion for the resumption of the procedure [Section 266 (7)] and the consolidation of the cases.

Section 219 (1)[320] The indictment shall be filed in a number of copies sufficient to make one copy available to the court, all of the accused and counsels for the defence each. To the copy of the indictment filed with the court, all documents supporting the indictment and presented by the prosecutor to the suspect and/or the counsel for the defence at the conclusion of the proceedings as well as all physical evidence.

(2) If the name and the data of the witness are ordered to be handled confidentially, the name and data of the witness to be summoned to the hearing shall be indicated in a separate confidential document instead of the indictment.

(3)[321] If the accused fails to command the Hungarian language, the part of the indictment pertaining to such accused shall be translated into the native, regional or minority language of the accused, or at request, into another language defined by the accused as a language spoken and formerly used in the proceedings, and thus filed with the court.

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[317] The text of Section 217 (3) e) was established by Section 128 of Act I of 2002.
[318] The second sentence of Section 218 (1) was enacted by Section 129of Act I of 2002.
[319] Section 218 (4) was enacted bySection 56 (1) of Act II of 2003.
[320] Section 219 (1) was established by Section 130 (1) of Act I of 2002.
[321] Section 219 (3) was established by Section 130 (2) of Act I of 2002.

(4)[322] If the prosecutor intends to use the testimony of a specially protected witness as evidence in the court procedure, the abstract of the minutes taken at the examination of such specially protected witness to the documents supporting the indictment. If this document has been attached after the disclosure of the files of the investigation (Section 193), both the suspect and the counsel for the defence shall be notified thereof and be granted the possibility to examine the subsequently attached document.

(5) After being attached to the files of the investigation, the abstract of the minutes taken at the examination of the specially protected witness may be used as evidence in compliance with the rules pertaining to documents (Section 116).

(6) The victim shall be notified of the indictment.

Partial omission of the indictment

Section 220 The prosecutor may, in a decision, omit to indict a criminal offence having no significance for the purpose of liability, due to the commission of another criminal offence of greater gravity and being the subject of the indictment. This fact shall be stated in the indictment, and the partial omission of the indictment shall be notified to the victim.

Section 221[323] In the decision the prosecutor may inform the victim of his right to enforce his civil claim by way of other legal means, and that a substitute private accusation may be lodged in respect of the act which have been partially omitted from the indictment.

Postponement of the indictment

Section 222 (1) In the case of criminal offence punishable by a maximum of three years' imprisonment, taking into consideration the gravity of the criminal offence and the extraordinary mitigating circumstances, the prosecutor may decide to postpone the filing of an indictment for a period of one to two years, if this is likely to have a positive impact on the future conduct of the suspect.

(2)[324] If the procedure may be terminated owing to a reason terminating punishability under Section 283 of the Penal Code, the prosecutor shall postpone the filing of the indictment for a period of one year, if the drug user suspect agrees to undergo a treatment for drug addiction, other therapeutic process treating drug users or to participate in preventive education.

(3) The prosecutor may postpone the filing of the indictment related to non-payment of alimony, if this may result in meeting the defaulted obligation.

Section 223 (1) The indictment may not be postponed under Section 222 (1), if the suspect:

a) is a notorious criminal,

b)[325] committed the wilful criminal offence during the probation period of a suspended sentence of imprisonment or after the final sentence of imprisonment imposed due to the wilfully committed criminal offence, prior to the end of the execution of the imprisonment.

(2) If the Penal Code makes the termination of punishability subject to the conduct after the commencement of the procedure, the indictment may only be postponed in the cases set forth in this Act.

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[322] Section 219 (4)–(6) was enacted by Section 130 (3) of Act I of 2002.

[323] The text of Section 221 was established by Section 131 of Act I of 2002. Pursuant to Section 308 (2) of Act I of 2002, the original subtitle of Section 221 shall be repealed and shall not enter into force.

[324] Section 222 (2) was established by Section 56 (2) of Act II of 2003.

[325] The text of Section 223 (1) b) was established by Section 133 of Act I of 2002.

Hearing prior to the postponement of the indictment [326]

Section 224 (1)[327] If the prosecutor deems it necessary to make the postponement of the indictment subject to setting rules of conduct or prescribing obligations, he shall obtain prior to the postponement of the indictment the opinion of the probation officer then hear the suspect. The hearing shall elucidate, taking into account the statements in the opinion of the probation officer as well, whether the suspect agrees to, and can adhere to the prospective rules of conduct and obligations. If necessary, the probation officer may also be heard.

(2)[328] The obligations stipulated in Section 225 (2) *a)* and *b)* may be ordered with the consent of the suspect and the victim, while those listed in items *c)* and *d)* thereof with the consent of the suspect.

(3) In the cases set forth in Section 225 (2) *a)* and *b)* the prosecutor shall also hear the victim; the hearing of the victim may be dispensed with if he had declared his consent earlier. The absence of the consent of the victim shall not be an obstacle to postpone the indictment by the prosecutor without prescribing an obligation for compensation or amends payable to the victim, provided that the conditions thereof otherwise exist.

Establishment of rules of conduct upon the postponement of the indictment [329]

Section 225 (1) In the decision concerning the postponement of the indictment, the prosecutor shall order the supervision of the suspect by a probation officer, and may also set rules of conduct or other obligations to be adhered to by the suspect. Adherence to the rules of conduct and obligations shall be supervised and assisted by the probation officer in compliance with the legal regulations pertaining to the performance of supervision by probation officers. In order to fulfil these tasks, the provision officer may request the assistance of other organs and organisations.

(2) The prosecutor may oblige the suspect

a) to fully or partially compensate the victim for the damage caused by the criminal offence,

b) ensure the compensation of the victim of another way,

c) make a financial contribution to a specific purpose or perform community service (make amends for the general public),

d) undergo a psychiatric treatment or treatment for alcohol addiction.

(3)[330] The prosecutor may combine the rules of conduct and obligations specified in subsection (2), and may set other rules of conduct and obligations as well.

(4)[331] In the case of Section 222 (2), prescribing the obligation of participating in a treatment for drug addiction, other therapeutic process treating drug users or preventive education shall be compulsory.[332]

(5) The decision on the postponement of the indictment shall be notified to the victim, the complainant and the party having filed a private motion as well. The victim may appeal the decision concerning the postponement of the indictment.

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[326] The subtitle was established by Section 134of Act I of 2002.
[327] The text of Section 224 (1) was established by Section 57 of Act II of 2003.
[328] Section 224 (2) and (3) was established by Section 134 of Act I of 2002.
[329] Section 225 and the subtitle thereof were established by Section 135 of Act I of 2002.
[330] Section 225 (3) was established by Section 58 (1) of Act II of 2003.
[331] Section 225 (4) was established by Section 58 (2) of Act II of 2003.
[332] Please refer to Joint Decree No. 26/2003. (IV. 9.) ESzCsM-GyISM of the Ministry of Health, Social and Family Affairs and the Ministry of Youth and Sports.

Procedure after the postponement of the indictment

Section 226 (1) The prosecutor shall terminate the procedure within thirty days after the lapse of the postponement period of the indictment, if the result expected therefrom has been achieved during this period.

(2)[333] The procedure shall also be terminated prior to the postponement period of the indictment, if the drug addict suspect verifies that he has participated in a treatment for drug addiction, other therapeutic process treating drug users or preventive education for a period of at least six successive months, or, if the person suspected of the misdemeanour of non-payment of alimony, has performed his obligation.

Section 227 (1) The prosecutor shall file an indictment, if

a) the suspect protests the decision and the conditions to terminate the investigation are absent,

b) an indictment was filed against the suspect due to a wilful criminal offence committed during the postponement period of the indictment,

c) the suspect gravely violates the rules of conduct or fails to meet his obligations,

d)[334] it is established during the postponement period of the indictment, that either of the grounds set forth in Section 223 excluding the postponement of the indictment exist.

(2)[335] In the case specified in Section 222 (3) indictment may only be filed if the obligation stipulated therein is not fulfilled.

(3) If the indictment was filed for a reason specified in subsection (1) *c)*, the prosecutor shall hear the suspect before filing the indictment.

(4)[336] If the indictment was postponed under Section 222 (2), the indictment shall be filed, if

a) the suspect fails to verify with a document that within one year following the postponement of the indictment he has participated in a treatment for drug addiction, other therapeutic process treating drug users or preventive education for a period of at least six successive months, or

b) during the postponement period of the indictment, another criminal proceedings has commenced against the suspect due to abuse of narcotic substances and the suspension or termination of the investigation do not apply.

Legal remedy

Section 228 (1) Anyone affected by the dispositions in the decision of the prosecutor may protest it within eight days following its communication.

(2) If the prosecutor does not grant the protest within three days, the protest shall be forthwith submitted to the superior prosecutor.

(3) The superior prosecutor shall make a decision on the protest within fifteen days of receipt. If the protest is deemed well-founded, the superior prosecutor may modify or repeal the decision, and order the same prosecutor to adopt a new decision; in an adverse case, the superior prosecutor shall reject the protest. The protest shall also be rejected if it is late or was lodged by a non-entitled party.

(4) The party having lodged the protest – and in the event of repealing or modifying a decision, those to whom the decision had been communicated – shall be informed of the

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[333] The text of Section 226 (2) was established by Section 59 of Act II of 2003.

[334] Section 227 (1) d) was enacted by Section 137 (1) of Act I of 2002.

[335] Pursuant to Section 88 (2) c) of Act II of 2003, in Section 227 (2) the words “Section 222 (2)–(3)” were amended to “Section 222 (3)”.

[336] Section 227 (4) was enacted by Section 137 (2) of Act I of 2002 and its text established by Section 60 of Act II of 2003.

decision on the protest. The decision regarding the judgement of the protest may not be protested against.

(5) The filing of the indictment shall not e subject to an appeal.

(6) To the decisions of the prosecutor the provisions set forth in Section 169 (2) are applicable as appropriate.

Actions of the substitute private accuser

Section 229 (1)[337] If the superior prosecutor has rejected the protest of the victim concerning the dismissal of the complaint or the termination of the investigation, and substitute private accusation may be lodged pursuant to Section 199 (2) – unless lodging substitute private accusation is excluded by Section 199 (3) –, and further, if the prosecutor has partially omitted the indictment, within thirty days of the communication of the decision concerning the rejection of the protest, the victim may stand as a substitute private accuser.

(2) After the rejection of the protest, the victim shall be allowed to examine in the official premises of the prosecutor's office the documents pertaining to the criminal offence committed against him.

Section 230 (2)[338] If the victim intends to act as a substitute private accuser, he shall submit, by way of his lawyer, a motion for prosecution to the prosecutor's office of first instance having proceeded in the case before. The prosecutor's office shall forward the motion for prosecution, together with the documents to the court having competence and jurisdiction in the case.

(2) The motion for prosecution shall contain the data set forth in Section 217 (3) *a)* to *c)*, *g)* and *h)*, as well as the substitute private accuser's reasons to motion for conducting the court procedure despite the dismissal of the complaint, the termination of the investigation or the partial omission of the indictment. In the motion for prosecution, the substitute private accuser may also designate the court having jurisdiction at the residence of the defendant as a court of jurisdiction [Section 17 (3)]. In this case, at the request of the substitute private accuser, the prosecutor's office shall forward the documents and the motion for prosecution to the court of jurisdiction.

Section 231 (1) The court shall admit the motion for prosecution if there is no reason for its dismissal.

(2) The court shall dismiss the motion for prosecution, if

a) the substitute private accuser submitted the motion for prosecution after the lapse of the deadline set forth in Section 229 (1),

b)[339] if the substitute private accuser is not represented by a lawyer, unless he is a natural person having taken an examination in law [Section 56 (4)],

c) the motion for prosecution was filed by non-entitled party,

d) the motion for prosecution apparently has no factual or legal grounds.

(3) Prior to the lapse of the deadline set forth in Section 229 (1), the substitute private accuser may repeatedly submit the motion for prosecution, if it had been formerly dismissed due to reasons specified in subsection (2) *b)*, *c)* or *d)* and the reason for dismissal do not exist any longer.

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[337] The text of Section 229 (1) was established by Section 138 of Act I of 2002.

[338] Pursuant to Section 88 (2) a) of Act II of 2003, the original Section 230 (1) shall be repealed and shall not enter into force. Pursuant to Section 88 (2) b) Act II of 2003, the numbering of Section 230 (2) and (3) shall be amended to subsections (1) and (2). The text of subsections (1) and (2) re-numbered by this Act was established by Section 139 of Act I of 2002.

[339] Section 231 (2) b) was established by Section 140 (1) of Act I of 2002.

(4) If the court is not competent or has no jurisdiction in the case, it shall transfer the case to the court of competence or jurisdiction.

(5)[340] If the court did not dismiss the motion for prosecution,

a) it shall ensure the availability of the means of evidence at the hearing,

b) it may order the application of a coercive measure.

Section 232 (1) Following the admission of the motion for prosecution, the accused shall be entitled to examine the files of the investigation.

(2) Documents handled separately from the files of the case and confidentially may not be disclosed to the substitute private accuser.

Section 233 (1) The decision dismissing the motion for prosecution may not be appealed.

(2) The dismissal of the motion for prosecution shall not prevent an order for the resumption of the investigation (Section 191).

PART THREE

Chapter XI

GENERAL RULES OF COURT PROCEDURE

Forms of court procedure

Section 234 (1) The court shall hold a trial when obtaining evidence to establish the criminal liability of the accused.

(2) In the cases specified in this Act, the court shall hold a public session, session or a panel session.

(3) Unless provided otherwise in this Act, public sessions shall be governed by the provisions pertaining to trials.

(4) Sessions shall be attended by the members of the court, the keeper of the minutes, the accuser and – unless provided otherwise in this Act – the accused and the counsel for the defence. In addition to the parties listed above, on the session the persons having been summoned by the court to attend or notified of the session may be present.

(5) The session of the panel shall be attended by the members of the court and the keeper of the minutes.

The single judge

Section 235 The provisions of this Act pertaining to the court, the panel of the court or the chairperson of the panel shall also apply to the single judge.

The substitute private accuser

Section 236 Unless provided otherwise in this Act, in the course of a court procedure, the substitute private accuser shall exercise the rights of the prosecutor, including the right to motion for a coercive measure entailing the restriction or deprival of personal freedom of the accused. The substitute private accuser may not motion for the termination of the right of the accused to parental custody.

The publicity of the trial

Section 237 (1) The trial of the court shall be public. In order to ensure the proper conduct, dignity and security of the trial, or due to lack of space, the presiding judge may determine the number of the audience.

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[340] Section 231 (5) was established by Section 140 (2) of Act I of 2002.

(2) Persons under fourteen years of age may not be among the audience of the trial, and the presiding judge may exclude from the audience youth under eighteen years of age.

(3) The court may, ex officio, or at the motion of the prosecutor, the accused, the counsel for the defence, the victim or the witness, exclude the public from the entirety or a part of the trial in a decision explaining the reasons therefor (in-camera trial) :

a) for ethical reasons,

b) to protect the minor participating in the procedure,

c)[341] to protect the persons participating in the procedure (Chapter V) or the witness,

d) to protect state or official secrets.

(4) The exclusion of the public may be motioned for in any stage of the procedure.

Section 238 (1)[342] The decision concerning the exclusion of the public shall be announced by the court at a public trial. The decision on the exclusion of the public may not be appealed, only contested in an appeal against the conclusive decision.

(2)[343] Regardless of the exclusion of the public, the court may permit the presence of official persons performing tasks related to the administration of justice at the trial. In the event of a procedure instituted against a foreign citizen accused, or due to a criminal offence committed to the injury of a foreign citizen victim, the presence of the representative of the consulate of their native country, or, pursuant to an international treaty promulgated by law, a member of the authority of the foreign state shall be allowed.

(3)[344] In the event that the public has been excluded, a victim having no representative or an accused having no defence counsel may motion for allowing a designated person – with the exception of a person to be examined at the trial – present at the location of trial to attend the trial. If the court excluded the public for the reason specified in Section 237 (3) *d)*, no such motion may be submitted. The decision pertaining to the motion may not be appealed.

(4) In the case of ordering an ex-camera trial, the court shall advise those present that they are prohibited to provide information of the trial, and if necessary also warn of the consequences of violating state and official secrets. The advice shall be included in the minutes.

Section 239 (1) The trial shall be made open to public when the reason for an ex-camera trial has ceased to exist.

(2) The court shall announce its decision publicly even if the public has been excluded from the trial.

Persons participating at the trial

Section 240 (1) The members of the panel shall be present at the trial from the beginning until the end.

(2) If the member of the panel is unavoidably prevented from attending the trial, the conclusive decision may be announced by a panel with different composition.

(3) Unless provided otherwise by this Act, no trial may be held in the absence of the keeper of the minutes, the accused, the prosecutor and – if the presence of the counsel for the defence is statutory at the trial – the counsel for the defence.

Section 241 (1) The presence of the prosecutor is obligatory at the trial

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[341] The text of Section 237 (3) c) was established by Section 141 of Act I of 2002.
[342] The second sentence of Section 238 (1) was established by Section 142 (1) of Act I of 2002.
[343] The second sentence of Section 238 (2) was enacted by Section 142 (2) of Act I of 2002.
[344] Section 238 (3) and (4) was established by Section 142 (3) of Act I of 2002.

a) in the first instance, if the criminal offence is punishable by five years' or more imprisonment by law,

b)[345] in the second instance, if the presence of the prosecutor at the trial of first instance was obligatory, unless the reason for his presence during the procedure of second instance has ceased to exist,

c) the accused is in detention,

d)[346] if the accused – regardless of his legal responsibility – is mentally disabled,

e) if the court obliged the prosecutor to attend the trial,

f) if the prosecutor announces that he would attend the trial.

(2)[347] With the exception of the case specified in subsection (1) *e)*, at the local court prosecution may also be represented by the secretary of the prosecutor's office.

Section 242 (1) The presence of the counsel for the defence is obligatory at the trial

a)[348] before the county court acting as the court of first instance, unless provided otherwise by this Act,

b) at the local court, if the criminal offence is punishable by five years' or more imprisonment by law,

c) at the local court in the cases regulated in Section 46,

d) if there is a substitute private accuser.

(2) If the prosecutor attends the trial, and the accused has not retained a defence counsel, if necessary, the presiding judge may arrange for the appointment of a defence counsel. If requested by the accused, an appointed counsel for the defence shall be designated.

Section 243 Unless provided otherwise by this Act, those attending the trial shall be entitled to lodge motions.

Conducting and preserving the dignity of a trial

Section 244 (1) The trial shall be conducted by the presiding judge who shall establish the order of the actions to be performed in accordance with this Act. The presiding judge shall ensure compliance with the law and advice those participating in the procedure of their respective rights and also ensure that they may exercise such rights.

(2) The presiding judge shall ensure that the dignity of the trial is preserved. With this in view, he shall have removed from the court room those who insult the dignity of the trial by their improper condition or appearance.

(3)[349] Those who are examined before the court and those addressing the court shall speak standing. The presiding judge may make an exemption to this rule.

Holding a trial by way of a closed-circuit communication system [350]

Section 244/A (1) At the motion of the prosecutor, the accused, the counsel for the defence, the witness, the lawyer acting on behalf of the witness, the ward or legal representative of a minor witness, or ex officio, the presiding judge may order the examination of the witness, or, in exceptional cases, the examination of the accused by way of a closed-circuit communication system. In the event of an examination via a closed-circuit communication system, direct links between the venue of the trial and the place of stay of the

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[345] Section 241 (1) b) was established by Section 143 (1) of Act I of 2002.

[346] Section 241 (1) d) was established by Section 143 (1) of Act I of 2002.

[347] The text of Section 241 (2) was established by Section 143 (2) of Act I of 2002 and Section 88 (2) a) of Act II of 2003. Pursuant to this latter legislature, the text "*c)* and" shall be repealed and shall not enter into force.

[348] The text of Section 242 (1) a) was established by Section 144 of Act I of 2002.

[349] The text of the second sentence of Section 244 (3) was established by Section 145 of Act I of 2002.

[350] The subtitle and Sections 244/A–244/D were enacted by Section 146 of Act I of 2002.

person heard shall be provided by a device simultaneously transmitting oral and visual communication..[351]

(2) The presiding judge may order the use of closed-circuit communication system for the examination

a) of a witness under fourteen years of age,

b) of a witness against whom a criminal offence falling in the scope of criminal offences against life and limb or health (Title I of Chapter XII of the Penal Code), or criminal offences against marriage, family, youth or public morals (Chapter XIV of the Penal Code), or other violent criminal offence was committed,

c) of a witness whose presence at the trial would impose unreasonable difficulties owing to his health condition or other circumstance,

d) of a witness or accused participating in a witness protection program specified in a separate legal regulation and whose protection otherwise justifies this, and

e) of a detained accused or witness whose presence at the trial would endanger public safety.

(3) Examination by way of a closed-circuit communication system may be ordered by the presiding judge in a decision explaining the reasons therefor. The decision concerning examination via a closed-circuit communication system may not be separately appealed, only when the conclusive decision is contested.

(4) The decision shall be communicated to the prosecutor, the accused, the counsel for the defence, the witness to be heard, the lawyer acting on behalf thereof, in the event of a minor witness, the legal representative or ward thereof, and in the event of the examination of a detained person, the relevant institution of detention at least five days prior to the day of the trial. The decision shall be sent to the court providing the separate room for the examination of the accused or the witness, or, when appropriate, the relevant institution of detention.

Section 244/B (1) The witness or accused to be examined via a closed-circuit communication system shall be placed in a separate room (testimonial room) at the court providing for their examination or at the relevant institution of detention. Only the following persons may be present in the testimonial room: the lawyer acting on behalf of the witness, in the case of a minor witness the legal representative or ward thereof, and if required, the expert, the interpreter and the staff operating the closed-circuit communication system. In the case of the examination of the accused via a closed-circuit communication system, the counsel for the defence may be present both in the venue of the trial and the testimonial room.

(2) A judge from the court of jurisdiction at the location of the testimonial room shall also be present in the testimonial room. In the course of opening the trial, after recording those present in the venue of the trial, at the request of the chairperson of the panel the judge establishes the identity of those present in the testimonial room and verifies that no unauthorised person has entered the testimonial room and the witness or the accused are not restricted in exercising their respective procedural rights.

(3) At the commencement of the examination, the presiding judge advises the witness or accused to be examined via a closed-circuit communication system that they will be examined in this manner.

(4) The responsibilities of the judge of the court having jurisdiction at the location of the examination set forth in this Section may also be performed by the court secretary, in this case the minutes specified in Section 244/D (1) shall also be taken by the court secretary.

[351] For detailed rules, please refer to Decree No. 22/2003. (VI. 25.) IM of the Ministry of Justice.

Section 244/C (1) In the case of examinations by way of a closed-circuit communication system it shall be ensured that the participants of the criminal proceedings may exercise – with the exception stipulated in subsection (4) below – their rights to ask questions, make objections or motions and other procedural rights in compliance with the provisions of this Act.

(2) In the course of the examination the accused shall be allowed to contact his counsel for the defence. If the counsel for the defence is present in the venue of the trial, a telephone connection shall be provided for between the testimonial room and the venue of the trial to ensure this right.

(3) Those present at the trial shall be allowed to see the witness or accused in the testimonial room as well as all other persons examined or staying there simultaneously with the witness or the accused. While in the testimonial room, the witness and the accused shall be provided with the means to follow the course of the trial.

(4) Witnesses under fourteen years of age examined by way of a closed-circuit communication system may be questioned exclusively by the presiding judge. The members of the panel, the prosecutor, the accused, the counsel for the defence and the victim may propose questions to be asked. With the exception of a confrontation, while in the testimonial room, a witness under fourteen years of age may only hear and see the chairperson of the panel via the transmission device.

(5) Upon the examination by way of a closed-circuit communication system, the individual features of the witness suitable for identification (e.g.: face, voice) may be distorted by technical means during the transmission.

Section 244/D (1) The judge present in the testimonial room shall take separate minutes of the circumstances of the examination by way of a closed-circuit communication system, indicating the persons present in the testimonial room. The minutes shall be attached to the minutes taken at the trial.

(2) Simultaneously with the examination via a closed-circuit communication system, video and audio records shall be taken of the events taking place at the trial and the place of stay of the person examined. The video and audio records shall be attached to the documents.

(3) At the motion of the participants of the criminal proceedings, the presiding judge may order that the video and audio records be played at or outside the trial. Upon playing the video and audio records, it shall be ensured that they cannot be watched and heard, changed, destroyed or copied by unauthorised persons.

Maintaining the order of the trial

Section 245 (1) With the exception of the members of the law enforcement body and the police force on duty, no one may enter the court room carrying a weapon or other tool suitable for the breach of peace. Persons summoned to the trial may not take their weapon in the court room.

(2) Those disturbing the order of the trial are first called to order by the presiding judge, then upon repeated or grave disorderly conduct, may be ordered to leave or be removed. The presiding judge shall sanction persons disturbing the regular course of the trial the same way.

(3) The presiding judge may order the person disturbing the order or regular course of the trial not to return to the court room that day of the trial.

(4)[352] The court may impose a disciplinary penalty on those disturbing the order or regular course of trial, and in the case of an order to leave or removal, take them into custody until the end of the trial on the day of their disorderly conduct.

[352] The text of Section 245 (4) was established by Section 147 of Act I of 2002.

(5) If the audience repeatedly disturbs the order or regular course of the trial, the presiding judge may exclude it from the trial.

Section 246 (1) Upon disorderly conduct, the prosecutor shall be called to order. If the trial cannot be continued owing to the disorderly conduct of the prosecutor, it shall be suspended by the presiding judge who then requests the head of the prosecutor's office to designate another prosecutor. If the designation of another prosecutor is not practicable immediately, the trial shall be adjourned.

(2) Upon disorderly conduct, disciplinary penalty may be imposed on the counsel for the defence, who, however, may not be either ordered to leave or removed from the trial. If the trial cannot be continued owing to the disorderly conduct of the counsel for the defence, it shall be suspended by the presiding judge. In such a case, the accused may retain another counsel for the defence, or – if the presence of the counsel for the defence at the trial is obligatory – another counsel for the defence shall be appointed. If this is not practicable immediately, the trial shall be adjourned at the cost of the counsel for the defence having shown disorderly conduct.

(3) Upon the disorderly conduct of the representative of the substitute private accuser, the provisions of subsection (2) shall apply as appropriate.

Section 247 (1) The court shall continue the trial in the absence of an accused having been ordered to leave or removed, however, not later than prior to the conclusion of the evidentiary procedure it shall be summoned to the court once again to be informed of the evidentiary actions taken in his absence.

(2) In the case specified in subsection (1), if the accused fails to discontinue the disorderly conduct and thereby prevents holding the trial in his presence, the trial may be continued in his absence as well, in the presence of the counsel for the defence.

Section 248 Decisions made concerning the conduct and maintenance of order of the trial may not be appealed separately, unless they impose a disciplinary penalty, or order the payment of costs or taking a person into custody.

Committing a criminal or disciplinary offence at the trial

Section 249 The presiding judge shall inform the competent authority or the party having disciplinary powers of the disturbance of order at the trial entailing criminal or disciplinary proceedings; in the former case, the court may order that such person be taken into custody. Such custody may last seventy-two hours.

Minutes

Section 250 (1) The keeper of the minutes shall take minutes on the procedure of the court, as a rule, simultaneously therewith. If the accused is deaf, and an interpreter cannot be employed, minutes shall always be taken simultaneously with the procedure.

(2) The minutes shall indicate

a) the name of the court and the case number,

b) the criminal offence being the subject of the indictment and the name of the accused,

c)[353] the place of court procedure, the scheduled and actual time of starting the trial, and the reason for the discrepancy therein, if any,

d) the form of the court procedure,

e) whether the procedure was public,

[353] Section 250 (2) c) was established by Section 148 (1) of Act I of 2002.

f) the name of the judge, the members of the court, the keeper of the minutes, as well as the prosecutor, accused, counsel for the defence, witness, expert, interpreter present and other persons participating in the procedure,

g) other personal data specified in this Act,

h)[354] whether the minutes were taken simultaneously with the trial, and if not, the date when the minutes were put in writing.

(3) The minutes shall clearly describe the course of actions and all significant formalities of the trial so that compliance with the rules of procedure could also be verified.

(4)[355] The minutes shall be signed by the presiding judge and the keeper of the minutes. If the presiding judge is prevented from signing the minutes, they shall be signed – indicating his capacity as a substitute – a member of the panel. If the events occurring during the procedural action are recorded as specified in Section 252 (2), the employee of the court taking the minutes shall verify with his signature that he has drawn up the minutes in compliance with the notes of the stenographer, or the record taken by an audio or video recording equipment or other device.

(5)[356] No notes may be made between the lines written in the minutes. Texts becoming redundant due to modification or correction shall be deleted by crossing them so that such deleted text could remain legible. Any modifications or corrections made shall be signed by the presiding judge and the keeper of the minutes.

(6) If the minutes contain several pages, they shall be laced together and the case number be indicated on each page.

(7) If the supplementation, modification or correction made before the minutes are duly signed fails to fulfil the formal requirements stipulated in subsection (5), the document may not be signed as minutes but regarded as notes on the trial thereafter.

Section 251 (1) Testimonies, the expert opinion, the result of the inspection, as well as the motions of the prosecutor, the accused, the counsel for the defence, the private accuser, substitute private accuser and the private party shall be described in the minutes in detail.

(2) The part of the testimony or expert opinion identical to that already included in the minutes of an earlier stage of the court procedure needs not be repeatedly recorded in the minutes, instead, reference shall be made to the minutes taken earlier.

(3) If the wording of an expression or statement is of significance, it shall be included in the minutes word-by-word. Upon a motion or ex officio, the court may order that a specific circumstance or statement be recorded in the minutes. If this is motioned by the prosecutor, the accused, the counsel for the defence, the private accuser, the substitute private accuser, the private party or the lawyer acting on behalf of the witness present, such recording may only be dispensed with, if the court has no knowledge of the existence of the circumstance, or of the fact that such expression, declaration or statement has been made.

(4) The decisions adopted in the course of the procedure – with the exception of the conclusive decision – may also be included in the minutes.

(5)[357] Trials scheduled for several days with the same measure and interrupted trials shall be recorded in the same (single) minutes, while separate minutes shall be taken in the case of adjourned trials. The minutes shall indicate that the trial continuous or repeated.

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[354] Section 250 (2) h) was established by Section 148 (1) of Act I of 2002.

[355] The second and third sentences of Section 250 (4) were enacted by Section 148 (2) of Act I of 2002 and Section 61 of Act II of 2003, respectively.

[356] Section 250 (5)–(7) was enacted by Section 148 (3) of Act I of 2002.

[357] Section 251 (5) was enacted by Section 149 of Act I of 2002.

Section 252 (1) If the minutes are not taken simultaneously with the procedural action, or the procedure was recorded in accordance with subsection (3) below, the minutes shall be prepared within eight days following the procedural action at the latest. The notes of the trial made simultaneously with the procedural action shall be attached to the documents.

(2) The court may order that the entirety or a part of the procedure be recorded by shorthand, a video or audio recorder or other equipment. The court shall issue such order at the motion of the prosecutor, the accused, the counsel for the defence or the victim, provided that such motion is submitted in due time and the accused, the counsel for the defence or the victim simultaneously made an advance payment towards the costs.[358]

(3) The notes of the stenographer and other recording methods referred to in subsection (2) shall not substitute the minutes. The notes of the stenographer, the video or audio record or the recording made by other means shall be kept according to the provisions of a separate legal regulation.

(4) To the stenographer the provisions pertaining to the expert shall be applied.

(5)[359] If the verdict of acquittal of the court becomes final on the first instance, abridged minutes may be taken. The abridged minutes shall contain only the data specified in Section 250 (2) and the description of the court procedure according to Section 250 (3).

Section 253 (1) If the minutes have not been prepared within eight days, the presiding judge shall notify the prosecutor, the accused and the counsel for the defence of the date when the minutes will be ready.

(2)[360] Unless provided otherwise by this Act, at request, the documents produced in the course of the criminal proceedings – including the documents obtained by the prosecutor and investigating authority having proceeded in the case as well as the documents submitted or attached by the participants of the criminal proceedings – shall be made available by for reading at the official premises of the court to the prosecutor, the accused, the counsel for the defence and the victim.

(3) The fulfilment of the request made under subsection (2) may not jeopardise the continuity and the work of the court, and may not result in unlacing or damaging the laced documents. On the day of the trial and on the preceding working day, the request may only be fulfilled with the express permission of the presiding judge.

(4) At the request of a detained accused the presiding judge may permit the examination of the documents at the penal institution. Nevertheless, the provisions set forth in subparagraph (3) shall still apply.

(5)[361]

Section 254 (1)[362] Within fifteen days of the preparation of the minutes, the prosecutor, the accused, the counsel for the defence and the other parties having been present during the procedural action may motion for the supplementation or correction of the minutes. If necessary, the court shall make the decision thereon after trial the persons who were present during the procedural action; upon rejecting the motion, reference thereto shall be made in the minutes. The presiding judge and the keeper of the minutes shall sign the supplementation and correction.

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[358] Please refer to Decree No. 14/2003. (VI. 19.) IM of the Ministry of Justice.

[359] The first sentence of Section 252 (5) was established by Section 150 (1) of Act I of 2002.

[360] Section 253 (2) was established by Section 150 (2) of Act I of 2002.

[361] Pursuant to Section 308 (2) of Act I of 2002, Section 253 (5) shall be repealed and shall not enter into force.

[362] The second sentence of Section 254 (1) was established by Section 62 of Act II of 2003, and its third sentence was enacted by Section 151 (1) of Act I of 2002.

(2) In the event of an apparent confusion of names or numbers, or other clerical errors, the court may order the correction of the minutes both in response to a motion or ex officio.

Section 255[363] (1) Minutes shall be taken on the session of the panel, if the decision was not adopted unanimously. The preparation of the minutes shall be ordered by the presiding judge. The fact that minutes were taken on the deliberation of the court or a dissenting opinion was made in writing shall be indicated in the minutes of the trial at the time of announcing the decision at the latest.

(2) The minutes of the deliberation of the court and the documents attached thereto according to Section 256 (5) shall be filed among the documents in a closed envelope which may only be disclosed to the court proceeding in respect of the appeal, the court and the prosecutor proceeding in the extraordinary legal remedy procedure, the disciplinary court proceeding in the disciplinary procedure, or, if criminal proceedings are instituted, the court and the prosecutor proceeding in the criminal case.

(3) No copy may be issued of the minutes of the session and the draft decision of the court panel, or the dissenting opinion of the minority thereon.

Deliberation and voting

Section 256 (1) The panel of the court adopts its decision after deliberation by way of voting. If the voting is not unanimous, the vote of the majority shall prevail.

(2) If there are also associate judges on the court panel, prior to the voting, the presiding judge shall provide information concerning the type of decision that may be adopted, the legal regulations required for the decision, the types and extent of punishment and the measures.

(3)[364] Upon the delivery of a verdict, the panel with consideration to the facts established decides whether the accused is guilty, if so, in what criminal offence, then on the punishment or measure to be imposed as well as other provisions.

(4) Younger judges shall cast their vote prior to the senior ones, and the chairperson shall vote last. If the votes concerning the punishment or the measure to be imposed are not unanimous, the majority of votes shall be computed by combining the votes for the strictest legal consequence with those considered the nearest thereto.

(5) Those holding a minority opinion shall be entitled to attach their written dissenting opinion to the minutes taken on the session of the panel.

(6)[365] Both the deliberation and the voting shall be secret. In addition to the chairperson and members of the panel proceeding in the case, only the keeper of the minutes may be present both at the deliberation and the voting.

(7) Issues not affecting the merit of the case which arise in the course of the trial may be deliberated in low voice at the trial as well.

Decisions

Section 257 (1)[366] In the cases stipulated in this Act, the court shall deliver a verdict, while in other cases it shall adopt a decision. In the conclusive decision the court shall make a statement on the charges; in the legal adjudication of the case the court shall not be affected by motions.

(2) The court shall deliver its verdict and conclusive decision “IN THE NAME OF THE REPUBLIC OF HUNGARY”.

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[363] The text of Section 255 was established by Section 152 of Act I of 2002.
[364] Section 256 (3) was established by Section 153 (1) of Act I of 2002.
[365] Section 256 (6) and (7) was enacted by Section 153 (2) of Act I of 2002.
[366] The second sentence of Section 257 (1) was enacted by Section 154 (1) of Act I of 2002.

(3) Unless provided otherwise by this Act, the decision shall consist of an introductory part, the disposition, the justification and the date.

(4)[367] The original copy of the decision and the disposition thereof put in writing prior to the announcement thereof shall be signed by all panel members. If the presiding judge or a member of the panel is prevented from signing the decision, it shall be signed – indicating their capacity as a substitute – a member or the chairperson of the panel having proceeded in the case. This provision shall not apply to signing the disposition part of the decision under Section 321 (1).

(5) The decision shall be announced by the presiding judge.

Section 258 (1) The introductory part of the verdict and conclusive decision shall indicate

a) the statement made according to Section 257 (2),

b) the name of the court and the place of the court procedure,

c) the date of the trial (if several trials have been held, the dates of all trials), the place and date of adopting the decision,

d) the form of the court procedure, and

e) whether the procedure was public.

(2) The disposition of the verdict and the conclusive decision shall contain

a) data regarding the pre-trial detention of the accused,

b) the name and personal data of the accused,

c)[368] a declaration of whether the accused was found guilty or having been acquitted of the charges, or that the court terminates the procedure,

d) the description of the criminal offence as well as of the form in which the offender committed the offence and the type of the offence,

e) the punishment or measure imposed and other legal consequences,

f) other provisions and

g) a provision on bearing the costs of the criminal proceedings.

(3) The justification of the verdict and the conclusive decision shall contain, in a running text

a)[369] reference to the charge, its legal classification according to the indictment, if required, the substance of the facts in the indictment,

b) facts established concerning the personal circumstances and data regarding the earlier punishments of the accused,

c) the facts established by the court,

d) the enumeration and evaluation of the evidence,

e)[370] the legal classification of the act according to the facts established by the court; upon the imposition or omission of a punishment or measure the justification thereof, indicating the applied legal regulations, and

f) reasons for the other provisions of the decision and the dismissal of the motions, indicating the applied legal regulations.

(4)[371] The contents of decisions regarding custody, pre-trial detention, temporary involuntary treatment in a mental institution, home curfew and house arrest shall be governed by the provisions of subsections (1) *b)* to *d)* and (2) *a)* and *b).*

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[367] The third sentence of Section 257 (4) was enacted by Section 154 (2) of Act I of 2002.
[368] The second part of Section 258 (2) c) was enacted by Section 155 (1) of Act I of 2002.
[369] Section 258 (3) a) was established by Section 155 (2) of Act I of 2002.
[370] Section 258 (3) e) was established by Section 155 (2) of Act I of 2002.
[371] Section 258 (4) was enacted by Section 155 (3)of Act I of 2002.

Section 259 (1)[372] If the conclusive decision communicated by way of an announcement has not been appealed by either the prosecutor, or the accused, or the counsel for the defence, the justification of the decision may consist merely of the enumeration of the facts and the applied legal regulations. In the justification of a verdict of acquittal, the enumeration of facts may also be omitted. (Abridged justification.)

(2)[373] If the conclusive decision pertains to more than one persons accused, the justification related to the accused against whom the conclusive decision has become final in the first instance, may also be made in writing in the form specified in subsection (1).

Section 260 (1)[374] Interlocutory decisions – i.e. decisions merely establishing the course of actions after the commencement of the trial, without affecting the merit of the case – need not be justified. The reasons for dismissing the motion for evidence shall be described in detail in the conclusive decision.

(2) Unless provided otherwise in this Act, interlocutory decisions may not be appealed. The court may dispense with a decision regarding the consideration of appeals against the scheduling, postponement, adjournment of the trial, or against subpoenas or notifications related to the trial.

(3) Decisions included in the minutes have no introductory part and date.

(4)[375] Unless provided otherwise by this Act, decisions not recorded in the minutes shall be put in writing not later than within thirty days, or, if it requires longer justification, within sixty days of the adoption or announcement thereof. The day when the entire decision is put in writing shall be recorded on the original copy of the decision.

Section 261[376] (1) In the event of an apparent confusion of names or numbers, a computing error or other clerical errors, the court may order the correction of the decision both in response to a motion or ex officio. The decision on the correction may be appealed by the prosecutor and the party to whom either the decision or the correction pertains to; and, if it pertains to the accused by the a counsel for the defence as well.

(2) The correction shall be recorded both on the decision and the estreats. If the erroneous estreat has already been served prior to the correction of the decision, the corrective decision shall be served on those to whom the court has sent the erroneous estreat.

Section 262 (1)[377] The decisions shall be communicated to those whom it concerns; the decision communicated to the accused shall also be communicated to the counsel for the defence, and the conclusive decision to the victim as well. With the exception of decisions related to the conduct and maintenance of order of the trial, decisions shall also be notified to the prosecutor, while decisions pertaining to the transfer of the case, designation of a court and the suspension of the procedure shall be notified to the victim as well. Decisions communicated to the victim and the other interested party may not contain personal data other than those of the victim and the accused.

(2) The decision shall be communicated verbally to those present; in other cases it shall be served on the parties concerned.

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[372] The third sentence of Section 259 (1), i.e. the sentence in parentheses, was enacted by Section 156 (1) of Act I of 2002.
[373] Section 259 (2) was established by Section 156 (2) of Act I of 2002.
[374] The first sentence of Section 260 (1) was established by Section 157 (1) of Act I of 2002.
[375] Section 260 (4) was enacted by Section 157 (2)of Act I of 2002.
[376] The text of Section 261 was established by Section 158 of Act I of 2002.
[377] The second sentence of Section 262 (1) was established by Section 159 (1) of Act I of 2002.

(3) During the announcement of the decision, the disposition shall be read out, the substance of the justification shall be made known and explained if required.

(4)[378] The estreat of the conclusive decision containing the justification as well shall be served on the prosecutor, the accused, the counsel for the defence and the victim even if they have been notified, either by way of an announcement or service, of the disposition of the decision; in other cases, the estreat of the decision containing the justification as well shall be served – if the decision was appealed by a party other than those listed above – to the appealing party.

(5) The parties on whom the decision or the notification of the contents of the decision shall be sent to – in addition to those listed in this section – are specified in a separate legal regulation.

(6) If the accused does not command the Hungarian language, after the announcement, the part of the verdict and conclusive decision pertaining to such accused shall be translated into the native, regional or minority language of the accused, or at request, into another language defined by the accused as a language spoken and formerly used in the proceedings, then served on the accused.

Chapter XII

PREPARATION OF A TRIAL

Communication of the indictment

Section 263 (1)[379] Within 15 days – or, in the event of cases having an extensive scope, within thirty days – of receipt of the files, the presiding judge establishes whether the provisions set forth in Section 264 to 271 may be applied.

(2) After the lapse of the deadline stipulated in subsection (1) above, the presiding judge shall forthwith send the indictment to the accused and the defence counsel; requesting both the accused and the defence counsel to state their means of evidence within fifteen days.

(3)[380] Concurrently with serving the indictment, the presiding judge shall advise the accused and the defence counsel, if the prosecutor intends to use the testimony of a specially protected witness as means of evidence, as well as their right to examine the abstract of the minutes containing the testimony of the specially protected witness and to file a motion for asking questions from the specially protected witness in writing and to terminate the specially protected status of the witness. The questions to the specially protected witness may not directly aim to reveal the identity and the place of stay of the specially protected witness.

Transfer

Section 264 If the court has no competence or jurisdiction to adjudicate the case, it shall transfer the case to the court of competence or jurisdiction.

Consolidation and severance of cases

Section 265 (1)[381] The court shall decide on the consolidation or severance of cases either ex officio or ex officio or upon a motion (Section 72). The decision concerning consolidation of cases in process at various courts shall be made by the court having competence and jurisdiction for joint examination; should there be more than one such courts, the principle of

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[378] Section 262 (4)–(6) was established by Section 159 (2) of Act I of 2002.
[379] Section 263 (1) was established by Section 160 (1) of Act I of 2002.
[380] Section 263 (3) was established by Section 160 (2) of Act I of 2002.
[381] The second and third sentences of Section 265 (1) were enacted by Section 161 (1) of Act I of 2002, and the text of the second sentence was established by Section 63 (1) of Act II of 2003.

preceding authority [Section 17 (2)] shall govern. The court shall send the case in process to the court entitled to make a decision concerning the consolidation for consideration.

(2)[382] Upon the commencement of another procedure against a person on probation, due to a criminal offence committed during the probation period or upon the commencement of a procedure against such person during the probation period due to a criminal offence committed prior to the probation period, the cases shall be consolidated and processed by the court having competence and jurisdiction for adjudicated the later case. If the accused was placed on probation by court martial, the cases shall be consolidated by the court having conducted the court martial procedure, unless it was put into effect due to reasons enumerated in Section 470 (3).

(3) The fact that the accused had formerly been placed on probation in a case based on private accusation shall not be an obstacle to consolidation, however, in the new criminal proceedings, the prosecutor, substitute private accuser or another private accuser shall represent the prosecution. If the accused had been put on probation in a case based on public accusation, and the new criminal proceedings are initiated based on private accusation, the cases may be consolidated provided that the prosecutor has taken over the representation of the prosecution from the private accuser. In such a case, the court shall forward the documents of the case to the prosecutor to consider taking over the representation of the prosecution. This restriction shall not apply if in the new case prosecution is represented by a substitute private accuser.

(4) [383] If the court does not establish the guilt of the accused in the new procedure, the consolidated cases shall be severed once again.

(5) Section 175 (7) shall also govern in the case of the court procedures.

(6)[384] The provisions of paragraphs (1) to (4) shall be applied as appropriate if, pursuant to Section 266 (6), the court suspended the criminal proceedings launched formerly against the suspect, but the prosecutor filed a new indictment against the accused due to drug abuse [Section 266 (7)].

Suspension of the procedure

Section 266 (1)[385] The court shall

a) suspend the procedure for reasons specified in Section 188 (1) *a)*, *b)* and *d)*-g),

b) suspend the procedure ex officio or upon a motion and initiate the procedure of the Court of Constitution, if the adjudication of the case involves the application of such legal regulation or other means of state governance which are found contrary to the Constitution,

c)[386] suspend the procedure ex officio or upon a motion, if the preparatory inquiry of the European Union is initiated according to the rules set forth in the Treaty establishing the European Union or the Treaty establishing the European Community. In its decision the court specifies the question requiring the preliminary ruling of the European Court of Justice and – to the extent required for answering the question – describes the facts and the Hungarian legal regulations concerned. The decision shall be sent to the European Court of Justice, as well as for the information of the Ministry of Justice.

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[382] Section 265 (2) and (3) was established by Section 161 (2)of Act I of 2002.
[383] Section 265 (4) and (5) was enacted by Section 161 (3) of Act I of 2002.
[384] Section 265 (6) was enacted by Section 63 (2) of Act II of 2003.
[385] Section 266 (1) was established by Section 64 (1) of Act II of 2003.
[386] Section 266 (1) c) was enacted by Section 6 of Act XXX of 2003. This provision shall enter into force on the day when the act on the promulgation of the international treaty on Hungary's accession to the European Union enters into force, and shall also apply to to cases in progress at that time. Please also refer to Government Resolution No. 2088/2003. (V. 15.) Korm. on the declaration pertaining to the preliminary inquiry procedure of the European Court of Justice.

(2) The court shall also suspend the procedure in the absence of the report required to launch the procedure [Section 236 (1) and Section 240 of the Penal Code]. The procedure may only be suspended up to the final conclusion of the base case.

(3)[387] The court may suspend the procedure, if

a) the accused is abroad for a longer time period,

b) **requested the prosecutor to search for means of evidence or complete an insufficient indictment [Section 268 (1)].**

(4) If the court does not deem the measure set forth in subsection (3) *a)* justified and the place of stay of the accused abroad is known, the court may issue a warrant of arrest and initiate a procedure for the extradition of the accused. Should the extradition of the accused be denied or not possible, the court – if the conditions are met – may initiate the transfer of the criminal proceedings.

(5)[388] The court shall resume the procedure if the reason for suspending the procedure has ceased, or upon suspension pursuant to Section 188 (1) *g)*, if the act promulgating the charter of the international criminal court or the act on the execution of the obligations arising from such charter provides so.

(6)[389] If the procedure may be terminated due to an element terminating punishability stipulated in Section 283 of the Penal Code and the prosecutor did not postpone the indictment under Section 222 (2), the court shall suspend the procedure for a period of one year, provided that the drug user accused agrees to undergo a treatment for drug addiction or other therapeutic process treating drug users or to participate in preventive education.

(7)[390] The procedure shall be resumed if the suspect fails to verify that within one year following the suspension he has participated in a treatment for drug addiction, other therapeutic process treating drug users or preventive education for a period of at least six successive months, or the prosecutor filed a new indictment against the accused due to drug abuse.

(8) Unless the prosecutor postponed the filing of the indictment pursuant to Section 222 (3), procedures launched due to non-payment of alimony (Section 196 of the Penal Code) may be suspended by the court for a maximum of one year, if this may result in meeting the defaulted obligation. The procedure shall be resumed prior to the lapse of the deadline if the accused still fails to fulfil his obligation to pay alimony.

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[387] Section 266 (3) and (4) was established by Section 64 (2) of Act II of 2003.
[388] Section 266 (5) was established by Section 64 (3) of Act II of 2003.
[389] Section 266 (6) was established by Section 64 (4) of Act II of 2003.
[390] Section 266 (7) was enacted by Section 162 (4) of Act I of 2002, which concurrently amended the original numbering of subsection (7) to subsection (8). The text of the subsection was established by Section 64 (4) of Act II of 2003.

(9)[391] The procedure may be suspended by the court secretary for the reasons listed in subsections (1) *a)* and (2).

Termination of the procedure

Section 267 (1) The court may terminate the procedure,

a) if the action charged in the indictment does not constitute a criminal offence,

b) if the accused is a minor,

c)[392] due to death, statutory limitation or pardon of the accused or the existence of other elements precluding punishability stipulated by law,

d) if the action charged in the indictment has already been adjudicated by a final decision, including the case specified in Section 6 of the Penal Code,

e) if there is no private motion, request or complaint and they cannot be subsequently submitted,

f) if the prosecutor has dropped the charge and substitute private accusation cannot be applied,

g)[393] due to a criminal offence having no significance for the purpose of liability as opposed to the graver criminal offence contained in the indictment,

h) and shall reprimand the accused (Section 71 of the Penal Code) if the criminal offence no longer poses a danger or poses only a marginal danger to the society and therefore, even the mildest punishment or other measure permitted by law is unnecessary,

i)[394] if the procedure has been suspended pursuant to Section 266 (6) or (8) and the accused that he has participated in a treatment for drug addiction, other therapeutic process treating drug users or preventive education for a period of at least six successive months, or, if the person accused of the misdemeanour of non-payment of alimony, has performed his obligation.

(2) The court shall advise the private party of the termination of the procedure as well as of his right to enforce his civil claim by way of other legal means.

(3) If, upon dropping the charges, substitute private accusation may be lodged, the court shall serve on the victim the statement of the prosecutor on dropping the charges. If the victim fails to stand as a substitute private accuser within thirty days, the court shall terminate the procedure. No justification may be admitted for defaulting this deadline. If the victim wishes to act as a substitute private accuser, the motion for prosecution shall be submitted to the court.

(4) The fact that the statement of the prosecutor on dropping the charges could not be served on an absconding victim shall not prevent the termination of the procedure.

(5) Upon a substitute private accusation, the provisions stipulated in Section 229 (2), Section 230, Section 231 and Section 233 shall apply as appropriate.

Measure to perform a procedural action

Section 268 (1) [395] The court, ex officio or at the motion of the persons participating in the procedure shall arrange the availability of the means of evidence at the trial. To this end, it may contact the prosecutor – by setting a deadline and if necessary, suspending the procedure – and may also order that opinion of the probation officer be obtained. The prosecutor may also be contacted to search for means of evidence or to complete the insufficient indictment.

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[391] Section 266 (9) was enacted by Section 162 (5) of Act I of 2002, and its text established by Section 64 (5) of Act II of 2003.

[392] Section 267 (1) c) and d) was established by Section 65 (1) of Act II of 2003.

[393] Section 267 (1) g) and h) was enacted by Section 163 of Act I of 2002.

[394] Section 267 (1) i) was enacted by Section 65 (2) of Act II of 2003.

[395] The first and third sentences of Section 268 (1) was established by Section 164 of Act I of 2002, and its second sentence was established by Section 66 (1) of Act II of 2003.

(2)[396] If the prosecutor intends to use the testimony of a specially protected witness as evidence in the court procedure, the presiding judge shall obtain from the investigating judge the minutes taken at the examination of such specially protected witness and the decision adopted under Section 207 (2) *d)*. The minutes and the decision adopted under Section 207 (2) *d)* may only be examined by the members of the court and no copy may be issued thereof.

(3)[397] If the accused, his defence counsel or the prosecutor filed a motion to ask questions from a specially protected witness [Section 263 (3)], or the presiding judge asks questions from a specially protected witness, simultaneously with returning the minutes on the testimony of the specially protected witness and the decision adopted pursuant to Section 207 (2) *d),* the court orders the repeated questioning – of the specially protected witness by the investigating judge, who shall put the questions asked by the accused, his defence counsel or the prosecutor. The hearing shall be governed by the provisions of Section 213 (2) and (4).

Decision on coercive measures

Section 269 (1) The court decides on the maintenance, order or termination of a coercive measure entailing the restriction or deprival of personal freedom at the motion of the prosecutor [Section 218 (1)] or ex officio.

(2) The coercive measures maintained or ordered by the court ordering the transfer of the case shall remain effective until the decision of the transferee court adopted in the course of preparing the trial.

Option to reclassify the charge

Section 270[398] (1) The court may reclassify the charge contained in the indictment. At that time, the court may also decide on the transfer, consolidation, severance of the cases as well as on the suspension or termination of the procedure.

(2) If the court establishes that the charge contained in the indictment is a criminal offence which may only be prosecuted based on a private accusation, the statement of the prosecutor on taking over the accusation need not be obtained.

Transfer to a five-member panel

Section 271 The county court may order that the case be tried by a panel consisting of two professional judges and three associate judges, if

a) this is justified by the large number of the persons accused or the exceptionally extensive scope of the case,

b) the criminal offence is punishable by life imprisonment by law.

The preliminary hearing

Section 272 (1) If prior to the adoption of a decision in issues examined in the course of the preparation for the trial it appears necessary to hear the prosecutor or the accused, the court shall hold meeting within thirty days after the lapse of the deadline specified in Section 263 (1).

(2)[399] The preparatory hearing is obligatory if the court decides on an order of pre-trial detention, home curfew, house arrest or temporary involuntary treatment in a mental institution, or when the accused or his defence counsel has motioned for the termination of the specially protected status of a witness.

(3) The presiding judge shall notify the prosecutor, the accused and the defence counsel of the date of the preparatory hearing; in the case of subsection (2) and if the accused needs to be

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[396] The second sentence of Section 268 (2) was established by Section 66 (2) of Act II of 2003.
[397] The text of Section 268 (3) was established by Section 164 of Act I of 2002.
[398] The text of Section 270 was established by Section 165 of Act I of 2002.
[399] Section 272 (2)–(4) was established by Section 166 (1) of Act I of 2002.

heard for another reason, the presiding judge shall summon the accused and – if defence is statutory – the counsel for the defence.

(4) The preparatory hearing may not be held in the absence of the prosecutor, and the summoned accused and defence counsel, unless its subject is an order for pre-trial detention, home curfew, house arrest or temporary involuntary treatment in a mental institution.

(5) At the preparatory hearing the presiding judge presents the case, and the members of the panel, the prosecutor, the accused and the counsel for the defence may motion for the presentation of additional documents.

(6) The presiding judge and the members of the panel may ask questions from the prosecutor and the accused. The accused may also be questioned by the prosecutor and the counsel for the defence, while the accused and the counsel for the defence may motion for asking questions from the prosecutor.

(7)[400] If the accused or the counsel for the defence names or unambiguously identifies the specially protected witness in any other way, the court shall terminate the specially protected status of the witness. In such a case, the witness shall be summoned and questioned according to the general rules; if necessary, the presiding judge may – ex officio or upon a motion – initiate another form of witness protection.

Scope of authority of the court

Section 273 (1)[401] It is either the court panel or the presiding judge that acts in the course of preparation of a trial.

(2) In the issues examined in the course of preparation of a trial, the court shall adopt a decision prior to the lapse of the deadline set forth in Section 263 (1) unless the hearing under Section 272 appears necessary.

(3) It shall fall in the scope of authority of the court panel to adopt a decision on the termination of the procedure and coercive measures entailing the deprival or restriction of personal freedom.

(4)[402] The court panel shall be entitled to decide on all issues which otherwise fall within the scope of authority of the presiding judge.

Scope of authority of the presiding judge

Section 274[403] (1) The presiding judge shall decide on all issues which do not fall within the scope of authority of the court panel under Section 273 (3) and which were not decided by the court panel pursuant to Section 273 (4).

(2) If the court reprimanded the accused in his absence (Section 71 of the Penal Code), the reprimand shall be effected by the presiding judge.

Decision after the preparation of the trial

Section 275 (1) After the completion of the preparation of the trial, and setting the date of the trial, issues regulated in a Sections 267 and 269 shall be decided upon by the court at a panel meeting, while issues regulated in Sections 264, 265, 266, 268, 270 and 271 shall be decided upon by the presiding judge.

(2) The presiding judge may postpone the set trial for an important reason. Upon the hindrance of the defence counsel, the trial may be postponed if the accused does not give a power of attorney to another defence counsel, or it is not practicable to appoint another defence counsel, or if the new defence counsel cannot prepare for the defence until the trial due to shortage of time.

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[400] Section 272 (7) was enacted by Section 166 (2) of Act I of 2002.
[401] Section 273 (1) was established by Section 167 (1) of Act I of 2002.
[402] Section 273 (4) was established by Section 167 (2) of Act I of 2002.
[403] The text of Section 274 was established by Section 168 of Act I of 2002.

Preclusion of legal remedy during the preparation of a trial

Section 276 (1) No appeal may be lodged against

a) the setting and postponement of the trial,

b) the summons to the preparatory hearing and the trial and the notification of the trial,

c)[404] the suspension of the procedure pursuant to Section 188 (1) *a)* or Section 266 (3),

d) the option of reclassification compared to the indictment,

e) reference to the five-member panel or the refusal thereof,

f) termination of the procedure pursuant to Section 267 (1) *f),*

g) the rejection of the statement on legal remedy made after the acknowledgement of a decision, and

h)[405] the measures of the court specified in Section 268 (1) to (3).

(2) The court may omit the adoption of a decision concerning the consideration of an appeal against decisions listed under subsection (1).

(3) The court may omit the decision concerning the consideration of motions for an appeal against final decisions.

(4)[406] Even though the reprimand received by the accused from the court(Section 71 of the Penal Code) cannot be appealed, within eight days after the communication of the decision, the prosecutor, the accused and the defence counsel thereof may request that a trial be held. Based on the request, the court shall hold a trial. The summons shall be served on the accused five days prior to the trial at the latest.

Scope of authority of the single judge

Section 277 If the local court that acts as a single judge in a case, the decisions falling within the authority of both the court panel and the presiding judge under this Chapter shall be adopted by the single judge.

Setting the trial

Section 278 (1) After the notification of the indictment, the presiding judge establishes the date of the trial, and makes arrangements for the trial, summons and notices.

(2) As a rule, the trial shall be conducted in the official premises of the court. If deemed justified, the court may order another location.

(3) The date of the trial shall be set – taking into consideration the order of arrival of the cases and the order concerning the priority handling of the case – at the closest possible day allowing the court to conclude the case without adjournment.

Summons and notification

Section 279 (1) The accused, the counsel for the defence (in the case of statutory defence) and all other persons whose presence at the trial is obligatory shall be summoned to attend on the date set. Notification shall be sent to the prosecutor and – unless an exception is provided by this Act – the expert and other persons participating in the criminal proceedings whose presence at the trial is allowed by this Act. If the prosecutor filed a motion to terminate the parental right of custody of the accused, the other parent and the child welfare agency shall also be advised of the trial.

(2) In the summons or notification, the persons participating in the criminal proceedings shall be requested to submit their motions for evidence without delay, prior to the trial. The presiding judge shall arrange for the availability of the means of evidence required for the adjudication of the case at the trial.

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[404] Section 276 (1) c) was established by Section 169 (1) of Act I of 2002.

[405] Section 276 (1) h) was established by Section 169 (1) of Act I of 2002.

[406] Section 276 (4) was enacted by Section 169 (2) of Act I of 2002.

(3) The summons shall be served on the accused at least five days prior to the trial.

Section 280 (1) If the witness is a minor under fourteen years of age and he has been heard by the court in the course of the investigation [Section 207 (4)], he may not be summoned to the trial. If such witness has reached the age of fourteen at the time of the trial, he may be summoned to the trial in exceptionally justified cases.

(2) The specially protected witness (Section 97) may not be summoned to the trial.

Chapter XIII

TRIAL OF THE COURT OF FIRST INSTANCE

Title I

COURSE OF EVENTS AT THE TRIAL

Opening the trial

Section 281 (1) The trial is opened by the presiding judge by enumerating the charges in the indictment, requesting the audience to maintain silence and order and warning them of the consequences of disturbing order. The presiding judge states the names of the members of the court, the keeper of the minutes, the prosecutor and the counsel for the defence. The presiding judge records those attending the trial then, depending on whether those summoned and notified are present, establishes whether the trial can be held.

(2) If the duly summoned accused or witness fails to attend, where it is feasible, the presiding judge arranges that they be taken to the court without delay, and also requests the absent prosecutor or expert to appear at the trial; the request to the prosecutor shall be sent through the head of the prosecutor's office.

(3) If the summoned defence counsel does not attend, the accused may assign another defence counsel or – if the presence of the defence counsel at the trial is statutory – another defence counsel shall be appointed. The new defence counsel shall be allowed sufficient time to prepare for the defence. If this is not feasible without delay, the trial shall be postponed at the cost of the defence counsel who has failed to attend.

(4)[407] The trial may be held in the absence of the accused, if the procedure pertains to ordering temporary involuntary treatment in a mental institution, and due to his health condition he is unable to attend the trial or exercise his rights.

(5) If the measure of the presiding judge set forth in subsection (2) is not feasible or failed to bring result, the trial may also be held in the absence of the duly summoned accused who has failed to attend and is at liberty, however, the evidentiary procedure – with the exception of the case specified in subsection (9) below – may not be concluded.

(6) Under the conditions stipulated in subsection (5), if the provisions of subsection (9) cannot be applied, after questioning and hearing those present the trial shall be adjourned and a bench warrant be issued to take the non-attending accused to court on the next date of the trial. If such bench warrant has already been issued in the course of the court procedure due to the non-attendance of the accused, in the case of a criminal offence punishable by imprisonment, a warrant of arrest shall be issued or pre-trial detention ordered. For the accused having no counsel for the defence, one shall be appointed.

(7)[408] If the accused cannot be arrested on a bench warrant on the new date of the trial because he left for an unknown location from his place of residence or if the accused could

[407] Section 281 (4)–(6) was established by Section 170 (1) of Act I of 2002.
[408] Section 281 (7)–(9) was enacted by Section 170 (2) of Act I of 2002.

not be taken to court under the warrant of arrest until the new date of the trial, the court shall establish that the accused is absconding and thereafter act in compliance with the provisions of Chapter XXIV.

(8) If the accused is present at the trial set pursuant to subsection (6), the minutes of the trial having been held in his absence shall be read out after questioning the accused. If required, the court may order to summon witnesses and experts who had already been questioned and heard and to repeatedly question and hear them in the presence of the accused, further, the court may require a written testimony of such witnesses [Section 85 (5) and (6)].

(9) The court may acquit the accused or terminate the criminal proceedings against him in his absence; the notification of the related decision indicating also the clause in the purview concerning the right of appeal (324-Section 325) shall be served on the accused and the defence counsel.

Section 282 (1) If the trial can take place in the absence of a person not attending, the court shall decide on the commencement of the trial after hearing the prosecutor, the accused and the counsel for the defence.

(2) If there is no obstacle to holding the trial, the presiding judge shall request the witnesses – with the exception of the victim – to leave the court room. The presiding judge shall advise such persons of the consequences of unjustified leave. The expert shall only be required to leave if this is deemed necessary by the court, otherwise the expert may be present at the trial from the commencement thereof.

(3)[409] It is not necessary to postpone the trial if the notification period was not kept [Section 279 (3)] provided that the accused and the counsel for the defence unanimously request that the trial be held. If defence is not statutory and the assigned defence counsel fails to attend the trial, the trial needs not be postponed unless requested so by the accused.

(4) If there is an obstacle to holding the trial, the court shall postpone it.

Section 283 (1) Prior to the commencement of the trial, the prosecutor, the accused, the counsel for the defence and the victim

a) may initiate the transfer, consolidation or severance of the case(s),

b) may initiate the exclusion of the presiding judge, a member of the court or the keeper of the minutes, and

c) may indicate other circumstances which hinder the holding of the trial or need to be taken into consideration prior to the commencement of the trial.

(2) Prior to the commencement of the trial, the accused, the counsel for the defence and the victim may motion for the exclusion of the prosecutor.

Commencement of the trial

Section 284 (1) If the presiding judge establishes that there is no obstacle to holding the trial and the witness and expert has left the court room [Section 282 (2)], the court shall commence with the trial.

(2) At the request of the presiding judge

a) the prosecutor shall present the charge,

b)[410] the victim and his representative present shall state whether they intend to enforce a civil claim; if so, the presiding judge shall request the victim to describe his claim and – if the victim has no representative – advise him of the provisions in Section 54 (7); and thereafter,

c) the victim to be questioned as a witness shall leave the court room.

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[409] Section 282 (3) was enacted by Section 171 of Act I of 2002, which concurrently amended the original numbering of subsection (3) to subsection (4).

[410] The text of Section 284 (2) b) was established by Section 172 of Act I of 2002.

Order of taking evidence [411]

Section 285 (1) In the course of the evidentiary procedure the prosecutor, the accused, the counsel for the defence, the victim, the private party, and in the issues of his concern, the other interested party may make motions and observations.

(2) The evidentiary actions initiated by the prosecutor, the accused and the counsel for the defence and the order thereof shall be decided upon by the presiding judge, taking into consideration the motions of the prosecutor, the accused and the counsel for the defence.

(3) The rejection of the motion for evidence may not be appealed, only contested in an appeal against the conclusive decision.

(4) As a rule, evidence motioned for by the prosecutor shall precede the taking of evidence initiated by the accused and the counsel for the defence.

Section 286 (1) The evidentiary procedure shall start with the questioning of the accused.

(2) Generally, from among the witnesses, the victim shall be questioned first.

(3) When the accused and the witness have been questioned and the expert heard, they may be required to answer the questions of – in addition to the court members – the prosecutor, the accused, the counsel for the defence, the victim, the private party, and in issues of his concern, by the other interested party and the expert.

Continuity of the trial

Section 287 (1) If practicable, the court shall not interrupt an already commenced trial. If required due to the scope of the case or for other reasons, the presiding judge may interrupt the already commenced trial for maximum eight days, and the court – to complement evidence or for other important reason – may adjourn the trial.

(2) In the case stipulated in subsection (1) above, the date of resuming the trial shall be set, unless considering the reason for the adjournment the resumption of the trial within six months does not seem practicable.

(3) Within six months, the trial may be resumed without repetition, unless the composition of the panel has changed; otherwise the trial shall be recommenced anew.

(4) Within six months, the trial may be repeated by presenting the documents of the case, if the person of the professional judge has not changed in the court panel. After the presentation of the documents of the case, the prosecutor, the accused and the counsel for the defence shall be advised that they may make observations on, and request the supplementation of the presentation. The advice and the observations shall be entered in the minutes.

(5) Adjourned trial shall be resumed by presenting the minutes taken at the latest session of the trial, if the interruption has lasted for more than eight days and the prosecutor, the accused or the counsel for the defence motions for such presentation. After the presentation of the minutes, the prosecutor, the accused and the counsel for the defence shall be advised that they may make observations on, and request the supplementation of the presentation.

Questioning the accused

Section 288 (1) As a rule, the accused shall be questioned in the absence of the other accused who have not been questioned as yet.

(2) At the motion of the prosecutor, the accused or the counsel for the defence or ex officio, for the duration of questioning the accused, the presiding judge may order the other

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[411] The subtitles preceding Sections 285, 287, 288, 291, 292, 295 and 296, as well as Sections 285–297 were established by Section 173 of Act I of 2002.

accused to leave the court room if the presence of the latter disturbed the accused in the course of the questioning.

(3)[412] The presiding judge establishes the identity and the personal data listed in Section 117 (1) of the accused, asks whether the accused has understood the charges and if not, he shall explain the charges. Thereafter, the accused shall be granted the opportunity to briefly summarise his position concerning the charges. The accused or his defence counsel – if they deem this necessary – may also mention the type of evidentiary procedure they intend to motion for in the interest of the defence.

(4)[413] If the accused does not avail himself to the opportunity specified in subsection (3), or his statement is unclear in this regard, the presiding judge shall ask the accused whether he admits his criminal liability.

Section 289 (1) The questioning of the accused shall be governed by the provisions set forth in Section 117 (2) to (5) and Section 118, with the exceptions stipulated in subsection (2).

(2) In addition to those stipulated in Section 117 (2), the presiding judge shall advise the accused that he may ask questions from those questioned in the course of the evidentiary procedure, and may also make motions and observations. The accused shall also be warned that failure of testimony shall be subject to reading out his earlier testimony made as a defendant.

(3) Unless this disturbs the order of the trial, the accused may also consult with his counsel for the defence during the trial, however, during his questioning this shall be subject to the permission of the presiding judge.

Section 290 (1) If the accused wishes to make a testimony after the warning set forth in Section 289 (2), he may present his testimony concerning the charges as a comprehensive whole, including his defence. Thereafter, the presiding judge, then the persons listed in Section 286 (3) – in the order stipulated therein – may ask questions from the accused.

(2) The presiding judge shall ensure that the method of questioning does not injure the human dignity of the accused.

(3) If the question may influence the accused, suggests the reply, irrelevant, has been asked by an unauthorised person, injures the dignity of the trial, or is repeatedly directed to the same fact, the presiding judge may prohibit the reply.

Reading out and presenting the earlier testimony of the accused

Section 291 (1) If the accused does not wish to make a testimony at the trial, and in the case of Section 281 (5) or of an absconding accused, at the motion of the prosecutor, the accused or the counsel for the defence or ex officio, the presiding judge shall either read the testimony of the accused given in the course of the investigation or have it read out by the keeper of the minutes.

(2) If the accused had been questioned as a witness in the course of the investigation, the testimony may only be read out if it is motioned by the accused, or the minutes taken on the testimony clearly indicates the warning and advice specified in Section 85 (3), as well as the reply thereto.

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[412] Section 288 (3) was established by Section 67 (1) of Act II of 2003.
[413] Section 288 (4) was enacted by Section 67 (2) of Act II of 2003.

(3) The testimony of the accused given in other criminal proceedings as a suspect or accused may only be read out if the minutes taken on the testimony clearly indicates the warning and advice specified in Section 117 (2), as well as the reply thereto.

(4) At the motion of the prosecutor or the counsel for the defence, or ex officio, the presiding judge may also present parts of the earlier testimonies – i.e. those given in the course of the proceedings as a suspect or accused – of the accused, if the accused has changed his testimony in the meantime.

(5) Parts of the earlier testimony may only be presented, if the accused has been asked about facts and circumstances contained in the presentation, or the accused has given a testimony concerning such facts and circumstances. The presiding judge shall ensure that the extent of the presentation is sufficient to establish the facts of the case.

Questioning the witness

Section 292 (1) The witness shall be questioned in the absence of the other witnesses who have not been questioned as yet. Derogation from this provision is permitted in the case of questioning the victim as a witness.

(2) At the motion of the prosecutor, the accused or the counsel for the defence, or ex officio, for the duration of questioning, the presiding judge may order the accused whose presence may disturb the witness in the course of the questioning to leave the court room.

Section 293 (1) When commencing the questioning of the witness, the presiding judge shall act in compliance with the provisions of Section 85 (2) and (3), then, if there is no obstacle to the testimony, the presiding judge shall question the witness, taking heed of the provisions stipulated in Section 88. At the commencement of the questioning, a victim to be questioned as a witness may also make the statement described in Section 284 (2) *b)*, unless he had already made such a statement earlier.

(2) To the questioning of the witness, the provisions set forth in Section 290 (2) and (3) shall be applied as appropriate.

Section 294 Specially protected witnesses may not be questioned at the trial. If the witness was questioned pursuant to Section 207 (4), he may also be questioned if he has reached the age of fourteen at the time of the trial, and his questioning at the trial is exceptionally justified.

Questioning of the witness by the prosecutor, the accused or the counsel for the defence

Section 295 (1) At the motion of the prosecutor, the accused or the counsel for the defence, the presiding judge may permit the questioning of the witness first by the prosecutor and the counsel for the defence. In such a case, to the questioning of the witness the provisions of Section 293 shall be applied, with the following derogation:

a) if the questioning of the witness has been motioned for by the prosecutor, the witness shall first be questioned by the prosecutor, then answer to the questions of the accused and the counsel for the defence, and finally, may motion for asking questions,

b) if the questioning of the witness has been motioned for by the accused or the counsel for the defence, the witness shall first be questioned by the accused or the counsel for the defence, then answer to the questions of the prosecutor, and finally, may motion for asking questions,

c) in the next step, that party may ask further questions from the witness who had motioned for questioning the witness, but they may only concern facts and circumstances that have arisen as a result of the questions of the other party,

d) the presiding judge and the court members may ask questions from the witness both after the conclusion of the questioning and after a reply to any of the questions.

(2) If any of the parties asking questions repeatedly violates the provisions Section 290 (3) the presiding judge shall deprive that party from the right of questioning.

(3)[414] The rejection of the motion specified in subsection (1) may not be appealed, only contested in an appeal against the conclusive decision.

Reading out and presenting the earlier testimony of the witness

Section 296 (1) At the motion of the prosecutor, the accused or the counsel for the defence or ex officio, the presiding judge shall either read the testimony of the witness given in the course of the investigation or have it read out by the keeper of the minutes, in the following cases:

a) the witness cannot be questioned at the trial, or his attendance would pose unreasonable difficulties due to his state of health, or would not be possible owing to his long term stay abroad,

b) the witness unlawfully refuses to give testimony at the trial,

c) the trial has to be recommenced pursuant to Section 287 (3),

d) the witness gave a written testimony pursuant to Section 85 (5) and (6) and the court does not deem his questioning at the trial necessary,

e) the court requested a written testimony from the witness pursuant to Section 281 (8).

(2) If the witness exercises his right of exemption at the trial, his earlier testimony may not be read out.

(3) If the person to be questioned at the trial had been questioned as a suspect or accused in the earlier stage of the procedure, his earlier testimony or testimony part subject to the right to exemption granted in Section 82 (1) may only be read out with his consent.

Section 297 (1) At the motion of the prosecutor, the accused or the counsel for the defence, or ex officio, the presiding judge may present parts of the earlier testimony of the witness, if the witness cannot reckon the events or there is a contradiction in his testimonies given at the trial and earlier. The presentation – subject to the provisions set forth in Section 296 (3) – may also extend to the testimony of the witness given in the former stages of the procedure or in another procedure as a suspect or accused.

(2) Parts of the earlier testimony may only be presented, if the witness has been asked about facts and circumstances contained in the presentation, or the witness has given a testimony concerning such facts and circumstances. The presiding judge shall ensure that the extent of the presentation is sufficient to establish the facts of the case.

Hearing the expert

Section 298 (1) After giving the warning specified in Section 110 (1), the expert shall be heard by applying, as appropriate, the rules pertaining to the questioning of the witness.

(2) In the course of the hearing, the expert may use his written expert opinion or notes and may also use audio-visual aid.

Reading out the expert opinion

Section 299[415] (1) If the expert fails to attend the trial despite notification, or the court did not notify the expert pursuant to Section 108 (6), the presiding judge shall read out, or has the keeper of the minutes read out the expert opinion having been submitted in writing. Should

[414] Section 295 (3) was enacted by Section 68 of Act II of 2003.

[415] The text of Section 299 was established by Section 174 of Act I of 2002.

the hearing of the expert be necessary under Section 109 after reading out the expert opinion, the trial shall be adjourned and the expert be summoned to the set trial.

(2) If the expert fails to attend the trial despite the summons, the court – ex officio or upon a motion – may permit that the expert opinion submitted in writing be read out. Should the prosecutor, the accused, the counsel for the defence, the victim or the private party wish to ask questions after the expert opinion has been read out, the trial shall be adjourned and the expert be summoned again to the set trial.

(3) In addition to the cases mentioned in subsections (1) and (2), the expert opinion may also be read out, if the expert has already been heard at the trial, but the trial shall be recommenced once again pursuant to Section 287 (3).

Assignment of an expert at the trial

Section 300 If the assignment of the expert becomes necessary at the trial, the presiding judge shall immediately summon him to the trial. If this is not feasible, the court shall adjourn the trial and set a deadline for preparing an expert opinion.

Reading out documents and other papers

Section 301 (1) The presiding judge disposes of reading out the documents and the papers used as means of evidence at the trial.

(2) The report of the investigating authority may be read out as a document.

(3) Upon the unanimous motion of the prosecutor, the counsel for the defence and the accused, the presiding judge may permit that instead of reading out a document, only its gist be presented or indicated.

(4)[416] Papers submitted at the trial shall be attached to the minutes of the trial by the presiding judge.

Using audio and video recordings taken at the procedural action

Section 302 (1) The presiding judge may have the records made by an audio or video recorder or other equipment at the procedural action presented at the trial, either ex officio or at the motion of the prosecutor, the accused or the counsel for the defence.

(2) If the recordings referred to in subsection (1) were taken at the questioning of the suspect or the witness, the presentation shall be governed by the provisions of Section 291 to 292 and Sections 296 to 297.

Judicial inspection

Section 303 (1) At the trial, physical evidence shall be exhibited by the presiding judge. if this is not practicable, a photo of the physical evidence shall be shown and its description be given.

(2) In the course of the trial, the court shall – ex officio or upon a motion – conduct an inspection.

(3) The judicial inspection shall be conducted by the court or a delegated member thereof.

Evidentiary actions by way of a delegated or requested judge

Section 304 (1) If taking evidence is not feasible at the trial, or poses extraordinary difficulties, the court shall delegate its professional judge member (delegated judge) or – if required – request another court (requested court). The prosecutor, the accused and the defence counsel thereof, as well as the victim shall be notified if evidence is taken.

(2)[417] The requested court shall be informed of the name and residence of the accused, the counsel for the defence and the victim, the facts to be elucidated by taking evidence, the name

[416] Section 301 (4) was enacted by Section 175 of Act I of 2002.

and residence of the persons to be questioned and the circumstances concerning which they should be questioned. The papers or the copies thereof which are required to fulfil the request shall be forwarded to the requested court.

(3) The requested court shall fulfil the request within thirty days. If the requested court does not fulfil the request within thirty days, it shall inform the requesting court of the obstacle to the fulfilment. If the fulfilment of the request partially falls within the jurisdiction of another court, the requested court – after taking the evidence falling within its own jurisdiction – shall transmit the papers to the other court, informing thereof the requesting court.

(4) The minutes taken during the procedure of the delegated and requested courts shall be read out at the trial.

(5)[418] The accused, the counsel for the defence and the victim shall not be notified, if their presence resulted in their learning of the data of the witness handled confidentially pursuant to Section 96. The accused and the counsel for the defence need not be notified when evidence is taken from a witness under fourteen years of age [Section 280 (1)].

Supplementary evidentiary action

Section 305[419] (1) If the court deems the results of the evidentiary procedure insufficient and more thorough investigation necessary, it may, either ex officio or upon a motion order to take or obtain further evidence. If this is not feasible without delay, the court shall adjourn the trial and take evidence on the trial set for the new date.

(2) If it is not feasible to take evidence by way of a delegated judge or requested court (Section 304), further, if supplementary evidence cannot be taken at the trial, the court shall request the prosecutor to seek means of evidence.

(3) Based on the findings of the evidentiary action, the prosecutor, the accused and the counsel for the defence may motion for asking further questions from a specially protected witness. The court may also ask questions from the specially protected witness. In such a case, the provisions in Section 268 (2) and (3) shall apply.

(4) If the accused or the counsel for the defence names or unambiguously identifies the specially protected witness in any other way, either at the trial or after – as a result of – the measures set forth in subsection (1) above, the court shall terminate the specially protected status of the witness. In such a case, the witness shall be summoned and questioned according to the general rules; if necessary, the presiding judge may – ex officio or upon a motion – initiate another form of witness protection.

Omission of the evidentiary action [420]

Section 306 The court may omit the evidentiary action due to a criminal offence having no significance for the purpose of liability as opposed to the graver criminal offence contained in the indictment.

Suspension of the procedure

Section 307[421] The procedure may also be suspended after the commencement of the trial (Section 266). If the court has suspended the procedure because the accused became mentally

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[417] Section 304 (2)–(3) was enacted by Section 176 (1) of Act I of 2002, which concurrently amended to the original numbering of subsections (2) and (3) to (4) and (5).

[418] Section 304 (5) was established by Section 176 (2) of Act I of 2002.

[419] The text of Section 305 was established by Section 177 of Act I of 2002 and amended by Section 88 (2) c) of Act II of 2003. (the words “new evidence” was amended to “further evidence”).

[420] The subtitle and Section 306 were established by Section 178 Act I of 2002.

[421] The text of the second sentence of Section 307 was established by Section 179 of Act I of 2002.

disabled after the commitment of the criminal offence or the accused is absconding, the court may order confiscation or forfeiture of property.

Transfer, consolidation and severance of cases

Section 308 (1) After the commencement of the trial, the case may only be transferred if its adjudication is beyond the competence of the court, is subject to military law, or falls within the jurisdiction of another court pursuant to Section 17 (5) to (6).

(2) Consolidation and severance of the cases may take place even after the commencement of the trial (Section 265).

(3) After the commencement of the trial, the case may not be referred to a five-member panel. (Section 271).

Out-of-trial decisions

Section 309[422] (1) After the adjournment of the trial, if necessary, the court may decide at a panel meeting on the transfer [Section 308 (1)], consolidation or severance [Section 308 (2)] of the cases, the suspension [Section 266 (1) to (3) and (6)] or termination [Section 267 (1) *c)-e)*] of the procedure, a measure to perform a procedural action (Section 268), as well as on a coercive measure entailing the restriction or deprival of personal freedom.

(2) In the issues not listed in subsection (1) above, decision shall be adopted by the presiding judge out of trial.

Amendment of the charge

Section 310 (1)[423] If the prosecutor – with regard to the charge contained in the indictment or the facts related thereto – deems that the accused is guilty of having committed a different or another criminal offence than the subject of the indictment, the prosecutor shall amend or expand the indictment before the panel meeting held pursuant to Section 321 (1), or motion for the adjournment of the trial in order to supplement the indictment.

(2) If the indictment is amended, upon the motion of the prosecutor or – in order to prepare a defence – the accused or the counsel for the defence, the court may adjourn the trial.

(3) If the indictment is expanded, at the joint motion of the accused and the counsel for the defence, the court shall, or ex officio may, adjourn the trial for a period of minimum eight days, or shall separate the case to which the indictment has been expanded.

(4) The case shall be transferred if the deliberation of the amended charge exceeds the competence of the court or is subject to procedures against juvenile offenders or the military law.

Dropping the charge

Section 311 (1) Before the panel meeting held pursuant to Section 321 (1), the prosecutor may drop the charge. The prosecutor shall provide justification for dropping the charge.

(2) If the prosecutor took over the representation of the prosecution from the substitute private accuser, he may not drop the charge but may withdraw from the prosecution. In the event that the substitute private accuser and the representative thereof are present, the trial shall be continued; otherwise the court shall adjourn the trial, simultaneously setting a new one, and notifying the substitute private accuser that it is him who represents the prosecution again.

Actions of the substitute private accuser

Section 312 (1) If substitute private accusation is applicable when the charge is dropped, the court adjourns the trial, and serves on the victim the statement of the prosecutor on

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[422] The text of Section 309 was established by Section 180 of Act I of 2002.

[423] The text of Section 310 (1) was established by Section 181 of Act I of 2002.

dropping the charge. If the victim fails to stand as substitute private accuser within thirty days, the court shall terminate the procedure. No justification may be admitted for defaulting this deadline.

(2) After the charge has been dropped, the victim shall be granted the opportunity to examine, in the official premises of the court, the documents related to the criminal offence having been committed against him. Confidential documents handled separately from the files of the case may not be disclosed to the substitute private accuser.

(3)[424] If the victim wishes to act as a substitute private accuser, the motion for prosecution shall be submitted to the court that had proceeded in the case before. Representation of the substitute private accuser by a lawyer shall be obligatory from the time of submitting the motion for prosecution.

(4) The motion for prosecution shall contain the items listed in Section 217 (3) *a)-c), g)* and *h),* as well as the reasons for requesting the continuation of the court procedure despite the fact that the prosecutor has dropped the charge.

(5) If the substitute private accuser submitted a motion for prosecution, the court shall act in compliance with the provisions set forth in Section 231, provided that the substitute private accuser may repeatedly submit the motion for prosecution prior to the lapse of the deadline specified in subsection (1) above. The decision rejecting the motion for prosecution shall not be subject to an appeal.

(6) If the prosecutor has dropped the charge and there is a substitute private accuser acting in the case, the trial shall be continued. The continuity of the trial shall be governed by the provisions of Section 286.

(7) If the procedure involves several criminal offences and the prosecutor drops the charge in any of them, substitute private accusation may only apply if the case concerning which the charge was dropped is subject to severance. In such a case, the charges shall be severed.

Conclusion of the evidentiary procedure

Section 313 After conducting the evidentiary procedure, if no motion for evidence has been submitted or the motion for evidence has been rejected by the court, the presiding judge shall declare the evidentiary procedure concluded and requests those entitled to make their argument in the case and their addresses.

Closing arguments and addresses

Section 314 (1) The prosecutor shall speak for the prosecution and the defence counsel for the defence, while the accused, the victim, the private party and the other interested party may make an address to the court.

(2)[425] If several counsels for the defence act on behalf of the same accused, it is the counsel of record or the defence counsel designated by him who shall speak for the defence. If the victim, the private party and the other interested party have several representatives, they shall agree on the person to make the address.

(3) While presenting their closing arguments, no one may be called to order.

(4) The closing arguments may not be interrupted unless it includes a term that constitutes a criminal offence, disturbs the order or it is required in order to prevent the procrastination of the procedure.

Section 315 (1) If the prosecutor deems that the guilt of the accused can be established, when speaking for the prosecution, he shall put forward a motion – specifying the relevant legal regulations – to the court

[424] The text of the first sentence of Section 312 (3) was established by Section 182 of Act I of 2002.
[425] The text of Section 314 (2) was established by Section 183 of Act I of 2002.

a) for convicting the accused, naming the underlying facts and the criminal offence,
b) for the type of punishment to be imposed or measure to be applied,
c) for other orders to be issued.
(2) The prosecutor may not propose specifically the extent of the punishment or measure.
(3) If the prosecutor deems that the guilt of the accused cannot be established, when speaking for the prosecution, he shall put forward a motion – specifying the relevant legal regulations and giving justification – to the court to acquit the accused.

Section 316[426] Following the prosecutor, the victim, the private party and the other interested parties may make their address. The victim may state if he requests the establishment of the guilt and punishment of the accused. The private party indicates – and may justify – the amount for which he intends to enforce his civil claim; in his absence, the announced claim shall be read out from the documents. The other interested party may make a motion in issues directly affecting his right or rightful interest.

Section 317 (1)[427] The addresses are followed by the speech for the defence. Having heard the closing arguments of the counsel for the defence, the accused may also speak in his own defence. If the accused has no defence counsel, this address shall be governed by the rules pertaining to the closing arguments [Section 314 (3) and (4)].
(2) Should there be several accused, the order of sequence of the speeches for their defence shall be determined by the presiding judge.

Section 318 (1) After the closing arguments and addresses, in the same order of sequence, rebuttals may be made. Such rebuttal may also be rebutted, it is the counsel for the defence, or the accused who shall have the last say.
(2) After the closing arguments, addresses and rebuttals, if the accused is deaf and no interpreter may be employed, the accused shall be granted the opportunity to read the minutes.

The right to the last say

Section 319 Prior to the adoption of the conclusive decision, the accused has the last say.

Re-opening the evidentiary procedure

Section 320 Prior to adopting the conclusive decision, the court shall re-open the evidentiary procedure, if deemed necessary based on the closing arguments, addresses, and the last say.

Announcement of the adoption of the decision and the decision

Section 321 (1) After hearing the closing arguments, addresses and the last say of the accused, the court shall withdraw to adopt a decision at a panel meeting. At the panel meeting the purview of the decision shall be recorded and signed by the court members.
(2)[428] The conclusive decision shall be announced immediately after its adoption. The original copy of the purview of the decision made at the trial, signed by the court members, shall be attached to the minutes of the trial. decision adopted at the trial.
(3)[429] The purview of the conclusive decision shall be read out by the presiding judge and heard by those present standing; owing to the state of health of a person present, the presiding judge may grant an exception to this rule. Thereafter, the presiding judge orally presents the gist of the justification.

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[426] The text of the second sentence of Section 316 was established by Section 184 of Act I of 2002.
[427] The third sentence of Section 317 (1) was enacted by Section 185of Act I of 2002.
[428] The second sentence of Section 321 (2) was enacted by Section 186 (1)of Act I of 2002.
[429] The first sentence of Section 321 (3) was established by Section 186 (2) of Act I of 2002.

(4)[430] If prior to adopting the conclusive decision, the court establishes that the charge contained in the indictment should be reclassified, it may adjourn the trial in order to prepare for the defence, and shall hear the prosecutor, the accused and the counsel for the defence present in this regard.

Section 322 (1)[431] If necessary due to the complexity of the case or the extensive scope of the decision or other important reason, the trial may be adjourned for eight – in exceptional cases, for fifteen – days to allow time for adopting and announcing the decision. At the time of adjourning the trial, the new date thereof shall be set.

(2)[432] At the trial set pursuant to subsection (1), the minutes taken at the latest session of the trial needs not be presented. Should the duly summoned accused or the counsel for the defence fail to attend the trial, the decision may be announced in their absence as well. No justification for the absence is allowed.

Statements on legal remedy

Section 323 (1) After announcing the decision, the presiding judge shall asks those who are entitled to appeal whether they intend to exercise this right. The order of sequence of making statements on appeal is as follows: the prosecutor, the private party, other interested parties, the accused and the defence counsel.

(2)[433] The appellant shall indicate the provision in the decision found deleterious and the object of the appeal. Incorrect indication of the cause for the appeal or other mistakes related to the appeal shall not be a reason for rejecting the consideration of the appeal in its merit. The prosecutor shall also indicate if he wishes to lodge an appeal to the detriment of the accused [Section 354 (2)].

(3) The appeal may enumerate a new fact, refer to new evidence and may also motion for an evidentiary action which had been omitted by the court of first instance.

(4) The justification of the appeal may be made in writing. Prior to the submission of the documents, the justification shall be presented at the court of first instance, and thereafter at the court of appeal, not later than on the eight day preceding the trial.

Parties entitled to appeal

Section 324 (1) The following parties shall be entitled to lodge an appeal against the verdict of the court of first instance:

a) the accused,

b) the prosecutor,

c) the counsel for the defence – even without the consent of the accused,

d) the heir of the accused – against orders granting a civil claim,

e) the legal representative and the spouse of an accused of legal age – even without the consent of the accused – against an order for involuntary treatment in a mental institution,

f) the private party, against a disposition adjudicating a civil claim in its merit,

g) those against whom a disposition has been made in the verdict, in respect of the relevant order.

(2) The prosecutor may lodge an appeal to the detriment of the accused.

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[430] Section 321 (4) was enacted by Section 186 (3) of Act I of 2002.
[431] The text of Section 322 (1) was established by Section 187 of Act I of 2002.
[432] The text of the first sentence of Section 322 (2) was established by Section 187 of Act I of 2002, and its second and third sentences were established by Section 69 of Act II of 2003.
[433] Section 323 (2) and (3) was established by Section 188 (1) of Act I of 2002.

Announcement of the appeal

Section 325 (1) Those to whom the verdict has been communicated by way of an announcement shall lodge their appeal immediately, or may request a three-day deadline. No justification may be admitted for defaulting this deadline.

(2) Verdicts communicated by way of a notice served may be appealed within eight days.

(3) If the appeal is not made at the time of the announcement of the verdict, it shall be either submitted to the court of first instance in writing, or recorded in the minutes.

(4) The court of first instance shall notify the accused and the counsel for the defence of the appeal of the prosecutor lodged pursuant to subsection (3).

Section 326 If the court of first instance communicates the non-conclusive decision by way of an announcement, the appeal shall be announced at that time. Otherwise the announcement of appeals against a non-conclusive shall be governed by the provisions set forth in Section 325 (2) to (4).

Decision on a coercive measure and concurrent sentences [434]

Section 327 (1) If the conclusive decision does not become final at the time of its announcement, the court shall immediately make a decision on pre-trial detention, temporary involuntary treatment in a mental institution, home curfew or house arrest.

(2) In the case specified in subsection (1), pre-trial detention may also be ordered – in addition to the reasons stipulated in Section 129 (2) *a), b)* or *d)* – owing to the risk that the accused may escape or hide, taken the duration of the imprisonment imposed in the verdict.

(3) If the accused is acquitted or put on probation, or the procedure is terminated, or if the court did not pronounce a sentence for imprisonment to be enforced, or – in the case of acquittal – did not order involuntary treatment in a mental institution, the court shall terminate the pre-trial detention, home curfew, house arrest or the temporary involuntary treatment in a mental institution, and forthwith arranges the release of the accused.

(4) In the event that the verdict becomes final and the relevant conditions prevail, if practicable, the court shall conduct the concurrent sentencing procedure.

Closing the trial

Section 328 After the statements on legal remedy and the adoption of the decisions referred to in Section 327, the presiding judge closes the trial.

Title II

CONCLUSIVE DECISIONS OF THE COURT OF FIRST INSTANCE

The judgement

Section 329 The court shall make a decision concerning the charges by way of a judgement, either convicting or acquitting the accused.

The condemning judgement

Section 330 (1) The court shall convict the accused, if it ascertains that the accused had committed a criminal offence and may be punished.

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[434] The subtitle and Section 327 was established by Section 189 of Act I of 2002. The original Section 327 (2) was declared unconstitutional by Resolution No. 19/1999. (VI. 25.) AB of the Constitutional Court, and therefore, it will not enter into force.

(2) In the condemning, the court shall

a) impose a punishment,

b) place the accused on probation or reprimand the accused,

c) omit the imposition of a punishment.

(3) When imposing a judgement of probation, in addition to the items listed in Section 258 (2), the purview of the sentence shall contain the rules of conduct established by the court.

(4)[435] If the court establishes the guilt of the accused for a criminal offence committed thereby during or prior to the probation, the court shall repeal the disposition concerning probation and impose concurrent sentences.

The verdict of acquittal

Section 331 (1) The court shall acquit the accused of the charges, if the guilt of the accused cannot be ascertained and the procedure is not terminated.

(2) In the case an accused acquitted from the charges due to mental disability, the court shall order the involuntary treatment of the accused in a mental institution provided that the conditions therefor are fulfilled.

(3) The justification of the verdict shall include, in addition to the items listed in Section 258 (3), the factors having led the court to formulate the verdict, with special regard to the absence of the criminal offence, the absence of evidence for the criminal offence, and reference to the grounds for the preclusion or termination of punishability.

(4)[436] If the verdict of acquittal is based on the grounds for the preclusion or termination of punishability, the court may order confiscation, or forfeiture of property.

Ruling terminating the procedure

Section 332 (1) The court shall terminate the procedure,

a) due to the death, statutory limitation or pardon of the accused,

b) if there is no private motion, complaint or request and they have not been or cannot be subsequently submitted,

c) if the action has already been adjudicated by a final decision,

d) if the prosecutor has dropped the charge and substitute private accusation cannot be applied,

e)[437] due to other grounds for the preclusion of punishability stipulated by law a [Section 32 *e)* of the Penal Code].

(2) The court shall terminate the procedure concerning a criminal offence having no significance for the purpose of liability as opposed to the graver criminal offence contained in the indictment.

(3)[438] Upon learning of the reasons specified in subsections (1) or (2), the court shall immediately terminate the procedure.

(4)[439] The court shall advise the private party of the termination of the procedure as well as of his right to enforce his civil claim by way of other legal means.

(5)[440] If the fact that the accused died or was pardoned ex officio becomes known after the announcement of the conclusive decision, but before such decision has become final, and no appeal has been announced against the decision, the court shall repeal the non-final conclusive decision or the disposition concerning the same accused and terminate the procedure.

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[435] Section 330 (4) was established by Section 190 (1) of Act I of 2002.
[436] Section 331 (4) was established by Section 190 (2) of Act I of 2002.
[437] Section 332 (1) e) was enacted by Section 191 (1) of Act I of 2002.
[438] Section 332 (3) was established by Section 191 (2) of Act I of 2002.
[439] Section 332 (4) was enacted by Section 191 (2) of Act I of 2002.
[440] Section 332 (5) was enacted by Section 70 of Act II of 2003.

Section 333 If the prosecutor has dropped the charges and substitute private accusation may be lodged, the fact that the statement of the prosecutor on dropping the charges could not be served on an absconding victim shall not prevent the termination of the procedure.

Section 334[441] Upon terminating the procedure pursuant to Section 332 (1) *a)-b)* and *e)* the court may order confiscation or forfeiture of property. Upon terminating the procedure pursuant to Section 332 (5), the court shall uphold the effect of the dispositions in its earlier conclusive decision regarding confiscation or forfeiture of property.

Adjudication of a civil claim

Section 335 (1)[442] Inasmuch as possible, in the judgement the court shall adjudicate the civil claim in its merit; by either accepting or rejecting it. If this considerably delayed the conclusion of the procedure, or if the accused is acquitted, or if the adjudication of the motion on its merits in criminal proceedings is precluded due to other conditions, the court shall refer the enforcement of a civil claim to other legal means.

(2) If, during the enforcement of the civil claim a different motion is lodged, the court shall consider them based on the higher amount of claim.

Termination of parental right of custody

Section 336 (1) Upon the motion of the prosecutor, the court shall terminate the parental right of parental custody, if it declared the accused guilty in a wilful criminal offence to the injury of his child and establishes that the conditions stipulated in Section 88 (1) of Act IV of 1952 on Marriage, family and guardianship.

(2) In the absence of the conditions specified in subsection (1) the court shall reject the motion.

(3) The court shall refer the enforcement of a claim to terminate the parental right of custody to other legal means, if the adjudication of the motion considerably delayed the conclusion of the procedure, or if the adjudication of the motion on its merits in criminal proceedings is precluded due to other conditions.

Adjudication of an administrative offence

Section 337 (1) If, based on the results of the hearings, the court finds that the charge in the indictment is an administrative offence, and acquits the accused thereof, the court shall adjudicate the administrative offence.

(2)[443] In the case of subsection (1), the court may order confiscation and adjudicate the civil claim on its merits.

(3)[444] If the accused was indicted due to several criminal offences, and the court establishes that any of the criminal offences in the indictment is an administrative offence, the court may terminate the procedure for this administrative offence if it has no significance for the purpose of liability as opposed to the graver criminal offence in the indictment.

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[441] The text of the first sentence of Section 334 was established by Section 192 of Act I of 2002, and its second sentence by Section 71 of Act II of 2003.

[442] The text of the first sentence of Section 335 (1) was established by Section 193 of Act I of 2002, and its second sentence by Section 72 of Act II of 2003.

[443] Section 337 (2) was established by Section 194 (1) of Act I of 2002.

[444] Section 337 (3) was enacted by Section 194 (2) of Act I of 2002.

Bearing the cost of criminal proceedings

Section 338 (1) The court shall order the accused to pay the cost of the criminal proceedings, if the accused is declared guilty, or the liability of the accused is established in committing an administrative offence. This provision shall not apply to the cost of criminal proceedings borne by other parties pursuant to the law.

(2) The accused may only be ordered to bear the cost of criminal proceedings incurred in connection with the act or the part of the facts of the case regarding which the guilt or the liability of the accused has been established. The accused may not be ordered to bear the part of the cost of criminal proceedings incurred unnecessarily, for reasons other than the omission of the accused.

(3)[445] The court orders each accused declared guilty to bear the cost of criminal proceedings separately. If the cost of criminal proceedings, or a part thereof cannot be allocated by the accused persons declared guilty, the court shall order all the accused to bear the cost of criminal proceedings jointly and severally.

(4) The court may relieve the accused from paying a part of the cost of criminal proceedings, if such cost is unreasonably high compared to the gravity of the criminal offence.

Section 339 (1) Of the cost of criminal proceedings specified in Section 74 (1) *a)*, the state shall bear the amount which the accused may not be ordered to pay pursuant to Section 338, as well as the costs which the accused needs not reimbursed pursuant to Section 74 (3).

(2)[446] The state shall also bear the cost incurred because the accused is deaf, numb or blind, or cannot command the Hungarian language, or used his regional or minority language in the course of the proceedings.

(3) If prosecution was represented by the prosecutor and the court acquits the accused, within thirty[447] days after the decision has become final, the state shall – to the extent specified in a separate legal regulation – reimburse the out-of-pocket expenses of the accused as well as the fee of his defence counsel not paid in advance during the proceedings and the out-of-pocket expenses of such defence counsel.[448]

(4) Regardless of the acquittal of the accused or the termination of the procedure, the accused shall be ordered to bear the cost incurred due to his omission.

Section 340 (1) The court shall order the accused to pay the out-of-pocket expenses of the private party and the representative thereof and the fee of the latter, if it accepts the civil claim enforced by the private party. In the event of partial acceptance, the accused shall be ordered to pay the proportionate part of such cost; otherwise the cost shall be borne by the private party.

(2) The court shall order the accused to pay the out-of-pocket expenses of the substitute private accuser and the representative thereof and the fee of the latter, if prosecution is represented by the substitute private accuser and the court declares the accused guilty.

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[445] The text of the second sentence of Section 338 (3) was established by Section 195 of Act I of 2002.

[446] The text of Section 339 (2) és (3) was established by Section 196 of Act I of 2002.

[447] Pursuant to Section 88 (2) c) of Act II of 2003, in Section 339 (3) the words “within fifteen days” were amended to “within thirty days”.

[448] Please refer to Joint Decree No. 26/2003. (VII. 1.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance.

Title III

TASKS OF THE COURT OF FIRST INSTANCE AND THE PROSECUTOR AFTER AN APPEAL

Section 341 (1) Appeals not permitted by law, or lodged by a non-eligible party, or are belated shall be rejected by the court of first instance. The court may omit the adoption of a decision concerning the consideration of an appeal against decisions specified in Section 346 (5), and an appeal against final decisions.

(2) If the deadline to lodge an appeal has lapsed with respect to all entitled parties, the chairperson of the panel of the court of first instance – through the prosecutor working with the court of appeal – shall submit the documents without delay, but not later than within thirty days to the court of appeal.

(3) If the appeal is based on a procedural irregularity the circumstances of which are not clearly specified in the documents, the presiding judge shall provide information thereof in the submission.

(4) The prosecutor working with the court of appeal shall send the documents, together with his motion, to the court of appeal within fifteen days, or, if the case is especially complex or has an extensive scope, within thirty days.

Title IV

TRIAL IN THE ABSENCE OF THE PROSECUTOR OR THE DEFENCE COUNSEL

Section 342[449] (1) If this Act permits holding the trial in the absence of the prosecutor or the defence counsel, the provisions stipulated in Titles I and II shall be applied with the deviations specified in this Section.

(2) If the prosecutor is not present at the trial, the charges shall be read out from the indictment by the court.

(3)[450]

(4) If the defence counsel is not present at the trial, the accused may speak for the defence.

(5) If the accused and the defence counsel did not lodge an appeal against a conclusive decision communicated by way of an announcement, the court shall notify the prosecutor absent from the trial by way of serving the purview. If the court notifies the prosecutor of its conclusive decision by way of serving the purview, the prosecutor may announce its appeal within five days. No justification may be admitted for defaulting this deadline.

Title V

DEROGATION RELATING TO THE SUBSTITUTE PRIVATE ACCUSER

[449] The text of Section 342 was established by Section 197 of Act I of 2002.

[450] Section 342 (3) was annulled by Resolution No. 14/2002. (III. 20.) AB of the Constitutional Court, therefore this provision will not enter into force.

Section 343 (1) The representative of the substitute private accuser shall be obliged to attend the trial. Should the representative of the substitute private accuser fail to attend the trial without having immediately provided sufficient excuse in advance, the court shall postpone the trial at his expense and may impose disciplinary penalty on the representative.

(2)[451] If the legal representation of the substitute private accuser ceases during the procedure, within eight days of gaining cognisance thereof the court shall request the substitute private accuser to arrange for legal representation within eight days. In the event that the substitute private accuser fails to arrange for a power of attorney within the set deadline, the procedure shall be terminated. The substitute private accuser shall be warned of this fact.

(3) If the substitute private accuser cannot arrange his legal representation, because, based his income and property, he is presumably unable to cover the legal fees, and has certified the above in compliance with the provisions of the relevant legal regulation, upon the request of the substitute private accuser the court may grant personal exemption from paying the costs.[452] In the event of a personal exemption from paying the costs

a) at the request of the substitute private accuser, the court appoints a lawyer of a law firm to act as a representative,

b) the substitute private accuser and his appointed representative shall be entitled to the right of prenotation of duty during the one-off issue of the copy of the documents of the criminal case,

c) the fee and verified out-of-pocket expenses of the officially appointed representative is advanced by the state.

(4) To the fee of the appointed representative of the substitute private accuser, the legal regulation pertaining to the appointed defence counsel shall be applied.

(5) The substitute private accuser may not extend the charges.

(6) The closing arguments shall be made by the representative of the substitute private accuser.

(7) The substitute private accuser may not lodge an appeal against the conclusive decision of the court of first instance to the benefit of the accused.

(8) If prosecution is represented by the substitute private accuser at the announcement of the appeal, the court of first instance shall submit the documents directly to the court of appeal.

Section 344[453] If the accused has been acquitted or the procedure against him terminated, the part of the cost of criminal proceedings specified in Section 74 (1) which was incurred after the commencement of the actions of the substitute private accuser, shall be borne by the substitute private accuser.

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[451] Section 343 (2)–(4) was enacted by Section 73 of Act II of 2003, which amended the original numbering of subsections (2)–(5) to subsections (5)–(8).

[452] Please refer to Joint Decree No. 9/2003. (V. 6.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance.

[453] The text of Section 344 was established by Section 74 of Act II of 2003.

Chapter XIV
PROCEDURE OF THE COURT OF APPEAL

Title I

GENERAL RULES

Provisions applicable in the course of the appeal proceeding

Section 345 The provisions stipulated in Chapters XI–XIII of this Act shall be applied to the procedures of the court of appeal with the deviations set forth in this Chapter.

The right of appeal and the effect of the appeal

Section 346 (1) The judgement of the court of first instance may be appealed at the court of appeal. The appeal against the ruling terminating the procedure, issued by the court of first instance based on a trial shall be governed by the rules of the appeal against a judgement.

(2) The appeal against the judgement of the court of first instance may involve any of the dispositions therein or exclusively the justification thereof.

(3) An appeal may be lodged for legal or factual reasons.

(4) An appeal suspends the part of the judgement to become final which is to be reviewed by the court of appeal owing to the appeal.

(5) The following may not be appealed

a) the suspension of the procedure under Section 266 (3),

b) the termination of the procedure under Section 332 (1) *d)*,

c) the rejection of the statement on legal remedy made after the acknowledgement of a decision.

Section 347 (1) The non-conclusive ruling of the court of first instance may be appealed, unless prohibited by this Act. The arrangement of the appeal against the ruling shall be governed by the rules of appeal against a judgement. If evidence is taken, the court of appeal shall adjudicate the appeal against the ruling at a trial, otherwise at a panel session.

(2) The ruling may be enforced regardless of an appeal, unless this Act stipulates that the appeal has a delaying effect. In especially exceptional cases, both the court of first instance and the court of appeal may suspend the enforcement of the ruling.

The scope of the review

Section 348 (1)[454] Unless an exception is provided for in this Act, the court of appeal shall review the judgement contested by the appeal, together with the preceding court procedures. The dispositions of the judgement concerning the substantial facts of the case, the establishment of guilt, the classification of the criminal offence, the imposition of punishment and the application of measures shall be reviewed by the court of appeal regardless of the person of the appellant and the reason for the appeal. The court of appeal shall decide ex officio on the auxiliary issues related to the above, thus, for example, on the dispositions concerning the civil claim and the cost of criminal proceedings.

(2) If the indictment contained charges against the accused for several criminal offences, in the judgement only that disposition concerning acquittal or the termination of the procedure may be reviewed, against which the appeal has been lodged.

(3) If the appeal concerns exclusively the disposition in the judgement concerning the termination of seizure, a civil claim, the termination of a parental right of custody or the cost

[454] The text of the second sentence of Section 348 (1) was established by Section 198 of Act I of 2002.

of criminal proceedings, the court of appeal shall only review the relevant part of the judgement.

(4) In the appeal against the justification of a judgement, only legal or factual statements or other argumentation or evaluative statements may be contested.

Section 349 (1) If the judgement of the court of first instance contains dispositions on several persons accused, the court of appeal shall only review the part of the judgement regarding the accused concerned by the appeal.

(2) The court of appeal shall acquit the accused not concerned by the appeal and – if the classification of the criminal offence is degraded – commute the unlawfully grave punishment or the measure imposed in lieu of a punishment, or repeal the dispositions in the judgement of the court of first instance regarding such accused and terminates the procedure against him or orders the court of first instance to conduct a new procedure, if it adopts the same decision regarding the accused whom the appeal concerns.

Section 350 In the event that the judgement is found unsubstantiated, the court of first instance may be ordered to conduct a new procedure pursuant to Section 349 (2), if this may result in the acquittal of the accused not concerned by the appeal, or the commutation of the unlawfully grave punishment of the accused owing to the degraded classification of the criminal offence, or the termination of the procedure.

Restrictions as to the facts of the case in the judgement of the court of first instance

Section 351 (1)[455] The court of appeal shall decide based on the facts of the case established by the court of first instance, unless the judgement of the court of first instance is not substantiated, or the appeal makes statements on new facts or reference to new evidence [Section 323 (3)], and therefore, the court of appeal conducts an evidentiary procedure.

(2) The judgement of the court of first instance shall be regarded unsubstantiated, if

a) the facts of the case are not elucidated,

b) the court of first instance has failed to establish the facts of the case, or established them insufficiently,

c) the established facts of the case are contrary to the contents of the documents,

d) from the facts established, the court of first instance has drawn inaccurate conclusions.

Section 352 (1) In the event of a non-substantiated judgement [Section 351 (2)], the court of appeal

a) shall supplement or correct the facts of the case, if the entirety of, or the correct facts of the case can be ascertained from the contents of the documents, factual conclusions or evidence taken;

b)[456] may ascertain the facts of the case differently than those established by the court of first instance, if the accused may be acquitted or the procedure terminated based on the evidence taken.

(2) The court of appeal shall review the judgement of the court of first instance based on the corrected, supplemented, or different facts of the case.

(3)[457] In the case of subsection (1), the court of appeal may evaluate the proofs differently than the court of first instance only in connection with the facts concerning which it have taken evidence.

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[455] The text of Section 351 (1) was established by Section 199 of Act I of 2002.
[456] Section 352 (1) b) was established by Section 200 (1) of Act I of 2002.
[457] Section 352 (3) was enacted by Section 200 (2) of Act I of 2002.

Evidentiary procedure by the court of appeal

Section 353[458] (1) In the course of the procedure of the court of appeal, evidence may be taken ex officio for reasons specified in Section 351 (2), and upon a motion pursuant to the provisions of Section 323 (3).

(2) Evidence may be taken in order to remedy the failure of the court of first instance to substantiate its judgement, if the facts of the case have not been elucidated or are insufficient. With the exception of the case stipulated in subsection (3) a trial shall be set for taking evidence.

(3) Should it be necessary to hear the accused in order to further clarify the conditions of imposing the punishment, the court of appeal shall hold a public session.

Restriction against severity

Section 354 (1)[459] The guilt of an accused having been acquitted by the court of first instance and the punishment or the measure imposed on such accused in lieu of the punishment may only be increased if an appeal was lodged to the detriment of the accused. This provision shall also apply if, the evidence taken by the court of appeal pursuant to Section 353 leads to the establishment of a graver criminal offence.

(2) An appeal lodged to the detriment of the accused shall mean an appeal requesting the establishment of the guilt of the accused, or a graver classification of the criminal offence, or increasing the punishment or a stricter measure imposed in lieu of a punishment, or the imposition of a punishment instead of the said measure.

(3) If the court of first instance – after imposing a punishment or a measure imposed in lieu of thereof for a criminal offence – acquits the accused from the charges pressed for any criminal offence, or terminates the procedure related to such accused, the punishment or the measure imposed in lieu of thereof for a criminal offence may only be increased or made stricter, respectively, if the appeal – lodged to the detriment of the accused exclusively against his acquittal or the termination of the procedure – against the disposition in the judgement concerning the acquittal or the termination of the proceedings succeeds.

(4)[460] Owing to the restriction against severity, in the absence of an appeal to the detriment of the accused, the court of appeal may not impose

a) a punishment on a person whose case had been adjudicated in the first instance by way of an independently applied measure,

b) compulsory labour service or imprisonment instead of a fine, or imprisonment instead of compulsory labour service,

c) imprisonment to be served instead of suspended imprisonment; a longer term of imprisonment instead of imprisonment to be served (even if the former is suspended),

d) suspended imprisonment instead of a fine or compulsory labour service to be effectuated,

e) a fine to be effectuated instead of a suspended fine, a higher amount of fine instead of a fine to be effectuated (even is the former is suspended),

f) an ancillary punishment not applied by the court of first instance,

g) primary punishment instead of the ancillary punishment enforced in lieu of principal punishment in the procedure of first instance.

(5) If the court of first instance made no disposition concerning confiscation or forfeiture of property despite the provisions of law, but the facts of the case contain the data required for the decision, such decision may also be adopted by the court of appeal, even if no appeal has been lodged to the detriment of the defendant.

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[458] The text of Section 353 was established by Section 201 of Act I of 2002.
[459] The second sentence of Section 354 (1) was enacted by Section 202 (1) of Act I of 2002.
[460] Section 354 (4)–(6) was enacted by Section 202 (2) of Act I of 2002.

(6) If the court of first instance applied a legal consequence due to an administrative offence [Section 337 (1)], this legal consequence may only be made stricter in the course of the appeal proceeding, if the appeal was lodged against the disposition of acquittal or requests the imposition of stricter legal consequence for the administrative offence.

Section 355[461] In the case of life-long imprisonment, the extension of the date of the first release on parole or the exclusion of the possibility of granting parole shall be regarded as an increase of the punishment and the appeal lodged with this aim shall be regarded as an appeal to the detriment of the accused.

Title II

THE APPEAL PROCEEDING

Comments on the appeal

Section 356 Until the submission of the documents, those concerned by the appeal may make comments regarding the appeal at the court of first instance, and thereafter at the court of appeal.

Withdrawal of the appeal

Section 357 (1) The appellant may withdraw the appeal until the panel session of the court of appeal held for the purpose of making a decision.

(2) After the submission of the documents, the appeal of the prosecutor may be withdrawn by the prosecutor working with the court of appeal. If the prosecutor withdraws the appeal and no one else has lodged an appeal, the prosecutor shall return the documents, together with his statement, to the court of first instance.

(3) The appeal lodged in favour of the accused by another party may only be withdrawn by the appellant with the consent of the accused. This provision shall not apply to the appeal of the prosecutor.

(4) One withdrawn, the appeal may not be submitted again.

Preparations for adjudicating an appeal

Section 358 (1) The chairperson of the panel of the court of appeal

a) takes measures – if necessary – to obtain missing documents or information, supplement documents, obtain new documents, as well as to forward the documents to the prosecutor or request information from the court of first instance,

b) requests the appellant to supplement the appeal within eight days, if the reason for considering the procedure of the court of first instance or the judgement detrimental cannot be clearly established therefrom,

c) returns the documents to the court of first instance, if the appeals have been withdrawn,

d)[462] serves the appeal lodged by another party and the motion of the prosecutor working with the court of appeal on the accused and the defence counsel,

e) sends the justification of the appeal made by the accused or the defence counsel before the court of appeal to the prosecutor working with the court of appeal.

(2) Prior to the trial, the presiding judge may order that evidence be taken and may also adopt the measures required therefor, with special regard to summoning a witness or appointing an expert.

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[461] The text of Section 355 was established by Section 203 of Act I of 2002.

[462] The text of Section 358 (1) d) was established by Section 204 of Act I of 2002.

Rejection of the appeal, transfer, suspension of the proceeding

Section 359 (1) The court of appeal shall reject the appeal at the panel session, if the court of first instance omitted the rejection of the appeal in the cases listed in Section 341 (1).

(2) If the court of appeal is not competent or has no jurisdiction in the adjudication of the appeal, it shall transfer the documents to the court of competence or jurisdiction at the panel session.

(3)[463] The court of appeal shall suspend the proceeding at the panel session, if Section 266 (1) is deemed applicable. The proceedings may only be suspended under Section 188 (1) *b)* if the trial cannot be held in the absence of the accused.

Setting a panel session, a public session and a trial

Section 360 (1) The presiding judge shall set a date for a panel session, public session or trial for the adjudication of the appeal, to be held not later than within thirty days after receiving the case.

(2) The presiding judge may set a public session or trial in a case falling in the domain of a panel session, if he deems this indispensable for the adjudication of the appeal.

(3) The court of appeal may adopt the decision that may be made at a panel session also at a public session or trial, if the underlying reason is perceived at the public session or trial.

The public session

Section 361 (1)[464] The court of appeal shall hold a public session, if – in the case of a non-substantiated judgement – the entirety of, or correct facts of the case can be established from the content of the documents or factual conclusions, or if the accused needs to be heard in order to further elucidate the circumstances of the imposition of the punishment.

(2) The court of appeal shall summon those whose hearing it deems necessary to the public session, and arranges for bringing the imprisoned accused to court.

(3)[465] The procedure at public sessions shall be governed by the rules pertaining to holding the trial (Section 366), provided that – unless requested by those present – the presentation of the case may be omitted.

Section 362 (1) The court of appeal shall notify the public session to the prosecutor and – unless they have been summoned – the substitute private accuser, the accused, the defence counsel and the victim.

(2) The prosecutor is not obliged to attend the public session.

The trial[466]

Section 363 (1) In the course of the proceedings by the court of appeal, the provisions set forth in Chapter XIII shall be applied with the deviations set forth hereunder.

(2) With the exception of the case specified in Section 353 (3), a trial shall be set for taking evidence.

Section 364 (1) The accused shall be summoned to the trial, if the court of appeal takes evidence at the trial or deems the presence of the accused necessary. If the accused is detained, the court of appeal shall arrange that the accused is brought to court. The summons shall be served on the accused at least five days before the date of the trial.

(2) In the case of statutory defence, the defence counsel shall be summoned to the trial.

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[463] The text of the second sentence of Section 359 (3) was established by Section 205 of Act I of 2002.
[464] Section 361 (1) was established by Section 206 (1) of Act I of 2002.
[465] Section 361 (3) was enacted by Section 206 (2) of Act I of 2002.
[466] The subtitle and Sections 363–365 were established by Section 207 of Act I of 2002.

(3) The accused shall be notified of the trial, even if he needs not be summoned thereto. An accused who is detained shall be brought to the trial at his own request or the request of his defence counsel.

(4) A notification shall be sent of the trial to the prosecutor, in the case of statutory defence the defence counsel, the victim and all parties who have lodged an appeal. The notification shall be sent leaving sufficient time for its service five days prior to the trial at the latest.

Section 365 (1) The trial may be held in the absence of the accused, if

a) the accused at liberty has been properly notified,

b) the accused has failed to report a change in address and therefore, could not be notified of the trial.

(2) The trial may also be held in the absence of a summoned accused, if the accused had announced in advance that he wished not attend or no appeal had been lodged to the detriment of the accused.

(3) In the cases specified in subsections (1) and (2), no justification may be admitted for not attending the trial.

Section 366[467] (1) At the trial, the judge designated by the presiding judge shall present the case. He shall recite the judgement of the court of first instance, the appeal and the comments thereon, and outline the facts in the documents required to review the case. Unless requested by those present or deemed necessary by the court of appeal, the recital of the justification for the judgement of the court of first instance may be omitted.

(2) The members of the court, the prosecutor, the accused, the defence counsel and the victim may request the supplementation of the recital.

(3) Thereafter, those entitled to appeal [Section 324 (1)] shall be enabled to put forward their propositions and motions.

(4) Evidence shall be taken after the presentation of the case and the motions stipulated in subsection (3).

(5) After the case has been presented and evidence taken, those entitled shall present their closing arguments and give their speech. It is the appellant who shall present his closing argument first. If the prosecutor has also lodged an appeal, the closing argument shall be first presented by the prosecutor.

(6) If the court of appeal establishes prior to the delivery of the conclusive decision that the classification of the act established by the court of first instance may need to be changed, it shall act in compliance with the provisions set forth in Section 321 (4).

Communication of the conclusive decision

Section 367[468] (1) The conclusive decision of the court of appeal shall also be communicated to the appellant.

(2) The court of appeal shall serve its conclusive decision on the prosecutor, the accused, the defence counsel, the victim and to the party concerning whom the decision contains a disposition.

Decision on coercive measure

Section 368[469] In the event that the judgement of the court of first instance is repealed, the court of appeal shall decide on pre-trial detention, home curfew, house arrest, temporary

[467] The text of Section 366 was established by Section 208 of Act I of 2002.
[468] The text of Section 367 was established by Section 209 of Act I of 2002.
[469] The text of Section 368 was established by Section 210 of Act I of 2002.

involuntary treatment in a mental institution and withdrawal of the travel document in a repealing ruling.

Measures after the adjudication of the appeal [470]

Section 369 (1) After the adjudication of the appeal, the court of appeal shall serve the estreats of its decision, and the returns the documents of the case, together with the estreat of its decision and the minutes taken at the trial or public session to the court of first instance.

(2) If the court of appeal reprimanded the accused in the absence thereof (Section 71 of the Penal Code), the effectuation thereof shall be arranged by the chairperson of the panel of the court of first instance.

Title III

DECISIONS OF THE COURT OF APPEAL

Section 370 (1) In the cases stipulated by this Act, the court of appeal shall uphold, modify or repeal the judgement of the court of first instance, or rejects the appeal.

(2) Upon modifying the judgement of the court of first instance, the court of appeal shall decide in the form of a judgement, otherwise by way of rulings.

(3) The justification of the decision shall identify the appellant and the reason for the appeal and explain the reasons underlying the decision of the court.

Upholding the judgement of the court of first instance

Section 371 (1)[471] The court of appeal shall uphold the judgement of the court of first instance, if the appeal is not substantiated, or the judgement needs not be repealed otherwise, or needs not be modified or – pursuant to the restriction against severity or the provisions of subsection (2) – may not be modified.

(2)[472] In the event that the facts of the case have not been supplemented or corrected [Section 352 (1) a)] no minor changes may be effected concerning the punishment imposed in the judgement of the court of first instance within the sentence-limits permitted by law.

(3) The ruling of the court of appeal upholding the judgement of the court of first instance shall be a conclusive decision.

(4) The justification of the decision shall briefly describe the reasons for upholding the judgement.

Changing the judgement of the court of first instance

Section 372[473] (1) If the court of first instance misapplied a legal regulation and the judgement needs not be repealed, the court of appeal shall modify the judgement and adopts a decision in compliance with the law.

(2) The court of appeal may also modify the judgement of the court of first instance, if in compliance with Section 352 or 353, the appeal proceeding remedied the failure of the court of first instance to substantiate its judgement.

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[470] The subtitle and Section 369 were established by Section 211 of Act I of 2002.

[471] The text of Section 371 (1) was established by Section 212 of Act I of 2002.

[472] Section 371 (2) was enacted by Section 212 of Act I of 2002, which concurrently amended the original numbering of subsections (2) and (3) to subsections (3) and (4).

[473] Pursuant to Section 213 of Act I of 2002, the numbering of the original Section 372 was amended to subsection 372 (1), and concurrently a new subsection (2) was inserted in Section 372.

Repealing the judgement of the court of first instance

Section 373[474] (1) At the panel session, the court of appeal

I. shall repeal the judgement of the court of first instance and terminate the procedure,

a) upon the death of the suspect, statutory limitation or pardon,

b) if the court of first instance had delivered its judgement in the absence of a private motion, request or complaint required to conduct the procedure,

c) the action has already been adjudicated by a final decision;

II. shall repeal the judgement of the court of first instance and orders the court of first instance to conduct a new procedure, if

a) the court was not lawfully formed,

b) the judgement was delivered with the participation of a judge excluded therefrom by law, or a judge who was not present at the trial from the outset,

c)[475] the court transgressed its competence, adjudicating a case falling within the scope of military justice or the exclusive jurisdiction of another court,

d) the trial was held in the absence of a person whose presence is statutory by law,

e)[476]

III. shall repeal the judgement of the court of first instance, if the court of first instance proceeded in the absence of a legitimate indictment;

IV. shall repeal the judgement of the court of first instance and

a) send the documents to the prosecutor, if the prosecutor had motioned for the procedure specified in Chapter XXV in the absence of the preconditions stipulated by law,

b) order the court of first instance to conduct a new procedure, if the court had conducted the procedure specified in Chapter XXV in the absence of the preconditions stipulated by law.

(2)[477] The judgement needs not be repealed under subsection (1) II. *a)*, if the conclusion of the court of appeal that the case should have been adjudicated by the panel of court of first instance is based on the reclassification of the criminal offence.

(3) Pursuant to subsection (1) II. *d)*,

a) if the court of appeal establishes that – due to the reclassification of the criminal offence – the attendance of the defence counsel should have been statutory at the trial of the court of first instance [Section 242 (1) *b)*], the judgement shall only be repealed, if the prosecutor had originally lodged the indictment due to a criminal offence punishable by five years' or more imprisonment, or in the course of the procedure of the first instance, the court established that the classification may be graver than that indicated in the indictment,

b) the judgement may not be repealed due to the absence of the defence counsel, if the court of first instance erroneously classified the action as criminal offence punishable by five years' or more imprisonment.

Section 374 (1)[478] If the court of appeal terminates the procedure under Section 373 (1) I. *a)*, or suspends the procedure for the reason specified in Section 188 (1) *b)*, the disposition in the judgement of the court of first instance regarding confiscation, forfeiture of property and the establishment of a civil claim

a) shall be upheld, if no appeal has been lodged against such dispositions or the appeal is not substantiated,

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[474] Pursuant to Section 214 (1) of Act I of 2002, the numbering of the original Section 373 was amended to subsection 373 (1).

[475] Section 373 (1) II. c) was established by Section 214 (1) of Act I of 2002.

[476] Pursuant to Section 308 (2) of Act I of 2002, Section 373 (1) II. e) shall be repealed and shall not enter into force.

[477] Section 373 (2) and (3) was enacted by Section 214 (2) of Act I of 2002.

[478] The introductory part of Section 374 (1) was established by Section 215 (1) of Act I of 2002.

b) shall be modified and a lawful decision shall be adopted by the court of appeal, if the court of first instance misapplied a legal regulation in the judgement.

(2) Upon resuming the suspended procedure, the court of appeal shall repeal the disposition adopted under subsection (1).

(3)[479] The verdict of acquittal or the disposition of the judgement on acquittal needs not be repealed pursuant to Section 373 (1) II. *d)*, if the judgement was delivered in the absence of the accused or the defence counsel.

Section 375 (1)[480] The court of appeal shall repeal the judgement of the court of first instance and order the court of first instance to conduct a new procedure, in the event of a procedural irregularity not listed under Section 373 (1) II., which had a significant impact on conducting the procedure or the establishment of guilt, or the classification of the criminal offence, or the imposition of the sentence or application of a measure. Such irregularities are, in particular, if the persons participating in the procedure were prevented from or restricted in exercising their lawful rights, or the court of first instance failed to meet its obligation to provide justification. The court of appeal may also repeal the judgement of the court of first instance and order the court of first instance to conduct a new procedure, if the public was excluded from the trial for no lawful reasons.

(2) The verdict of acquittal or the disposition of the judgement on acquittal needs not be repealed, if the procedural irregularity specified in subsection (1) restricted the accused or the defence counsel in exercising their lawful rights.

(3)[481] The judgement needs not be repealed under subsection (1), if the court failed to hold a preparatory session despite the statutory legal stipulation.

(4) If the court of first instance failed to make a disposition concerning a seized item, confiscation or forfeiture of property despite a legal stipulation thereon, and the data required for such decision cannot be clarified by taking evidence in the course of the appeal proceeding, the court of appeal shall order the court of first instance to conduct the special procedure described in Section 569 (1).

Section 376[482] (1) The court of appeal shall repeal the judgement of the court of first instance and order the court of first instance to conduct a new procedure, if the judgement is unsubstantial and this cannot be remedied in compliance with Section 352, and this had a significant impact on the establishment of guilt, imposition of a sentence or the application of a measure.

(2) The disposition of the judgement on acquittal needs not be repealed, if only a single part of the judgement is unsubstantiated.

Section 377 The court of appeal shall repeal the judgement of the court of first instance and terminate the procedure concerning a criminal offence having no significance for the purpose of liability of the accused.

Section 378 (1)[483] The justification of the repealing ruling shall contain the reason for the repeal, and guidelines for the court of appeal concerning the repetition of the procedure.

(2) The court of appeal may order that the case be proceeded by another panel of the court of first instance or – in exceptional cases – by another court.

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[479] Section 374 (3) was established by Section 215 (2) of Act I of 2002.
[480] Section 375 (1) was established by Section 216 (1) of Act I of 2002.
[481] Section 375 (3) and (4) was enacted by Section 216 (2) of Act I of 2002.
[482] The text of Section 376 was established by Section 217 of Act I of 2002.
[483] The text of Section 378 (1) was established by Section 218 of Act I of 2002.

Disposition concerning the civil claim and the ownership right of the other interested party [484]

Section 379 (1) If the court of appeal overrules only the disposition of the judgement of the court of first instance concerning a civil claim, and finds the appeal substantial, it shall modify the relevant part of the judgement. If the adjudication of the civil claim on its merits delayed the procedure, it shall repeal the relevant disposition in the judgement of the court of first instance and refer the civil claim to other legal ways. If the appeal not substantial, the court of appeal shall uphold the judgement of the court of first instance.

(2) The court of appeal may also adjudicate the civil claim on its merits, if – based on the appeal of the prosecutor – it overruled the disposition in the judgement of the court of first instance which referred the civil claim to other legal ways.

(3)[485] If the other interested party lodged an appeal against the disposition in the judgement of the court of first instance concerning confiscation or forfeiture of property and based on this or any other appeal, the disposition in the judgement of the court of first instance concerning confiscation or forfeiture of property – affecting the ownership right of the other interested party –

a) has not been modified or repealed by the court of appeal, the court of appeal shall send the documents to the court having competence and jurisdiction to adjudicate civil case regarding the ownership-related claim of the other interested party in the first instance,

b) has been modified by the court of appeal, without omitting the confiscation or forfeiture of property, the court of first instance shall ensure that the decision of the court of appeal is notified to the other interested party together with the information regarding the right of the other interested party stipulated in Section 55 (3).

(4) If the confiscation or forfeiture of property affecting the ownership right of the other interested party is ordered by the court of appeal, the purview of the decision shall contain the information regarding the right of the other interested party stipulated in Section 55 (3).

(5) In the case specified in subsection (1), the court of first instance proceeding in the civil suit shall adjudicate the ownership claim of the other interested party within the framework of the appeal lodged by the other interested party in the course of the criminal proceedings, in compliance with the Code of Civil Procedure.

Termination of the parental right of custody

Section 380 If the court of appeal overruled only the disposition in the judgement of the court of first instance concerning the termination of the parental right of custody, the provisions of Section 379 (1) shall apply, as appropriate.

Cost of criminal proceedings

Section 381 (1) In its decision, the court of appeal shall establish the costs of criminal proceedings incurred during the appeal proceeding, and if necessary, make a disposition on bearing such costs.

(2) The court of appeal may exempt the accused declared guilty from the payment of the entirety or a part of costs of criminal proceedings incurred during the appeal proceeding if the appeal of the accused or the defence counsel was successful.

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[484] The subtitle was established by Section 219 (1) of Act I of 2002.

[485] Section 379 (3)–(5) was enacted by Section 219 (2) of Act I of 2002.

Title IV

APPEAL AGAINST THE NON-CONCLUSIVE RULING DELIVERED IN THE COURSE OF THE APPEAL PROCEEDING [486]

Section 382 The legal remedy granted against a non-conclusive ruling in the course of the proceeding of the court of appeal, which would be subject to an appeal in a procedure of the first instance, the provisions of Section 326 and Titles I to III shall be applied with the deviations set forth in this Title.

Section 383 (1) A ruling delivered in the course of the proceeding of the court of appeal ordering or terminating a coercive measure, or the review of the period of a coercive measure after more than one year, and a non-conclusive ruling delivered in the course of the appeal proceeding that would be subject to an appeal in a procedure of the first instance, may be appealed

a) at a tribunal, if the ruling was delivered by a county court,

b) at the Supreme Court, if the ruling was delivered by a tribunal.

Section 384 The appeal shall be adjudicated by the tribunal or the Supreme Court at a panel session.

Chapter XV[487]

REPEATED PROCEDURE

General provisions [488]

Section 385[489] In the course of the procedure repeated owing to the real of the decision of the court, the provisions stipulated in Chapter XIII shall be applied with the deviations specified in this Chapter.

Section 386[490] (1) In the repeated procedure, the court shall follow an expedited procedure.

(2) In the repeated procedure the court shall adjudicate the case by taking into

consideration the reasons and comments of the decision repealing the case.

(3) When reviewing the decision delivered in a repeated procedure, the court of appeal shall not be bound by the reasons and comments explained in the repealing decision, even if the facts of the case have remained unchanged.

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[486] The text of Title IV and Sections 382–384 were established by Section 220 of Act I of 2002.

[487] The indication of "Chapter XV" preceding Section 385 and the wording of the title of this Chapter were enacted by Section 221 (1) of Act I of 2002.

[488] The subtitle preceding Section 385 was enacted by Section 221 (2) of Act I of 2002.

[489] Sections 385 and 386 were established by Section 221 (2) of Act I of 2002.

[490] Pursuant to Section 308 (2) Act I of 2002, the original subtitle of Section 386 shall be repealed and shall not enter into force.

Title I[491]

REPEATED PROCEDURE OF THE COURT OF FIRST INSTANCE

Section 387[492] (1) After the commencement of the trial, the presiding judge recites the repealing decision of the court of appeal, the repealed decision of the court of first instance and the indictment.

(2) If the prosecutor modified the indictment after the decision of the court of first instance has been repealed, the prosecutor shall recite the modified indictment.

(3) If the accused does not wish to give testimony, the presiding judge may also read out the testimony of the accused given at the trial based on which the repealed decision had been delivered.

Section 388 (1) The questioning of the witness or hearing of the expert may be substituted by reading out the testimony of the witness given at the trial based on which the repealed decision had been delivered, and the minutes taken there on the expert opinion submitted thereto.

(2) Subsection (1) may not be applied if the judgement of the court of first instance was repealed if the judgement was not substantiated and the procedure of the court of appeal could not remedy this.

(3) Subsection (2) shall not be construed as a prohibition of reading out the witness testimony or expert opinion which does not pertain to the unsubstantiated part of the facts of the case in the judgement.

Section 389[493] (1) If no appeal has been lodged to the detriment of the accused, the repeated procedure may not establish the guilt of the acquitted accused, and may not increase the sentence imposed in the repealed judgement or make the measure imposed in lieu of punishment stricter.

(2) The provisions set forth in subsection (1) shall not apply, if

a) the judgement of the court of first instance was repealed for reasons stipulated in Section 373 (1) II. *a)* to *c)* or Section 376 (1),

b) based on new evidence revealed in the course of the repeated procedure the court established a new fact subject to a stricter punishment, provided that the prosecutor lodges a motion therefor,

c) owing to the extension of the indictment by the prosecutor, the guilt of the accused needs to be established in another criminal offence as well,

d) the judgement of the court of first instance was repealed in a review procedure, owing to a motion for review submitted to the detriment of the defendant.

(3) In the case specified in subsection (2), the repeated procedure may not establish the guilt of the accused, and increase the sentence imposed in the repealed judgement or make the measure imposed in lieu of punishment stricter, if the court of appeal repealed the judgement of the court of first instance pursuant to the provisions in Section 349 (2).

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[491] The words “Title I” of Chapter XV preceding Section 387 of this Act and the wording of the Title were enacted by Section 221 (3) of Act I of 2002.

[492] Sections 387–389 were established by Section 221 (4) of Act I of 2002.

[493] Pursuant to Section 308 (2) Act I of 2002, the original subtitle of Section 389 shall be repealed and shall not enter into force.

Title II[494]

REPEATING THE PROCEDURE OF THE COURT OF APPEAL

Section 390[495] In the event that the Supreme Court repeals the decision of the court of appeal and orders the court of appeal to conduct a new procedure, such new procedure of the court of appeal shall be governed by the provisions stipulated in Title I as appropriate.

Title III[496]

TRIAL UPON THE SUBSEQUENT CONSOLIDATION OF CASES

Section 391[497] (1) The trial set pursuant to Section 568 (3) shall be governed by the provisions stipulated in this Section.

(2) After the commencement of the trial, the presiding judge recites the decision of the court concerning the subsequent consolidation and the decisions adopted in the basic cases.

(3) Based on the trial, the court shall terminate the probation, repeal the disposition concerning the sentence for a criminal offence committed prior to or during the probation and imposes concurrent sentences.

(4) If, based on the trial, the court ascertains that the subsequent consolidation was inappropriate, it shall repeal the ruling ordering the consolidation.

PART FOUR [498]

Chapter XVI

RE-TRIAL

Reasons for re-trial [499]

Section 392[500] (1) An act adjudicated by a final judgement of a court (basic case) may be subject to re-trial, if

a) new evidence is found – whether or not concerning a fact emerged in the basic case – which makes probable that

1. the defendant shall be acquitted, the sentence imposed shall be significantly commuted, or a measure shall be applied instead of a punishment, or the criminal proceedings shall be terminated,
2. the guilt of the defendant shall be established, or a significantly stricter sentence shall be imposed, or punishment shall be applied instead of a measure, or the measure imposed in lieu of punishment shall be made significantly stricter;

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[494] The words “Title II” preceding Section 390 of this Act and the wording of this Title were enacted by Section 221 (5) of Act I of 2002.
[495] Section 390 was established by Section 221 (5) of Act I of 2002.
[496] The words “Title III” preceding Section 391 of this Act and the wording of this Title were enacted by Section 221 (6) of Act I of 2002.
[497] Section 391 was established by Section 221 (6) of Act I of 2002.
[498] The words “PART FOUR” preceding Section 392 of this Act and “Chapter XVI”, as well as the wording of the title of this Chapter were enacted by Section 222 of Act I of 2002.
[499] The subtitles preceding Sections 392, 395 and Section 397 were established by Section 222 of Act I of 2002.
[500] The text of Sections 392–404 were established by Section 222 of Act I of 2002.

b) more than one final judgements have been delivered against the defendant for the same act, or the defendant was not sentenced under his own name;

c) false or falsified evidence was used in the basic case;

d) in the basic case a member of the court, the prosecutor's office or the investigating authority violated their obligation by breaching the penal law;

e) pursuant to Chapter XXIV, the judgement in the basic case was delivered at a trial held in the absence of the defendant.

(2) The cases stipulated in subsection (1) *c)* and *d)*, may only be subject to re-trial, if

a) the commitment of the criminal offence indicated as the reason for re-trial has been established by a final judgement, or the delivery of such judgement is not precluded due to lack of evidence, and

b) the criminal offence influenced the decision of the court.

Section 393 The testimony of a person who, exercising his right of immunity, had refused to testify in the basic case shall also be construed as new evidence under Section 392 (1) *a)*.

Section 394 Re-trial to the detriment of the defendant shall only apply in the life of the defendant and within the statutory limitation. The fact that the sentence of the defendant shall not be an obstacle to the re-trial, while a re-trial to the benefit of the a defendant shall not be precluded because the punishability of the defendant is terminated.

A motion for re-trial

Section 395 (1) A motion for re-trial to the detriment of the defendant may be submitted by

a) the prosecutor,

b) the substitute private accuser, in order to establish the guilt of an acquitted accused.

(2) A motion for re-trial to the benefit of the defendant may be submitted by

a) the prosecutor,

b) the defendant,

c) the defence counsel, unless this was prohibited by the defendant,

d)[501] the legal representative of a juvenile offender defendant,

e) against an order for involuntary treatment in a mental institution – even without the consent of the defendant – the legal representative and relative of the defendant,

f) after the death of the defendant, a relative in direct line, the brother or sister or the spouse of the defendant.

(3) In the case specified in Section 392 (1) *e)*, re-trial may only be motioned for to the benefit of the defendant and only when the defendant may be summoned from his place of stay.

Section 396 (1) The prosecutor shall not send to the court the motion for re-trial submitted by a non-eligible person, and shall advise him thereof in writing.

(2) A motion for re-trial shall indicate the reason and proofs of the motion. The indistinct indication of the reason shall not be an obstacle to the re-trial.

(3) If any court, other authority or official person acting in their own official competence gains cognisance of a circumstance based on which a motion for re-trial may be submitted, they shall notify thereof the prosecutor acting in the area of the court entitled to decide on the permissibility of a re-trial.

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[501] Section 395 (2) d) was enacted by Section 75 of Act II of 2003, which amended the numbering of subsections d) and e) to e) and f).

The re-trial procedure

Section 397 (1) The decision of the permissibility of a re-trial shall be adopted by the county court if the basic case was processed by the local court in the first instance and by the tribunal if the same was processed by the county court.

(2) Unless it is submitted by the prosecutor, the motion for re-trial shall be submitted to or recorded in minutes at the prosecutor acting in the area of the court entitled to decide on the permissibility of the re-trial. The prosecutor shall send the motion, together with his statement to the court within thirty days. The substitute private accuser shall submit the motion for re-trial directly to the court entitled to make the decision.

(3) Prior to sending the motion for re-trial, the prosecutor may order an investigation. If the prosecutor orders an investigation, the deadline stipulated in subsection (2) shall be calculated from the conclusion of the investigation.

(4) If the motion for re-trial is submitted pursuant to Section 392 (1) *e)* the re-trial procedure shall be expedited.

Section 398 (1) The court shall obtain the documents of the basic case, and may contact the prosecutor, if required for the decision concerning the permissibility of a re-trial, in order to find the means of evidence indicated by the party having submitted the motion. To the investigation the provisions stipulated in Chapter IX shall be applied as appropriate according to the nature of the re-trial procedure. Pre-trial detention, temporary involuntary treatment in a mental institution, home curfew and house arrest may not be ordered.

(2) The motion for re-trial shall be considered by the panel of second instance of the court at a panel session.

(3)[502] Until the commencement of the panel session under subsection (2), the motion for re-trial may be withdrawn. Should any of the parties listed in Section 395 (2) *b)* to *f)* withdraw the motion for re-trial before the prosecutor has sent it, together with his statement, to the court, the motion for re-trial needs not be forwarded to the court.

Section 399 (1) If court finds the motion for re-trial substantiated, it orders the re-trial and forwards the case to the court of first instance having proceeded in the basic case to repeat the procedure, or transfers the case to a court having competence and jurisdiction to conduct the repeated procedure, and simultaneously may suspend or interrupt the execution of any disposition made in the basic case, or order the necessary coercive measure. In the case specified in Section 392 (1) *b)*, the court may terminate the basic procedure itself under Section 332 (1) *c)*.

(2)[503] The court shall reject the motion for re-trial if it is not substantiated or was submitted by a non-eligible person. The court shall notify its decision to the party having submitted the motion for re-trial, and, unless it was submitted by the prosecutor, to the prosecutor as well.

(3) The court may omit to make a decision concerning the rejection of a motion submitted repeatedly with unchanged content by the same eligible party or by another party.

(4) In the event that the motion for re-trial is rejected, the cost of criminal proceedings shall be borne by the party having submitted the motion, or, if the motion for re-trial was submitted by the prosecutor, by the state.

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[502] Pursuant to Section 88 (2) c) of Act II of 2003, in the second sentence of Section 398 (3) the words “b) to e)” were amended to „b) to f)”.

[503] Pursuant to Section 88 (2) a) Act II of 2003, in Section 399 (2) the following text shall be repealed and shall not enter into force: “ submitted repeatedly with unchanged content by the same eligible party or by another party”.

Section 400 (1) The order for a re-trial shall not be subject to an appeal, while the rejection of a motion for re-trial may be appealed by the party having submitted the motion. The court may omit to make a decision on the adjudication of an appeal against a final decision.

(2) The appeal against the ruling of a county court shall be considered by the tribunal, while the appeal against the ruling of the tribunal shall be considered by the Supreme Court at a panel session.

Section 401 (1) Upon ordering a re-trial, the provisions of Chapters XI and XIII shall be applied with the deviations due to the nature of re-trial.

(2) Unless served earlier, the ruling ordering the re-trial shall be served on the defendant together with the summons to the trial; at the trial instead of the indictment, the presiding judge shall recite the judgement contested by the re-trial and the ruling ordering the re-trial.

Section 402 (1) If, depending on the outcome of the trial, the court establishes that the re-trial is substantiated, it shall repeal the judgement delivered in the basic case or the part of the judgement contested by the re-trial and delivers a new judgement; but shall reject the re-trial if it is found unsubstantiated.

(2) If a cumulative sentence was imposed in the basic case and the judgement ordering the cumulative sentence also needs to be repealed because the re-trial is substantiated, the court shall also repeal the judgement concerning the cumulative sentence and – if the conditions therefor are met – conducts the procedure for cumulating the sentences, unless this would be beyond competence specified in Section 574 (1); in adverse cases the court shall forward the documents to the court having competence to conduct the procedure for cumulating sentences.

(3) If the motion for re-trial was submitted to the benefit of the defendant, the judgement may not be modified to the detriment of the defendant.

(4) The decisions adopted after ordering the re-trial shall be subject to legal remedy according to the general rules.

Section 403 In the case of re-trial the civil claim having been adjudicated on its merits shall be adjudicated once again upon the motion of the prosecutor, the defendant or the private party. At the motion of the prosecutor or the defendant, a new decision shall be adopted in respect of the termination of the parental right of custody. However, re-trial (new procedure) concerning exclusively a civil claim or parental right of custody may only be held (conducted) by a court proceeding in civil suits, in compliance with the relevant conditions and procedural rules.

Section 404 The provisions stipulated in this Chapter shall also be applied as appropriate, if the motion for re-trial was submitted against the ruling of the court terminating the procedure or the ruling delivered without holding a trial.

Chapter XVII[504]

JUDICIAL REVIEW

Reasons for the judicial review [505]

Section 405 (1)[506] The final conclusive decision by the court may be subject to judicial review, if

a) the defendant was acquitted or the procedure terminated, the criminal liability of the defendant established or the involuntary treatment in a mental institution ordered in violation of the substantive law,

b) an unlawful punishment was imposed due to the unlawful classification of the criminal offence or the violation of other rules of criminal law, or an unlawful measure was applied, or the execution of the punishment was suspended despite the grounds for exclusion stipulated in Section 90 of the Penal Code,

c) the court adopted its decision by a procedural irregularity specified in Section 373 (1) II to IV,

d) the court adopted its decision by violating the restriction against severity [Sections 354 and 355, Section 389 (1) and (3), Section 549 (4)].

(2) No judicial review shall apply if the breach of law can be remedied by conducting a special procedure (Titles I to II of Chapter XXVIII).

Section 406[507] (1) Judicial review may take place to the benefit of the defendant in the following cases as well:

a) the Court of Constitution ordered the review of the criminal proceedings concluded by a final decision, unless the defendant has already been relieved from the detrimental consequences relating to his criminal record, or the sentence imposed or measure applied has been completely executed or their enforceability ceased,

b)[508] a body for the protection of human rights, created by way of an international treaty established that the conduct of the procedure or the final decision of the court has violated a provision of the international treaty promulgated by law, provided that the Republic of Hungary has submitted herself to the jurisdiction of the international body for the protection of human rights and the violation of law may be remedied by way of a judicial review,

c) owing to the harmonised decision of the Supreme Court, the disposition – not affected by the harmonised decision – of the final court decision establishing the defendant criminal liability is unlawful.

(2) Further, judicial review may be applied to the benefit of the defendant, if the criminal liability was established, the sentence imposed or a measure applied under a criminal statute which was declared unconstitutional by the Court of Constitution, but the defendant the defendant has already been relieved from the detrimental consequences relating to his criminal record, or the sentence imposed has been completely executed or its enforceability ceased, or the defendant is no longer subject to the effect of the measure. In such a case the motion for review may be submitted within six month following the communication of the decision of the Court of Constitution.

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[504] The words " Chapter XVII" and the title of the Chapter in this Act was enacted by Section 223 of Act I of 2002.

[505] The subtitles preceding Sections 405, 408, 413 and 425 were established by Section 223 of Act I of 2002.

[506] The text of Section 405 was established by Section 223 of Act I of 2002; the original numbering of Section 405 was amended to Section 405 (1) by Section 76 of Act II of 2003, which concurrently inserted a new subsection (2) in 405.

[507] The text of Sections 406–429 was established by Section 223 of Act I of 2002.

[508] Section 406 (1) b) was supplemented with Section 77 of Act II of 2003.

Section 407 No judicial review shall apply against the decision of the Supreme Court delivered based on a procedure for appeals on legal grounds, or a harmonisation procedure.

The motion for review

Section 408 The motion for review may be submitted by

I. to the detriment of the defendant:

a) the prosecutor,

b) in the case of acquittal or the termination of the procedure, the private accuser or the substitute private accuser,

II. to the benefit of the defendant:

a) the prosecutor,

b) the defendant,

c) the defence counsel, unless this was prohibited by the defendant,

d) the legal representative of the juvenile offender defendant,

e) against an order for involuntary treatment in a mental institution – even without the consent of the defendant – the legal representative and the spouse of the defendant of legal age,

f) after the death of the defendant, a relative in direct line, the brother or sister or the spouse of the defendant.

Section 409 (1) In the cases listed in Section 406 (1), the Prosecutor General shall submit the motion for review ex officio.

(2) Any court, other authority or official person acting in their own official competence gaining cognisance of a violation of law – as specified in Sections 405 or 406 – to the detriment of the defendant in a criminal proceeding, shall notify the Prosecutor General thereof.

Section 410 (1) The motion for review to the detriment of the defendant may be submitted within six months following the communication of the final conclusive decision.

(2) With the exception of the case specified in Section 406 (2), there is no deadline for the submission of a motion for review to the benefit of the defendant. The fact that the punishment of the defendant has been executed or the punishability of the defendant has ceased shall not be an obstacle to submitting the motion.

(3) Each entitled person may only submit a motion for review on one occasion, unless the new motion for review is submitted pursuant to under Section 406 (1) *b)*.

Section 411 With regard to the disposition of final decisions delivered in a criminal case concerning exclusively a civil claim or the termination of parental right of custody, a request for review may be submitted in compliance with the rules set forth in the Code of Civil Procedure.

Section 412 (1) The A motion for review may be withdrawn prior to the panel session held by the court for the purpose of making a decision thereon.

(2) The defence counsel may only withdraw his motion for review with the consent of the defendant.

(3) If the motion for review is withdrawn, the court shall terminate the review procedure.

The review procedure

Section 413 (1) The motion for review, indicating the reason and the purpose therefor, shall be submitted in writing to the court of first instance having proceeded in the basic case.

(2) Within thirty days, the court shall submit the motion for review, together with the documents of the basic case to the court having competence for conducting the review procedure.

Section 414 (1) With the exception of the case specified in subsection (2), the motion for review shall be considered by the panel of the Supreme Court, or, if it contests a decision of the Supreme Court, the panel of the Supreme Court consisting of five professional judges.

(2) If the motion for review was submitted due to the procedural irregularity specified in Section 405 *c)* against a conclusive court decision which has become final in the first instance, the motion for review shall be considered by the panel of the tribunal.

Section 415 To the review procedure the rules pertaining to the procedure of the court of appeal shall apply, with the deviations set forth in this Chapter.

Section 416 (1) The presiding judge shall request the party having submitted the motion to supplement the motion within thirty days, if the reason for considering the decision detrimental cannot be clearly established therefrom, or the motion refers to a reason other than those prompting a review.

(2) The participation of a defence counsel shall be statutory in the review procedure. If the defendant has no defence counsel, the presiding judge shall appoint one and if necessary, requests him to compile the motion for review.

(3) If the appointed defence counsel fails to submit the motion within thirty days, or the submitted motion is not complete, a disciplinary penalty may be imposed.

Section 417 (1)[509] Motions precluded by law or submitted by a non-entitled person, as well as belated motions shall be rejected by the court proceeding on the basis of the motion for review. With the exception of the case specified in Section 416 (3), the same applies to motions for review not submitted or submitted incompletely despite the request.

(2) The court proceeding on the basis of the motion for review may omit to make a decision concerning the rejection of a motion submitted repeatedly with unchanged content by the same eligible party or by another party.

Section 418 (1) If the motion for review is not subject to rejection, the presiding judge shall send the motion, together with the documents of the basic case, to the office of Prosecutor General and/or the office of the chief prosecutor for appeals.

(2) If the motion for review contests a decision delivered in a procedure based on the

accusation of a private accuser or substitute private accuser, the statement of the office of

the prosecutor needs only be obtained if the motion was not submitted by the prosecutor.

(3) The prosecutor shall return the documents, together with his statement, to the court proceeding on the basis of the motion for review within fifteen days.

Section 419 (1) The presiding judge shall send the statement of the prosecutor to the party having submitted the motion for review.

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[509] Pursuant to Section 88 (2) a) of Act II of 2003, in Section 417 (1) the text " a motion submitted repeatedly with unchanged content by the same eligible party or by another party" shall be repealed and shall not enter into force.

(2) The defendant and his defence counsel shall receive the motion for review submitted by other parties and the statement of the prosecutor made thereon.

(3) Motions for review contesting a decision delivered in a procedure based on the accusation of a private accuser or substitute private accuser shall also be sent to the private accuser or the substitute private accuser.

(4) When sending the motion for review and the statement of the prosecutor, the presiding judge shall advise the eligible party to make comments within fifteen days of receipt.

Section 420 (1) In the review procedure, the facts of the case established in the final decision shall prevail.

(2) With the exception of the case specified in subsection (3), the motion for review shall be adjudicated in compliance with the legal regulations in effect at the time of the delivery of the contested decision.

(3) In the cases specified in Section 406, the motion for review shall be considered in compliance with the legal regulations in effect of the adjudication, however, if the review takes place due to the reasons stipulated in Section 406 (1) *b)*, the motion shall be adjudicated disregarding the legal regulation contrary and harmonisation decision to an the international treaty promulgated by law.

(4) With the exception of the case specified in subsection (5), the court proceeding on the basis of the motion for review shall review only the part of the decision contested by the motion for review and only for the reasons specified therein; however, in the case of a motion for review submitted to the detriment of the defendant the court may modify the contested decision to the benefit of the defendant.

(5) The Supreme Court shall review the contested decision under Section 405 *c)*, even if the motion was not submitted for this reason.

Section 421 The motion for review has no delaying effect, however, the court proceeding on the basis of the motion for review may suspend or interrupt the execution of the contested decision until the motion is adjudicated.

Section 422 (1) With the exception of the cases specified in subsection (2), the court shall adjudicate the motion for review at a public session.

(2) The court shall adopt a decision at a panel session, if

a) the motion may be rejected under Section 417,

b) the procedure shall be terminated under Section 412 (3),

c)[510] the motion was submitted under Section 405 (1) *c)*.

(3) The presiding judge may refer a case falling in the domain of a panel session to a public session, if he deems this indispensable for the adjudication of the motion.

(4) The public session may only be held in the presence of the Prosecutor General, or the chief prosecutor for appeals or the representative thereof, and the defence counsel.

Section 423 (1) The defendant and the eligible parties listed in Section 408 I. *b)* and II. *d)* to *f)* shall be advised on the public session. If the defendant is detained, he shall be brought to court in order to attend the public session.

(2) The notification shall be sent leaving sufficient time for its service five days prior to the public session at the latest. The fact that the notification could not be served on an absconding addressee shall not prevent holding the public session.

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[510] In Section 422 (2) c) the words “Section 405” were amended to “Section 405 (1)” by Section 88 (2) c) of Act II of 2003.

Section 424 (1) After opening the public session, the judge designated by the presiding judge shall recite the motion for review, the contested decision and the contents of the documents inasmuch as necessary to adjudicate the motion for review.

(2) After the presentation of the case, the party having submitted the motion for review, the prosecutor, the defence counsel and other eligible parties listed in Section 408 may make their addresses on the subject of the motion for review. The addresses are followed by replies thereto. The last address shall be made by the defendant.

(3) With regard to opening, adjourning, continuity of the public session as well as the maintenance of order and the communication of the decision, the provisions set forth in Chapters XI and XIII shall be applicable as appropriate. Minutes shall be taken at the public session.

Decision adopted on the basis of the review procedure

Section 425 (1) The court proceeding on the basis of the motion for review shall repeal the contested decision, and

a)[511] order the court that had proceeded in the case to conduct a new procedure, if the court delivered its conclusive decision in violation of substantive law specified in Section 405 (1) *a)* or *b)*,

b) order the court having competence and jurisdiction to conduct a new procedure, if the decision was delivered by committing the procedural irregularity specified in Section 373 (1) II,

c) send the documents to the prosecutor and order the court of first instance to conduct a new procedure, if the decision was delivered by committing the procedural irregularity specified in Section 373 (1) IV,

d) [512] orders the court that had proceeded in the case to conduct a new procedure, if the decision was delivered by committing the procedural irregularity specified in Section 405 (1) *d)*.

(2) The court proceeding on the basis of the motion for review shall repeal the contested decision, if it was delivered by committing the procedural irregularity specified in Section 373 (1) III.

Section 426 (1) If the defendant may be acquitted, the involuntary treatment in a mental institution omitted, the procedure terminated or the sentence or other measure commuted,

a)[513] in the case of violation of law specified in Section 405 (1) *a)* and *b)* the Supreme Court,

b)[514] in the case of the procedural irregularities specified in Section 405 (1) *c)* and *d)* the court proceeding on the basis of the motion for review

may adopt a decision in compliance with the law.

(2) The Supreme Court itself may adopt a decision in compliance with the law, if the court had suspended the execution of the sentence despite the grounds for exclusion stipulated in Section 90 of the Penal Code.

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[511] In Section 425 (1) a) the words “Section 405” were amended to “Section 405 (1)” by Section 88 (2) c) of Act II of 2003.

[512] In Section 425 (1) d) the words “Section 405” were amended to “Section 405 (1)” by Section 88 (2) c) of Act II of 2003.

[513] In Section 426 (1) a) the words “Section 405” were amended to “Section 405 (1)” by Section 88 (2) c) of Act II of 2003.

[514] In Section 426 (1) b) the words “Section 405” were amended to “Section 405 (1)” by Section 88 (2) c) of Act II of 2003.

(3) Upon establishing the existence of the reasons for review specified in Section 406, the Supreme Court itself may adopt a decision in compliance with the law, if this is possible based on the documents. Should the delivery of a lawful decision require a new procedure, the Supreme Court shall repeal the contested decision and order the court that had proceeded in the case to conduct a new procedure.

(4) If the court proceeding on the basis of the motion for review repeals the final conclusive decision and the defendant is detained, the court shall decide on the issue of detainment.

Section 427 If the court proceeding on the basis of the motion for review rejects the motion for review, it shall uphold the effect of the contested decision.

Section 428 If the motion for review is rejected – unless it has been initiated by the prosecutor – the cost of criminal proceedings incurred in the course of the review procedure, including the fee of the defence counsel appointed to compile the motion for review, shall be borne by the party having submitted the motion. In other cases the cost of criminal proceedings shall be borne by the state.

Section 429 (1) After the adjudication of the motion for review, the court having proceeded on the basis thereof shall serve the estreats of its decision, and return the documents of the case, together with the estreat of its decision and the minutes taken at the session to the court having delivered the contested decision or the court ordered to conduct a new procedure or conduct the procedure.

(2) If the Supreme Court orders the court of appeal to conduct a new procedure, it shall send the documents to the court of appeal, which shall then serve the decision of the Supreme Court.

Chapter XVIII [515]

APPEAL ON LEGAL GROUNDS

Section 430[516] Lodging an appeal on legal grounds shall be governed by the provisions set forth in Chapter XVII, with the deviations stipulated in this Chapter.

Request for appeal on legal grounds [517]

Section 431 The Prosecutor General may lodge an appeal on legal grounds at the Supreme Court against the unlawful and final decision of the court, unless the final decision may be contested by other means of legal remedy.

Section 432 No deadline is set for lodging an appeal on legal grounds, and it has no delaying effect on the execution of the decision.

Section 433 No appeal may be lodged on legal grounds if the decision has been delivered by the Supreme Court.

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[515] The words “Chapter XVIII” preceding Section 430 of this Act and the text of the title of the Chapter were enacted by Section 224 of Act I of 2002.

[516] The text of Sections 430–438 was established by Section 224 of Act I of 2002.

[517] The subtitles preceding Sections 431, 434 and 436 were established by Section 224 of Act I of 2002.

Procedure in the case of an appeal on legal grounds

Section 434 (1) The appeal on legal grounds shall be adjudicated by the panel of the Supreme Court at a public session.

(2) The Prosecutor General, the defendant and the defence counsel thereof shall be advised of the public session. If the defendant had no defence counsel in the basic case, the Supreme Court shall appoint a defence counsel for the defendant.

(3) The defendant and the defence counsel may make comments on the appeal on legal grounds.

Section 435 (1) The public session may not be held in the absence of the Prosecutor General or the representative thereof.

(2) In respect of the public session, the provisions set forth in Chapter XIV shall apply as appropriate. At the public session, the Prosecutor General or the representative thereof, the defendant and his defence counsel may make an address and – according to the nature of the procedure – may put forward motions.

Decision concerning the appeal on legal grounds

Section 436 If the Supreme Court finds the appeal on legal grounds substantiated, it shall state in its decision that the contested decision is unlawful; in adverse cases, it shall reject the appeal in a ruling.

Section 437 Upon establishing the violation of law, the Supreme Court may acquit the defendant, omit the involuntary treatment in a mental institution, terminate the procedure, commute the sentence or the measure or repeal the contested decision to facilitate the adoption of such decision, and if necessary, may order the court having proceeded in the case to conduct a new procedure; in other cases the decision of the Supreme Court may only establish the fact of unlawfulness.

Section 438 The cost of criminal proceedings incurred in the course of the appeal proceeding shall be borne by the state.

Chapter XIX

HARMONISATION PROCEDURE

Section 439[518] (1) Harmonisation procedure shall be applicable, if

a) in order to develop legal practice or ensure uniform sentencing policy a harmonisation decision is required in a matter of doctrine,

b) a panel of the Supreme Court intends to deviate from the decision of another adjudication panel of the Supreme Court with respect to a legal issue.

(2) Under subsection (1) *a),* a harmonisation procedure shall apply in order to ensure a uniform sentencing policy in particular, when the tribunal, the county court or local court delivered a final decision deviating from an earlier final court decision in a matter of doctrine and the president of the Supreme Court or the Prosecutor General deems a decision on the matter of doctrine necessary.

Section 440 (1) Harmonisation procedure shall be conducted,

[518] Section 225 of Act I of 2002 amended the original numbering of Section 439 to subsection 439 (1) and concurrently inserted a new subsection (2) in Section 439.

a) if it is initiated by the President or the head of the criminal division of the Supreme Court, or the Prosecutor General, and

b) in the case specified in Section 439 *b)*.

(2) For the reason specified in subsection (1) *b),* the harmonisation procedure is initiated by the panel of the Supreme Court.

(3)[519] If the outcome of the harmonisation procedure may have an impact on another special remedy procedure in progress before the Supreme Court, the Supreme Court shall suspend the special remedy procedure until the harmonisation decision is adopted.

Section 441 (1) The motion for harmonisation shall indicate the matter of doctrine (legal issue) to be decided, as well as the proposal of the party submitting the motion concerning the decision. The estreat of the court decisions affected by the motion shall be attached to the motion.

(2) The motion for harmonisation shall be adjudicated by the harmonisation panel of the Supreme Court consisting of five professional judges.

(3) The presiding judge of the panel shall be the president or the head of the criminal division of the Supreme Court. The person having submitted the motion for harmonisation may not be either the presiding judge or a member of the harmonisation panel.

(4) No one may be a member of the harmonisation panel who had participated in the delivery of the court decision affected by the motion for harmonisation.

Section 442 (1) The harmonisation procedure shall be prepared by the presiding judge, who shall set a panel session or a session to discuss the case.

(2) The harmonisation panel shall make a decision at a panel session, if

a) it rejects the motion not permitted by law, or lodged by a non-eligible party without adjudication on its merits,

b) it terminates the harmonisation procedure owing to the withdrawal of the motion for harmonisation.

(3) If the harmonisation panel adjudicates the motion on its merits, it shall make a decision at a session. The motion for a harmonisation decision – unless it was submitted by the Prosecutor General – shall be sent by the presiding judge, together with the estreat of the court decision affected by the motion for harmonisation, to the Prosecutor General. The Prosecutor General shall send his statement on the motion for harmonisation to the Supreme Court within fifteen days of receiving the motion.

(4) The session shall be chaired by the presiding judge, who may designate one or two presenting judges in the procedure.

(5) After opening the session, the presenting judge shall summarise the motion for harmonisation and the gist of the matter of doctrine to be decided, and presents the opinion of the panel members. The Prosecutor General and the party having submitted the motion may address the session.

(6) The harmonisation panel may adjourn the session for important reasons.

Section 443 (1) The decision of the harmonisation panel adopted at the session shall either accept or reject the motion; the harmonisation panel shall announce the harmonisation decision "IN THE NAME OF THE REPUBLIC OF HUNGARY".

(2) The purview of the decision accepting the motion for harmonisation shall contain guidelines on the a matter of doctrine being the subject of, or closely related to the harmonisation procedure.

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[519] The text of Section 440 (3) was established by Section 226 of Act I of 2002.

(3) If the guidelines concerning the matter of doctrine render the disposition of the final court decision (affected by the harmonisation decision) establishing the criminal liability of the defendant unlawful, the harmonisation panel shall repeal the unlawful disposition and acquits the defendant and/or terminates the procedure. If the defendant is detained, the panel shall terminate the detainment.

(4) The justification of the harmonisation decision shall identify the party having submitted the motion for harmonisation, the subject of the motion and the affected court decisions. It also describes the various opinions formed in the matter of doctrine to be decided, and if necessary, the gist of the facts of the case established in the affected court decision, and explains the reasons for the guidelines set forth in the purview. The justification of the decision shall also explain the reasons for acquitting the defendant and terminating the procedure.

Section 444 The harmonisation panel shall reject the motion for harmonisation, if it deems the adoption of a harmonisation decision unnecessary. The justification of the decision shall contain the reasons for rejection.

Section 445 (1) The harmonisation panel shall announce its decision without delay, and within fifteen days thereafter it notifies thereof the party having submitted the motion and – unless the motion was submitted by the Prosecutor General – the Prosecutor General. The defendant who is acquitted or against whom the procedure was terminated shall also be notified of the decision. If the prosecution was represented by a private accuser or a substitute private accuser in the basic case, they shall also be notified of the decision.

(2) The presiding judge shall arrange for the publication of the harmonisation decision in the Official Gazette.

PART FIVE

Chapter XX

CRIMINAL PROCEEDINGS AGAINST JUVENILE OFFENDERS

Section 446 In the criminal proceedings against juvenile offender [Section 107 (1) of the Penal Code], the provisions set forth in this Act shall be applied with the deviations stipulated in this Chapter.

General provisions

Section 447 (1) The proceedings against a juvenile offender shall be conducted by taking into account the characteristics of his age and in a way that promotes the respect of the juvenile offender for the laws.

(2) In the course of the criminal proceedings – when necessary, or under the provisions of the relevant legal regulation – protective and precautionary measures should be initiated in the interest of the juvenile offender, as well as actions against the person having neglected to educate, car for or supervise the juvenile offender.[520]

Juvenile court [521]

Section 448 (1) The case of juvenile offenders falling within the competence of the local court shall be processed by the court at the seat of the county court, and in the territory of the

[520] Please refer to Section 17 of Act XXXI of 1997.

[521] Section 448 and the subtitle thereof were established by Section 227 of Act I of 2002.

Metropolitan Court the Pest Central District Court, in the case of juvenile offenders, the jurisdiction of such courts shall extend to the territory of the county or Budapest, respectively.

(2) In the first instance, the presiding judge (single judge), while in the second instance, a member of the panel shall be the judge designated by the National Judiciary Council.

(3) At the court of first instance, one of the associate judges on the panel shall be a teacher.

(4) The juvenile court shall also adjudicate the case of a defendant of legal age, if it is related to the case of a juvenile offender.

The prosecutor

Section 449 (1) The powers of the prosecutor shall be exercised by the prosecutor (prosecutor for juvenile offenders)designated by a superior prosecutor.[522]

(2) Criminal proceedings against a juvenile offender may only be based on a public accusation. No substitute private accusation shall apply against a juvenile offender, it is the prosecutor's task to proceed in the cases of criminal offences subject to prosecution based on private accusation.

Defence counsel

Section 450 The participation of a defence counsel is statutory in the proceedings against a juvenile offender.

The legal representative

Section 451[523] The legal representative may inspect the documents of the case after the conclusion of the investigation. In the course of the investigation, he may also inspect the documents prepared on procedural actions he had the right to attend. In other respects, the rights of the legal representative to be present, to request information, submit motions and request legal remedy shall be governed by the rights of the defence counsel.

Section 452 (1)[524] Before the filing of the indictment at the request of the prosecutor, thereafter at the request of the court, the court of guardians shall appoint an ad hoc supervisor, if

a) the legal representative committed the criminal offence together with the juvenile offender, or the interests of the legal representative are otherwise in conflict with the interests of the juvenile offender,

b) the legal representative is prevented from exercising his rights,

c) the juvenile offender has no legal representative, or the legal representative cannot be identified.

(2)[525] In the case specified in subsection (1) *a)* before the filing of the indictment the prosecutor, thereafter the court may exclude the legal representative from the proceedings until the appointment of the ad hoc supervisor.

(3) During the proceedings, the ad hoc supervisor shall act as a legal representative.

Means of evidence

Section 453 (1) In order to elucidate the conditions characteristic to the personality, intellectual capacity and life conditions of the juvenile offender, the person responsible for the

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[522] Please refer to a 14/2003. (ÜK. 7.) LÜ utasítást.

[523] The text of Section 451 was established by Section 228 of Act I of 2002.

[524] The introductory part of Section 452 (1) was established by Section 229 (1) of Act I of 2002.

[525] Section 452 (2) was enacted by Section 229 (2) of Act I of 2002, which concurrently amended the numbering of the original subsection (2) to subsection (3).

juvenile offender (parent or guardian) shall be heard as a witness. The immunity stipulated in Section 82 (1) shall not extend to providing information of the above.

(2)[526] The age of the juvenile offender shall be proven by way of a public deed. A study of living conditions shall be obtained, and the profile of the juvenile offender from his school or workplace. The study of living conditions shall be prepared by the probation officer.[527] The probation officer may request the co-operation of the police in the preparation of the study of living conditions.

(3) The testimony of the juvenile offender defendant may not be tested by a polygraph.

Pre-trial detention

Section 454 (1) Even in the cases specified in Section 129 (2), the pre-trial detention of a juvenile offender may only be applied if this is necessary due to the gravity of the criminal offence.

(2) The pre-trial detention of the juvenile offender shall be executed in

a) detention home or

b) penal institution.

(3) The place of pre-trial detention shall be decided upon by the court, taking into consideration the personality of the juvenile offender and the nature of the criminal offence he is charged with.

(4) During the period of the pre-trial detention, the court may change the place of pre-trial detention at the motion of the prosecutor, the defendant or the defence counsel. Prior to the decision during the preparations for the trial, the decision thereon shall be adopted by the court ordering pre-trial detention, and thereafter the court proceeding in the criminal case.

(5) If the pre-trial detention of the juvenile offender is executed in a detention home, and the court decides on the temporary custody of the juvenile offender in a penal institution or a police holding cell, the competence and jurisdiction of the court shall be governed by the provisions of subsection (4).

(6) In the course of pre-trial detention, juvenile offenders shall be separated from offenders of legal age.

Section 455[528] After the lapse of two years after the commencement of the execution of pre-trial detention ordered against a juvenile offender, the pre-trial detention shall be terminated, unless the pre-trial detention was ordered or maintained after the announcement of the conclusive decision, or unless a repeated procedure is in progress in the case due to repeal.

Ordering coercive measure prior to the indictment

Section 456 (1) Prior to the filing of the indictment, in the procedure related to coercive measures (Sections 210 and 211), the session may not be held in the absence of the defence counsel.

(2) The legal representative and the person responsible for the juvenile offender shall also be advised of the session.

Section 457 The legal representative and the person responsible for the juvenile offender may address the session.

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[526] The text of the second sentence of Section 453 (2) was established by Section 27 of Act XIV of 2003.

[527] Please refer to a Decree No. 17/2003. (VI. 24.) IM of the Ministry of Justice.

[528] The text of Section 455 was established by Section 230 of Act I of 2002.

Communication of the decision

Section 458 The decision delivered in the course of the proceedings shall be notified to the legal representative, while the conclusive decision and the decision concerning a coercive measure restricting personal freedom shall also be notified to the person responsible for the juvenile offender.

Postponement of the indictment

Section 459 (1) In the case of a criminal offence punishable by a maximum of five years' imprisonment, if the conditions for an indictment are met, the prosecutor may decide to postpone the filing of an indictment, if this is likely to have a positive impact on the future development of the juvenile offender.

(2) In his decision concerning the postponement of the indictment, the prosecutor shall oblige the juvenile offender to keep certain rules of conduct or fulfil other obligations. The obligations specified in Section 224 (2) *c)*[529] may not be imposed on juvenile offenders.

The trial

Section 460 (1) The general public shall be excluded from the trial even in cases not specified in Section 237 (3), if this is necessary in the interest of the juvenile offender.

(2) The court may order that the part of the trial which could have a harmful effect on the proper development of the juvenile offender be held in the absence of the juvenile offender. The gist of the trial held this way shall be presented to the juvenile offender by the presiding judge not later than prior to the adjournment of the trial.

(3) The presence of the prosecutor is statutory at the trial.

Section 461 The trial may not be held in the absence of a juvenile offender accused under the provisions of Chapter XXIV.

Section 462 (1) At the trial of the case against a juvenile offender accused the accused and the witness shall be heard by the presiding judge (single judge). After hearing the accused and the witness, those entitled may ask questions from them.

(2) The study of the living conditions shall be presented at the trial.

(3) The prosecutor may not ledge a motion defining the extent of the measure on corrective education.

Waiving the right to trial

Section 463 The provisions of Chapter XXV may not be applied in the case of juvenile offenders.

Omission of the trial[530]

Section 464 In addition to those listed in Section 548 (1), the legal representative of the juvenile offender, without the consent thereof, may also request that a trial be held.

Ordering corrective education

Section 465 The court shall order corrective education in a condemning judgement.

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[529] Sections 224 and 225 of this Act were regulated anew by Sections 134 and 135 of Act I of 2002. The obligation under the original Section 224 (2) c) of this Act was regulated anew by Section 225 (2) c) of this Act.

[530] The subsection was established by Section 231 of Act I of 2002.

Replacing the fine with imprisonment

Section 466 The court shall decide on replacing the fine or the fine imposed as ancillary penalty with imprisonment either ex officio or at the motion of the prosecutor, if the juvenile offender failed to pay the fine and it cannot be collected.

Termination of a furlough order

Section 467 (1) If the decision concerning the termination of a furlough order shall be adopted due to a punishment or measure imposed in lieu of punishment in the course of a new criminal proceeding instituted against the juvenile offender, such decision shall fall in the competence of the court proceeding in the new case.

(2) In the case specified in subsection (1) the court shall decide on the termination of the furlough order at the motion of the prosecutor or ex officio subsequently, if no such disposition was made in the judgement.

(3) The cost of criminal proceedings shall be borne by the state, if the court does not terminate the furlough order.

Ordering consolidated measures

Section 468 To the imposition of a consolidated measure in lieu of several corrective education institutions, the provisions stipulated in Sections 574 and 575[531] shall apply as appropriate.

Chapter XXI

MILITARY CRIMINAL PROCEEDINGS

Section 469 In the event of military criminal proceedings the provisions of this Act shall be applied with the derogations stipulated in this Chapter.

Scope of military criminal proceedings

Section 470 (1) Military criminal proceedings shall apply in the case of

a) a military crime (Chapter XX of the Penal Code) committed by a soldier [Section 122 (1) of the Penal Code] during the time of his actual service period,

b) any criminal offence committed by a member of the armed forces,

c) other criminal offence committed by a permanent staff member of the civil national security service or a penal institution at his post or in connection with his military duty,

d)[532] a criminal offence committed by a member of allied armed forces (Section 368 of the Penal Code) within the boundaries of Hungary, or on a Hungarian ship or Hungarian aircraft outside Hungary, falling in the judicial authority of the Republic of Hungary.

(2) All criminal offences committed by the defendant shall be subject to military criminal proceedings if military criminal proceedings apply to any of such offences and no severance is possible.

(3)[533] In the case of several defendants, military criminal proceedings shall be conducted if the criminal offence committed by any of the defendants if subject to military criminal proceedings and the close connection between the facts of the case permit no separate proceedings. This provision shall also apply to the receiver and the abettor.

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[531] Pursuant to Section 88-a (2) c) Act II of 2003, in Section 468 the words “Sections 571 and 572” were amended to “Sections 574 and 575”.

[532] Section 470 (1) d) was enacted by Section 232 (1) of Act I of 2002.

[533] The second sentence of Section 470 (3) was established by Section 232 (2) of Act I of 2002.

The court

Section 471[534] (1) In cases subject to criminal proceedings, the military panel of the county court designated in the Act on the organisation and administration of courts shall act in the first instance. [535]

(2)[536] In cases subject to criminal proceedings, the military panel of the Metropolitan Tribunal shall act in the second instance.

Composition of the court

Section 472[537] (1) In military criminal proceedings, both in the first and second instances the professional judge shall be a military judge, and the associate judge in the first instance shall be a military associate judge.

(2) In the cases of criminal offences specified in Section 14 (1) *a)* and Section 16 (1) *a)-g)*[538] the court of first instance shall act in a panel, while in other cases it shall act as a single judge, without the participation of associate judges.

(3) The court of first instance may also act in a panel consisting of one professional judge and two associate judges, if it establishes the court established that the classification may be graver than that indicated in the indictment.

(4) In the military criminal proceedings – with the exception of the case specified in subsection (5) – the associate judge may not be of lower rank than the accused. As a rule, the panel shall consist of the associate judges of the armed force at which the accused discharged his duty at the time of the offence. Derogation from the above rule is allowed if the required for the purpose of administration of justice.

(5) In proceedings against an accused bearing the rank of general, if the panel of the court consisting of the selected military associate judges cannot be set up as specified in subsection (4), the president of the competent county court designated to conduct the military criminal proceedings – through the chairperson of the National Judiciary Council – shall initiate a procedure to select associate judges as stipulated in the Act on the legal status and remuneration of judges. The staff meeting to select the associate judges shall be held within fifteen days following its initiation by the chairperson of the National Judiciary Council. In such a case, the panel shall consist military associate judges of the rank of general, selected at the staff meeting of generals.

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[534] The text of Section 471 was established by Section 233 of Act I of 2002.
[535] Please refer to Part II of the appendix to Act LXVI of 1997.
[536] Section 471 (2) was established by Section 2 (5) of Act XXII of 2002.
[537] The text of Section 472 was established by Section 234 of Act I of 2002.
[538] In Section 472 (1) the reference to Section 16 (1) g) shall be amended to reference to Section 16 (1) h) with the effect of January 1, 2005.

Jurisdiction of the court of first instance

Section 473 (1)[539] The geographical jurisdiction of the military panel of the county court designated to conduct the military criminal proceedings is stipulated in the Act on the organisation and administration of courts.

(2) Adjudication of a criminal offence committed outside the Republic of Hungary shall fall in the jurisdiction of the military panel of the county court in the territory of which the commanding officer of the offender is stationed.

(3) The ground for jurisdiction set forth in Section 17 (4) shall not be applied in military criminal proceedings.

The military prosecutor

Section 474 (1) In military criminal proceedings the responsibilities of a prosecutor shall be performed by a military prosecutor. In order to establish the existence of the conditions for filing an indictment, the military prosecutor shall either conduct or order an investigation.[540]

(2) The investigation shall be conducted exclusively by the military prosecutor if a soldier has committed

a) a military felony,

b) a military misdemeanour, if he has committed other related criminal offences or if there are several defendants and the cases shall not be severed,

c) non-military criminal offence.

(3) Further, the investigation shall be conducted by the military prosecutor if the service relationship of the soldier has ceased in the meantime.

(4)[541] The military prosecutor shall conduct the investigation in the case of a criminal offence committed by a member of allied armed forces (Section 368 of the Penal Code) within Hungary, or on a Hungarian ship or Hungarian aircraft outside Hungary, falling in the judicial authority of the Republic of Hungary.

(5) Military criminal proceedings may only be conducted based on public accusation; while a criminal offence subject to private accusation shall fall in the competence of the military prosecutor. In military criminal proceedings no counter-charge may be filed. In proceedings conducted owing to a military criminal offence, no substitute private accusation may be applied.

(6)[542] The military prosecutor may enforce a civil claim for the damage caused to armed forces by the criminal offence adjudicated in the military criminal proceedings.

Offices of the military prosecutors

Section 475 (1) The office of the military prosecutor shall operate beside the military panel of the county court; its head shall have the powers of the chief county prosecutor.

(2)[543] The responsibilities of the department of the public prosecutor shall be performed by the Office of the Military Prosecutor for Appeals beside the tribunal and the Office of the Military Prosecutor beside the Supreme Court. In terms of military criminal proceedings, any provision in this Act referring to the office of the chief prosecutor for appeals or the chief prosecutor for appeals operating beside the tribunal shall mean the Office of the Military Prosecutor for Appeals or the head of the Office of the Military Prosecutor for Appeals, respectively, whereas any reference in this Act to the Office of the Prosecutor General or the

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[539] The text of Section 473 (1) was established by Section 235 of Act I of 2002.

[540] Please refer to a 15/2003. (ÜK. 7.) LÜ utasítást, and a 1/2002. (ÜK. 2.) LÜ utasítást.

[541] Section 474 (4) was enacted by Section 236 (1) of Act I of 2002, which concurrently amended the original numbering of subsection (4) to subsection (5).

[542] Section 474 (6) was enacted by Section 236 (2) of Act I of 2002.

[543] The second sentence of Section 475 (2) was enacted by Section 237 of Act I of 2002.

Prosecutor General shall mean the Office of the Military Prosecutor or the chief military prosecutor, respectively.

(3) The jurisdiction of the office of the military prosecutor shall depend on the jurisdiction of he court where it operates.

(4) Pursuant to the disposition of the chief military prosecutor and the Office of the Military Prosecutor for Appeals, the military prosecutor may also proceed in cases which would not otherwise fall in its jurisdiction.

Designation of the proceeding prosecutor's office

Section 476 In the event of a conflict of competence between the military prosecutor's office and other prosecutor's offices, the proceeding prosecutor's office shall be designated by the Prosecutor General.

The military investigating authority

Section 477 (1) If it is not the military prosecutor who conducts the investigation, the commanding officer shall act as the investigating authority.

(2) If the criminal offence subject to military criminal proceedings is detected by a non-military investigating authority, a non-military investigating authority gains cognisance of such a criminal offence, it shall immediately notify the military prosecutor of the performance of the actions stipulated in Section 170 (4).

(3)[544] The commanders having powers to conduct the investigation and the detailed rules of the investigation by the such commander shall be determined by the minister controlling the armed force, together with the minister of justice in agreement with the Prosecutor General.

Protection of the witness

Section 478[545] (1) In especially justified cases, a conscripted witness discharging military duty may request to be commanded or transferred to another post for duty. Prior to filing the indictment the request shall be decided upon by the military prosecutor, and thereafter the court. The witness may appeal the rejection of the request.

(2) The command or the transfer shall be executed by the competent personnel department of the armed force within seventy-two hours following the service of the decision.

Custody

Section 479 If the order for taking a soldier in custody for a criminal offence subject to military criminal proceedings was given by a non-military investigating authority, the defendant shall be handed over to the competent military prosecutor within twenty-four hours.

Pre-trial detention

Section 480 (1)[546] An order for the pre-trial detention of a soldier may also be issued if proceedings are conducted against him for a military criminal offence or other criminal offence subject to imprisonment and committed at his post or in connection with his military duty, and the defendant needs to be deprived of his liberty due to reasons of service or discipline.

(2) The pre-trial detention ordered pursuant to subsection (1) shall cease if the service relationship of the defendant ceases.

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[544] Section 477 (3) was enacted by Section 238 of Act I of 2002.

[545] Section 478 was established by Section 239 of Act I of 2002, while the "conscript" part was amended pursuant to Section 88 (2) c) of Act II of 2003.

[546] The text of Section 480 (1) was established by Section 240 of Act I of 2002.

Execution of the pre-trial detention

[Section 481[547] *(1) In exceptional cases, the sworn officer of armed forces in pre-trial detention may also be held in a garrison cell – for a period of maximum thirty days – based on a court decision; and if justified in order to take an investigatory action, based on the decision of the military prosecutor on two occasions – for a period of maximum fifteen days in each case.*

(2) The provision set forth in a Section 135 (2)may not be applied to the pre-trial detention of a sworn police officer. Further, the pre-trial detention may not be executed in a police cell if the service relationship of the defendant has ceased in the meantime.

(3) Sworn officers of penal institutions shall be held in pre-trial detention – regardless of the cessation of their service relationship – in a police cell or army guardhouse.]

Ensuring the right to defence [548]

Section 482 During his actual service relationship, the defendant shall be relieved of service if his participation in a procedural action is allowed or statutory pursuant to this Act.

Imposing close control

Section 483 (1)[549] Conscript soldiers may not be subject to home curfew. Upon a reason for arrest specified in Section 129 (2) *b)* to *d)* and Section 480, in lieu of the pre-trial detention of a conscript, the court may order the close control of the defendant at the unit thereof. Defendants under close control may not perform armed service and prior to the filing of the indictment may not leave his post without the permission of the military prosecutor or thereafter without the permission of the court.

(2) Extension of close control shall be governed by the provisions pertaining to the extension of pre-trial detention (Section 131), while the termination of close control shall be governed by Section 480 (2).

(3) Upon ordering close control, the participation of a counsel for the defence in the proceedings shall be statutory.

Prohibition of bail

Section 484 No bail may be accepted in the case of soldiers during the existence of their actual service relationship.

Rejection of the complaint

Section 485 The complaint may also be rejected by the military investigating authority due to grounds for the termination of punishability stipulated by law specified in Section 124 of the Penal Code.

Adjudication of a criminal offence by disciplinary procedure[550]

485/A. Section (1) The military prosecutor shall reject the complaint or terminate the investigation, and send the documents to the commander entitled to conduct a disciplinary procedure, if the objective of the punishment for a military misdemeanour may also be attained by way of disciplinary punishment.

(2) If the military investigating authority deems that the criminal offence can be adjudicated in the course of a disciplinary procedure, it shall forthwith submit the documents

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[547] The text of Section 481 was established by Section 241 of Act I of 2002. Pursuant to Section 308 (4) of Act I of 2002, Section 481 shall enter into force on January 1, 2005. Up to that time, to the location of az pre-trial detention Section 116 (1) and (3) of Law-Decree on the Penal service shall apply.

[548] Section 482 were the subtitle thereof were established by Section 242 of Act I of 2002.

[549] The text of Section 483 (1) was established by Section 243 of Act I of 2002. In the first and second sentences of the subsection, the text “sorállományú” was amended to “conscript” pursuant to Section 88 (2) c) of Act II of 2003.

[550] The subtitle and Sections 485/A and 485/B were enacted by Section 244 of Act I of 2002.

to the competent military prosecutor for the adoption of the decision specified in subsection (1); the military prosecutor shall adopt a decision within seventy-two hours.

(3) An investigation shall be ordered to be conducted or the procedure continued, if the suspect or his defence counsel filed a protest against the decision rejecting the complaint or terminating the investigation and there has been no other reason for rejecting the complaint or terminating the procedure. The suspect shall be warned thereof in the decision.

(4) If the military prosecutor referred the adjudication of the criminal offence to a disciplinary procedure, the competent commander may conduct a disciplinary procedure and impose the disciplinary punishments in compliance with the provisions of the separate acts regulating serve relations.[551]

(5) The decision imposing the disciplinary punishment shall also be served on the military prosecutor.

485/B. Section (1) Within three days following the final decision of the commander, the punished person and his defence counsel – after exercising their right of protest as defined in a separate act – may request the court review of the decision or order imposing a penalty for a criminal offence referred to disciplinary procedure. Until the request is adjudicated, the punishment may not be executed.

(2) The request shall be submitted to the commander having imposed the punishment, who shall forward it, together with the documents of the case, to the military panel of the county court having geographical jurisdiction in the case within twenty-four hours. The request may be withdrawn until the commencement of the trial.

(3) The court

a) shall act as a single judge,

b) shall adjudicate the request within three days, at a trial, after hearing the person punished and examining the documents; and if required, may take further evidence,

c) the commander having imposed the punishment and the military prosecutor shall be notified of the time of the trial.

(4) The commander and the prosecutor may make an address as the trial. Any written statements they may wish to make shall be sent to the court prior to the commencement of the trial.

(5) The court shall make a decision on the request in the form of a ruling.

(6) Requests not permitted by law, or lodged by a non-eligible party, and belated requests shall be rejected by the court. The request may also be rejected prior to setting the date of the trial.

(7) The court

a) shall uphold the decision or the order, if the request is not substantiated,

b) applies a lower security of imprisonment or commutes the punishment,

c) annuls the decision or order imposing the punishment, if a disposition concerning acquittal or the termination of the procedure should be adopted if the case was adjudicated in criminal proceedings.

(8) The appeal against the ruling of the course delivered pursuant to subsections (6) to (7) shall be governed by the provisions of Section 346 (1) concerning the appeal against the ruling terminating the procedure.

Prohibition of postponed indictment [552]

485/C. Section[553] (1) The indictment may not be postponed if the soldier has committed a military criminal offence during his actual service period or committed another criminal

[551] Please refer to Act XLIII of 1996, Act XLIV of 1996 and Act XCV of 2001.

[552] The subtitle was enacted by Section 245 of Act I of 2002.

offence at his post or in connection with his military duty – if the actual service relationship of the defendant exists at the time specified in Section 216 (1).

(2) The prohibition set forth in subsection (1) may not be applied if the indictment shall be postponed for the reasons stipulated in Section 222 (2).

The investigating judge

Section 486[554] In the course of military criminal proceedings, the tasks of the investigating judge shall be performed by the military judge of the county court. The appeal against the decision adopted by the military judge acting as an investigating judge shall be considered by the military panel of the tribunal.

Termination of the procedure

Section 487 On the grounds for the termination of punishability specified in Section 124 of the Penal Code, until the filing of the indictment the military prosecutor and thereafter the court may terminate the procedure.

Persons participating at the trial

Section 488[555] In the cases specified in Section 241 (1), the presence of the military prosecutor is statutory at the trial. In military criminal proceedings the secretary of the prosecutor's office may not represent the prosecution.

Section 489 The presence of the counsel for the defence is statutory at the trial,
a) if the criminal offence is punishable by five years' or more imprisonment by law,
b) in the cases regulated in Section 46,
c) if the accused is a conscript[556],
d) if there is a substitute private accuser.

Voting order of the military panel

Section 490[557] In the military panel, the judge of a lower rank shall vote before the judge of a higher rank. In the case of equal ranks, the officer having been promoted to the higher rank earlier shall cast his vote first. If the dates of promotion to the rank are identical, the younger officer shall vote first. The presiding judge shall be the last to vote.

Costs of criminal proceedings

Section 491 The costs of criminal proceedings conducted against a conscript[558] due to a military criminal offence – with the exception of the remuneration and out-of-pocket expenses of the mandated defence counsel and the representative of the victim, and the costs incurred due to imprisonment in a non-military penal institution – shall be borne by the state.

Prohibition of the application of provisions pertaining to juvenile offenders

Section 492 The provisions of Chapter XX may not be applied to a soldier.

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[553] Section 485/C was enacted by Section 245 of Act I of 2002, and its text established by Section 78 of Act II of 2003.
[554] The text of Section 486 was established by Section 246 of Act I of 2002.
[555]. The text of Sections 488 and 489 were established by Section 247 of Act I of 2002.
[556] In Section 489 c) the word "sorállományú" was amended to "conscript" pursuant to Section 88-a (2) c) of Act II of 2003.
[557] The third sentence of Section 490 was enacted by Section 248 of Act I of 2002.
[558] In Section 491 the word "sorállományú" was amended to "conscript" pursuant to Section 88-a (2) c) of Act II of 2003.

Chapter XXII
PROCEDURE BASED ON PRIVATE ACCUSATION

Section 493 In criminal proceedings conducted based on private accusation, the provisions set forth in this Act shall be applied with the derogations stipulated in this Chapter.

The private accuser

Section 494 (1) The burden of proving the guilt of the defendant shall falls on the private accuser.

(2) Unless provided otherwise in this Act, in addition to the rights of the victim, the private accuser shall also have the rights that the representation of the prosecution entail.

(3) If there are several victims in a case, they shall agree on the person to act as the private accuser. In the absence of such an agreement, the private accuser shall be designated by the court. After the selection or designation of the private accuser, the others shall have the right of a victim.

(4) In the absence of a counter-charge, the private accuser may be heard as a witness.

Section 495 (1) The private accuser shall be entitled to exercise the rights inherent to the representation of the prosecution in respect of the charge he pressed. In the event of a counter-charge (charge pressed against the private accuser) the private accuser shall have the rights and obligations of an accused.

(2) In respect of the counter-charge, the representative of the private accuser shall have the same legal status as the defence counsel, provided that his mandate extends to the defence.

The prosecutor

Section 496[559] In the procedure based on a private accusation the prosecutor may examine the documents of the case and may also attend the trial. The prosecutor may take over the representation of the prosecution from the private accuser in any stage of the procedure; in such a case the private accuser shall have the rights of the victim. Should the prosecutor later withdraw from the representation of the prosecution, this role shall be taken over by the private accuser once again. The judgement shall be served on the prosecutor if he has taken over the representation of the prosecution.

Grounds for instituting the procedure

Section 497 (1) The procedure shall be instituted based on a complaint. In the complaint the complainant shall identify the person against whom he requests the institution of the criminal proceedings, as well as designate the offence charged and the underlying evidence. The complaint shall be made at the court either in writing or verbally; verbal complaints shall be recorded in minutes.

(2) The investigating authority shall forward the complaint received to the competent court. The prosecutor shall send the complaint to the court if he does not take over the representation of the prosecution.

(3)[560] In the case of mutual assault, libel or slander, the procedure instituted against either party for the criminal offence, the other party shall be entitled to file the private motion prior to the panel session described in Section 321 (1) even if the relevant deadline has lapsed, provided that the criminal liability has not lapsed yet. Pressing a counter-charge is permitted

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[559] The last sentence of Section 496 was enacted by Section 249 of Act I of 2002.

[560] The second sentence of Section 497 (3) was enacted by Section 250 of Act I of 2002.

even if the prosecutor has taken over the representation of the prosecution from the private accuser.

(4) The court shall also adjudicate the administrative offence of slander having been committed mutually by the criminal offences set forth in subsection (3).

Section 498 If the person or the criminal offence cannot be identified from the complaint, the court shall call the complainant to make the complaint more specific in writing and may hold a preliminary session or order an investigation.

Investigation in the procedure based on a private accusation

Section 499 (1) Investigation may be ordered by the court or the prosecutor.

(2) The court shall order an investigation, if the identity, personal data or place of stay of the person referred to in the complaint is unknown, or means of evidence needs to be sought. The court shall send the ruling ordering the investigation and the documents to the investigating authority. The investigation shall be conducted by the police.

(3) The prosecutor may order an investigation, if he takes over the representation of the prosecution prior to issuing the summons to a personal hearing [Section 502 (1)].

Section 500 (1) After the conclusion of the investigation ordered by the court, the documents shall be returned to the court.

(2) The court having ordered the investigation shall be notified if the identity of the unknown offender could not be established even from the data gathered during the investigation.

(3) Should the complainant withdraw the complaint during the investigation ordered by the court, the documents produced by that time and the statement concerning the withdrawal of the complaint shall be returned to the court.

(4) In the cases specified in subsections (2) and (3) the court shall terminate the procedure.

Decision without a personal hearing

Section 501 (1) The court shall send the documents to the prosecutor, if

a) the complaint and the documents seem to suggest a criminal offence requiring the prosecutor to represent the prosecution,

b) it deems necessary that the prosecutor should consider taking over the representation of the prosecution,

c) the prosecutor has taken over the representation of the prosecution before the summons to the personal hearing is issued.

(2) If this is feasible based on the contents of the complaint and the documents, the court shall decide on the transfer of the case, the suspension of the procedure and the termination of the procedure.

(3)[561] In the case specified in subsection (1) *a)* the prosecutor shall order the investigation. The investigation needs not be ordered, if the conditions stipulated in 174 (1) *c)* to *f)* prevail.

The personal hearing

Section 502 (1) If the measures listed in Sections 498 and 501 do not apply, the court shall summon both the reported person and the complainant to a personal hearing, and hold a session. The defence counsel and the representative of the complainant shall be notified thereof. If there are several victims in the case, all of the victims shall be summoned to the personal hearing.

[561] Section 501 (3) was enacted by Section 251 of Act I of 2002.

(2) In the summons the complainant (victim) shall be warned that upon an insufficient excuse for his absence the court shall regard the charges dropped. The summons sent to the reported person shall refer to the name of the complainant and the substance of the criminal offence.

(3) If the reported person is a foreign citizen, an officer at the consulate of their native country may also attend the personal hearing.

(4) At the commencement of the personal hearing the court shall establish the identity of the complainant and the reported person, presents the substance of the complaint, and – if the conditions therefor prevail – advises the reported person of the option of a counter-charge. Thereafter, the court shall endeavour to reconcile the complainant and the reported person.

(5) Should the attempt for reconciliation fail, the court records the data of the reported person, then asks whether he pleas guilty of the charges contained in the complaint, and requests him to specify the means of evidence in support of his defence. If necessary, the court shall designates the victim to act as the private accuser, or designates the private accuser.

(6) If the reported person lodges a counter-charge, the court may also hear the complainant in his capacity as the reported person.

(7) The court requests the complainant – and in the case of a counter-charge the reported person – to specify the means of evidence and indicate the facts they prove. The court may set a fifteen-day deadline for this.

Section 503 (1) Minutes shall be taken of the personal hearing.

(2) The responsibilities of the court defined in Sections 501 and 502 may also be discharged by the associate judge or the court secretary, and they are also entitled to adopt the decision described in Section 504 (1).

Decision based on the personal hearing

Section 504 (1) The court shall terminate the procedure, if the complainant

a) did not attend the personal hearing and failed to forthwith provide a substantial excuse in advance, or could not be summoned because he had failed to report his change of address,

b) has withdrawn the complaint.

(2) The court may adopt a decision at the personal hearing in each issue it is entitled to decide upon prior to the personal hearing.

(3) In the case specified in subsection (1) the procedure instituted based on the counter-charge shall be terminated, provided that the deadline for filing a private motion has lapsed before the day of the personal hearing.

Appeal against the decisions and measures in the course of the preparation of a trial

Section 505 No appeal may be lodged

a) against the order for an investigation,

b) against the summons to a personal hearing, and the notification thereof,

c) due to the designation of the private accuser,

d) against the measure taken pursuant to Section 501 (1).

Setting the trial

Section 506 In the summons the private accuser shall be warned that upon an insufficient excuse for his absence the court shall regard the charges dropped, unless he arranges his representation.

Persons attending the trial

Section 507 If the private accuser fails to attend the trial and had failed to forthwith provide a substantial excuse in advance, or could not be summoned because he had failed to report his change of address, he shall be regarded as having dropped the charges.

Conducting the trial and maintaining the order of the trial

Section 508 Should the private accuser be ordered to leave or be removed from the trial due to disturbing the order, he shall be notified of the evidence taken in his absence not later than before the conclusion of the evidentiary procedure. If the representative of the private accuser disturbs the order, and the private accuser is not present, the trial shall be adjourned at the cost of the former.

The trial

Section 509 (1) If the private accuser has no representative or the accused has no defence counsel, at the trial the court presents the substance of the charge and, where appropriate, the counter-charge.

(2) At the trial, the court shall hear the accused and the witness, as well as the expert. The accused shall be heard in the absence of the private accuser.

Dropping the charge and withdrawal from the representation of the prosecution

Section 510 (1)[562] The private accuser shall not provide justification for dropping the charge. At the trial, the condition set forth in Section 504 (1) *a)* shall also be applicable. The private accuser may also drop the charge in a repeated procedure.

(2) If the prosecutor has taken over the representation of the prosecution from the private accuser, he may not drop the charge but may withdraw from the representation thereof. If the private accuser is present, the trial shall be continued, otherwise the court shall adjourn the trial and simultaneously set the date for a new trial and notify the private accuser that prosecution shall be represented by him once again.

Ruling terminating the procedure

Section 511 (1) The court shall terminate the procedure if the private accuser has dropped the charge at the trial, or the charge should be regarded as dropped due to his negligence (Section 507). Such cases shall also be governed by the provisions of Section 504 (3).

(2) The abridged minutes [Section 252 (5)] shall contain the statement of the accused – if appropriate – induced the private accuser to drop the charge as well as the declaration of dropping the charge.

Procedure of the court of appeal

Section 512 (1) The private accuser may not file an appeal against the decision of the court of first instance in favour of the accused.

(2) The court of first instance shall submit the documents directly to the court of appeal.

(3) The court shall summon the private accuser to the hearing, if it deems that his presence is necessary. Otherwise the private accuser shall be notified of the trial.

(4) The court of appeal shall repeal the judgement of the court of first instance at a panel session and terminate the procedure, if a motion to this effect is filed by the private accuser before the panel session to be held for adopting a decision. This case shall also be governed by the provisions of Section 504 (3).

Section 513[563]

[562] The third sentence of Section 510 (1) was enacted by Section 252 of Act I of 2002.

Bearing the costs of criminal proceedings

Section 514 (1) In the case regulated in Section 339 (1) the costs of criminal proceedings shall be borne by the private accuser, however, if the criminal proceedings is terminated on the grounds terminating punishability as specified in Section 32 *a)* or *c*) of the Penal Code, the costs of criminal proceedings defined in Section 74 (1) *a)* shall be borne by the state. Section 339 (2) shall also apply, if the court terminated the proceedings pursuant to Section 504 (1) *b),* the first sentence of Section 510 (1) or Section 512 (4).

(2) The court of appeal shall order the private accuser to bear the costs of criminal proceedings incurred in the course of the appeal procedure, if only the private accuser lodged an appeal against the decision of the court of first instance, and the court of appeal has upheld such decision.

(3) In the event of a counter-charge, the court may also order the private accuser and the party having filed the counter-charge to bear the costs of criminal proceedings it has advanced.

(4)[564]

Motion for re-trial

Section 515 (1) The private accuser may also file a motion for re-trial, if the defendant was acquitted from the charge or the proceedings were terminated.

(2) The motion for re-trial shall be submitted directly to the court. If the motion for re-trial requests the establishment of a criminal offence requiring the prosecutor to represent the prosecution, the statement of the prosecutor shall also be obtained.

Chapter XXIII

ARRAIGNMENT

Section 516 Upon an arraignment, the provisions of this Act shall be applied with the derogations set forth in this Chapter.

Conditions for the arraignment

Section 517 (1) The prosecutor may arraign the defendant to court within fifteen days from the commission of the criminal offence, if

a)[565] the criminal offence falling in the competence of the local court or subject to military criminal proceedings is punishable by a maximum of eight years' imprisonment by law,

b) the case is simple,

c) the evidence is available,

d) the defendant was caught in the act or admitted the commission of the criminal offence.

(2) If the conditions for an arraignment set forth in subsection (1) *a)* to *c)* are met and the defendant was caught in the act, the prosecutor shall arraign the defendant within fifteen days of the commission of the criminal offence.

(3)[566] The private accuser, and the substitute private accuser may not file a motion for summoning the defendant to court.

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[563] Pursuant to Section 308 (2) of Act I of 2002, Section 513 shall be repealed and shall not enter into force.
[564] Pursuant to Section 308 (2) of Act I of 2002, Section 514 (4) shall be repealed and shall not enter into force.
[565] Section 517 (1) a) was established by Section 253 (1) of Act I of 2002.
[566] Section 517 (3) was enacted by Section 253 (2) of Act I of 2002.

Investigation and indictment

Section 518 (1) If the conditions for an arraignment are met and the prosecutor intends to summon the suspect to the court, the prosecutor shall communicate to the suspect both the criminal offence and the evidence of the arraignment.

(2) The prosecutor shall forthwith arrange that the suspect may retain a defence counsel; if the suspect has no defence counsel, the prosecutor shall appoint one. If the defendant is in custody, the prosecutor shall also provide for an opportunity for the defence counsel to communicate with the defendant prior tot he trial.

Section 519 (1)[567] The prosecutor shall forthwith notify the court, if he intends to have the defendant arraigned; and the court shall immediately set the date of the trial.

(2) The coercive measure entailing the restriction or deprival of personal freedom ordered prior to the arraignment shall last up to the conclusion of the trial. If the documents are returned to the prosecutor, it shall fall within the competence of the court to decide on the coercive measures entailing the restriction or deprival of personal freedom.

Section 520 The prosecutor shall have the accused arraigned with the participation of the investigating authority or otherwise, directly summon the defence counsel and ensure the availability of the means of evidence at the trial. The prosecutor shall also ensure that those who shall statutorily attend the trial be present there and those whose participation is not statutory may be present.

Preparation of the trial

Section 521 In the event of an arraignment, the provisions of Chapter XII may not be applied.

Trial of the court of first instance

Section 522 (1) The prosecutor and the defence counsel shall statutorily attend the trial.

(2) Unless this has been done earlier, prior to the commencement of the trial, the prosecutor shall transmit the documents and the physical evidence to the court, and thereafter present the charges orally.

(3) After the presentation of the charges, the court shall return the documents to the prosecutor, if more than fifteen days have lapsed between the commission of the criminal offence and the arraignment, or the criminal offence is punishable by a maximum of eight years' imprisonment by law.

Section 523 (1) The accused and the witness shall be heard by the presiding judge.

(2) If in the light of evidence taken at the trial the prosecutor needs to be contacted in order to seek further evidence, the court shall return the documents to the prosecutor.

Section 524 The indictment may only be expanded, if the conditions for an arraignment are also met in respect of the criminal offence designated in the expanded indictment. Otherwise the court shall return the documents to the prosecutor.

Section 525 Returning the documents to the prosecutor shall not be subject to an appeal.

[567] The text of Section 519 (1) was established by Section 254 of Act I of 2002.

Chapter XXIV
PROCEDURE AGAINST AN ABSENT DEFENDANT

Section 526 In the case of a procedure against an absent defendant, the provisions of this Act shall be applied with the derogations stipulated in this Chapter.

Section 527 (1) The fact that the defendant is absconding shall not be an obstacle to the investigation; in addition to the measures taken to locate the place of stay of the defendant [Section 73 (1)] tracing and securing the means of evidence shall also be ensured.

(2) If the measures to locate defendant were unsuccessful, the prosecutor may motion in the indictment that the trial be held in the absence of the defendant, provided that based on the data of the investigation, there is no obstacle to filing the indictment.

(3) If the prosecutor files a motion for holding the trial in the absence of the accused, the court shall issue a warrant of arrest, unless it has already been issued.

(4) Prior to filing the indictment, the prosecutor shall appoint a defence counsel for the defendant – unless the defendant has retained a defence counsel – and ensures that the defence counsel may inspect the documents of the investigation (Sections 193 and 194).

(5)[568] Summons and notifications as well as the decision and other documents addressed to the defendant shall be served on the defence counsel.

The procedure of the court against an absconding accused

Section 528[569] (1) The court shall proceed against the absconding the accused based on the motion of the prosecutor to this effect. If the prosecutor files a motion for holding the trial in the absence of the accused, the court may not suspend the procedure pursuant to Section 188 (1) *a)*. Neither the private accuser, not the substitute private accuser may motion for a court procedure against an absconding accused.

(2) If the prosecutor filed a motion for holding the trial in the absence of the accused, and the place of stay of the accused has become known prior to the commencement of the trial, the court shall notify the prosecutor thereof, and if necessary orders a coercive measure entailing the restriction or deprival of personal freedom of the accused.

Section 529 (1) If the place of stay of the accused has become unknown after the filing of the indictment, and the trial may be held in his absence [Section 527 (2)], the presiding judge may, without suspending the procedure, may ask the prosecutor whether he wishes to file a motion for holding the trial in the absence of the accused, and shall simultaneously issue a warrant of arrest.

(2) If the prosecutor deems it justified to hold the trial in the absence of the accused, he shall file a motion to this effect within fifteen days of such request.

(3) If no defence counsel had acted on behalf of the accused formerly, in the motion filed pursuant to subsection (2) the prosecutor shall also motion for the appointment of a defence counsel. The trial shall be continued with the presentation of the materials of the earlier trial.

(4) If the prosecutor does not file a motion for holding the trial in the absence of the accused, the presiding judge shall suspend the procedure.

(5)[570] The provisions set forth in subsections (1) to (4) shall also be applied, as appropriate, to procedure of the court of appeal.

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[568] The text of Section 527 (5) was established by Section 255 of Act I of 2002.

[569] Section 528 (1) was enacted by Section 256 of Act I of 2002, which concurrently amended the numer of the original Section 528 to Section 528 (2).

[570] Section 529 (5) was enacted by Section 257 of Act I of 2002.

Section 530 (1) At the trial held in the absence of the accused, the presence of the prosecutor and the defence counsel shall be statutory.

(2) The indictment, the decisions, the summons and the notification shall be served on the accused by way of an announcement. The summons and notification addressed to the accused shall also be served on the defence counsel thereof.

Section 531[571] (1) If the measures to locate the accused succeeded prior to the delivery of the conclusive decision of the court of first instance, the court shall continue the trial by the presentation of the material of the earlier trial, and if necessary, reopen the evidentiary procedure (Section 320).

(2) If the measures to locate the accused succeeded after the delivery of the conclusive decision of the court of first instance, within the deadline set for an appeal, the accused may, in lieu of an appeal, file a motion with the court of first instance for the repetition of the trial.

(3) Prior to the commencement of the trial, the court shall present its decision delivered based on the trial having been held in the absence of the accused and the motion of the accused to repeat the trial. At the repeated trial, instead of repeatedly taking the testimony of the witness and repeatedly hearing the expert, the minutes taken of the earlier testimony given before the court and the earlier expert opinion may be read out. In other respects, the trial shall be governed by the provisions stipulated in Chapter XIII.

(4) Depending on the outcome of the repeated trial, the court may either uphold its decision having been delivered based on the trial held in the absence of the accused, or repeal the same and deliver a new decision.

(5) If the measures to locate the accused succeeded during the procedure of the court of appeal, the court of appeal shall set the date of the trial and hear the accused there, and – if required – takes further evidence as motioned for by the accused. Depending on the outcome of the procedure, the court of appeal may either uphold or change the judgement of the court of first instance, or repeal the same and order the court of first instance to conduct a new procedure.

(6) If the defendant is located after the delivery of the final decision, a motion for re-trial may be submitted in his favour.

Procedure against a defendant staying abroad

Section 532 (1) If the defendant is staying abroad and no extradition may be requested, or his extradition was rejected and the criminal proceedings have not been transferred either, the prosecutor may motion in the indictment to hold the trial in the absence of the accused.

(2) If it is established in a court procedure that the extradition of the accused staying abroad may not be requested, or his extradition was rejected and the court does not deem it justified to offer the transfer of the criminal proceedings, the court may ask the prosecutor whether he wishes to file a motion for holding the trial in the absence of the accused.

(3)[572] If it is established during the trial commenced in the absence of the accused that the extradition of the accused staying abroad may not be requested, or his extradition was rejected and the court does not deem it justified to offer the transfer of the criminal proceedings, the court shall continue the trial without such request to the prosecutor.

(4) If the procedure is conducted against a defendant staying abroad, or the defendant has returned to Hungary, the provisions of Section 527 to 531 shall be applied as appropriate.

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[571] The text of Section 531 was established by Section 258 of Act I of 2002.

[572] The text of Section 532 (3) was established by Section 259 of Act I of 2002.

Chapter XXV
WAIVER OF THE TRIAL

Section 533 In the case of the procedure conducted based on a waiver of the trial, the provisions of this Act shall be applied with the derogations stipulated in this Chapter.

Section 534 (1)[573] At the motion of the prosecutor, in a procedure instituted due to a criminal offence punishable by a maximum of eight years' imprisonment by law, the court may establish the guilt of the accused in a judgement delivered at a public session and may impose a sentence, if the accused waives his right to a trial and pleads guilty. Neither the private accuser, nor the substitute private accuser may motion for a procedure based on a waiver of the right to a trial.

(2)[574] In the procedure based on a waiver of the trial, the sentence of imprisonment to be imposed shall take into consideration the provisions of Sections 87/C and 85/A of the Penal Code.

(3) The court may not reject the civil claim.

Waiver of the trial in the case of a co-operating defendant [575]

Section 534/A (1) The waiver of trial may also be applied in the case of an offender having committed a criminal offence in conspiracy (Section 137.8 of the Penal Code) and has closely co-operated with the prosecutor and the investigating authority in the course of the investigation to prove the criminal case, but the investigation has not been terminated for any reason, even if the criminal offence is punishable by more than eight years' imprisonment by law.

(2) In the case of a person stipulated in subsection (1) the procedure conducted based on the waiver of the trial, the sentence shall not be stricter than those set forth in the provisions of Section 98 of the Penal Code and the General Part of the Penal Code prescribed for a criminal offence committed in a criminal organisation. The sentence shall be established based on Sections 87/C and 85/A of the Penal Code. If the criminal offence shall be punished by more than eight years' imprisonment by law, the sentence may not exceed this limit.

The actions of the prosecutor

Section 535[576] (1) Taking into account the circumstances of the case, thus in particular the person of the defendant and the criminal offence committed, the prosecutor may initiate in the indictment the adjudication of the case at a public session, if the defendant

a) made a confession, admitting also his guilt in the course of the investigation, and

b) motions for the adjudication of the case at a public session.

(2) The defendant shall be informed of the option to waive his right to trial and the consequences thereof by the prosecutor prior to filing the indictment. The information and the statement of the defendant shall be recorded in minutes. The prosecutor may attach the minutes taken of the information as a document of the investigation to the court copy of the indictment, if the defendant has motioned for the adjudication of the case at a public session.

(3) Defendants who made no confession in the course of the investigation may request the prosecutor after the conclusion of the investigation, but not later than within fifteen days

[573] The second sentence of Section 534 (1) was enacted by Section 260 (1) of Act I of 2002.
[574] Section 534 (2) was established by Section 260 (2) of Act I of 2002.
[575] The subtitle and Section 534/A were enacted by Section 261 of Act I of 2002.
[576] The text of Section 535 was established by Section 262 of Act I of 2002.

following the service of the indictment, to file a motion for the adjudication of the case at a public session.

(4) If the prosecutor agrees with the request, he informs the defendant of the acceptance thereof after hearing the defendant. In such a case, the prosecutor shall forthwith file the motion to the court for the adjudication of the case at a public session. Unless the defendant has a defence counsel, the prosecutor shall appoint a defence counsel to act on behalf of the defendant and shall ensure that the defence counsel may examine the documents of the investigation.

(5) If the prosecutor does not file a motion for the adjudication of the case at a public session, he will not advise the court of the request of the defendant and may not submit the documents produced in this regard to the court.

(6) The prosecutor may not withdraw the motion for the adjudication of the case at a public session. If – based on the outcome of the session – the prosecutor deems that the accused is guilty in a graver criminal offence, or is guilty in other criminal offences as well, the prosecutor shall file a motion for referring the case to a trial.

The procedure of the court

Section 536 (1) Upon a waiver of trial, the court shall act as a single judge and hold a public session. At the public session the attendance of the prosecutor and the defence counsel shall be statutory.

(2) The preparation of the public session shall be governed by the rules pertaining to the preparation of a trial.

Section 537 (1) At the public session the prosecutor shall present the charge and the motion for the adjudication of the case at a public session.

(2) After the presentation of the charge and the motion, the court shall inform the accused of the consequences of his waiver of trial and confession before the court, and in particular of the provisions stipulated in Sections 539 and 541.

(3) Thereafter, the court shall call the accused to make a statement whether he wishes to waive his right to trial.

(4) Prior to making the statement, the court shall allow the accused to consult with his defence counsel.

(5) The court shall order the public session if the accused waives his right of trial, and the court – based on this fact, the documents of the procedure and, if necessary, the answers to the questions addressed to the prosecutor, the accused and the defence counsel – deems that there is no obstacle to adjudicating the case at a public session. In other cases the court shall refer the case to a trial. This ruling shall not be subject to an appeal.

Section 538 (1)[577] After the waiver of trial, the court shall hear the accused of the actions included in the indictment. If the accused refuses to make a testimony, the court shall refer the case to a trial and this ruling shall not be subject to an appeal. The accused shall be warned of this fact prior to the commencement of the hearing.

(2) If, after hearing the accused, the court deems that there is reasonable doubt as to the legal responsibility of the accused, or the voluntary nature or credibility of the confession thereof, and if – with the exception of the cases set forth in Section 535 (3) – testimony of the accused significantly differ from his testimony given in the course of the investigation, the court shall refer the case to a trial, and this ruling shall not be subject to an appeal. If the court considers that the above measure would not be justified, it shall also hear the accused to establish the conditions underlying the sentence to be imposed.

[577] The text of Section 538 (1) and (2) was established by Section 263 of Act I of 2002.

(3) After concluding the hearing of the accused, the prosecutor and thereafter the defence counsel may also make their addresses.

Section 539 (1) The court shall establish the guilt of the accused based on the confession thereof and the documents of the investigation.

(2)[578] If the court established that the classification of the offence may be graver than that indicated in the indictment, it shall refer the case to a trial. This ruling shall not be subject to an appeal.

(3)[579] In the justification of the condemning judgement, in addition to the items listed in Section 258 (3) *a)* to *c),* and the conditions underlying the sentence and the applied legal regulations it is sufficient to refer to the fact of the waiver of trial.

Section 540 If the prosecutor motioned for the public session pursuant to Section 535 (2), and at the public session the court referred the case to a trial – unless there is an obstacle to holding the trial[580] – the court shall forthwith hold the trial. The trial shall be governed by the provisions set forth in Chapter XIII.

The procedure of the court of appeal[581]

Section 541 (1) The establishment of guilt, the facts of the case established in compliance with Section 539 identically with the indictment, and the classification established identically with that in the indictment shall not be subject to an appeal.

(2) The statement of new facts and reference to new evidence in the appeal shall be made with in consideration with the restrictions set forth in subsection (1).

Section 542[582] (1) The court of appeal shall review the dispositions in the appealed judgement concerning the substantiality of the facts of the case, the establishment of guilt and the classification of the criminal offence, however, upon the establishment of guilt, the facts of the case established in compliance with Section 539 identically with the indictment, and the classification established identically with that in the indictment it shall only change the judgement of the court of first instance, if the defendant may be acquitted or the procedure terminated, or – due to the reclassification of the offence compared to the judgement of the court of first instance – the sentence shall be significantly commuted or a measure shall be applied in lieu of the punishment.

(2) During the appeal procedure, evidence may be taken with consideration to the restrictions stipulated in Section 539 (1).

(3) Regardless of the appeal of the prosecutor for severity, the court of appeal may impose a sentence within the limits stipulated in 534 (2).

(4) If the court of first instance held the public session in the absence of the conditions stipulated by law, the court of appeal shall repeal the judgement of the court of first instance and order such court to conduct the procedure in compliance with the rules pertaining to repeated procedures.

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[578] The second sentence of Section 539 (2) was enacted by Section 264(1) of Act I of 2002.

[579] Section 539 (3) was enacted by Section 264(2) of Act I of 2002.

[580] Pursuant to Section 308 (2) of Act I of 2002, in Section 540, the words “tanúk a korábban kibocsátott idézésre megjelentek és a” shall be repealed and shall not enter into force.

[581] Section 541 and the subtitle thereof were established by Section 265 of Act I of 2002.

[582] Section 542 (1) and (2) was enacted by Section 266 of Act I of 2002, which concurrently amended the original numbering of subsections (1) and (2) to subsections (3) and (4).

Chapter XXVI
OMISSION OF THE TRIAL [583]

Section 543 Upon a suspended execution of imprisonment, imposition of a fine, or the application of an ancillary penalty as an individual punishment or order of probation with the omission of a trial, the provisions of this Act shall be applied with the derogations stipulated in this Chapter.

Section 544 (1) At the motion of the prosecutor – or in a case based on private accusation, ex officio – the court may adopt a ruling, with the omission of a trial, concerning the suspension of the execution of an imprisonment, a fine, or as an individual punishment suspension of the licence to practice, suspension of the driving licence, expulsion – against a soldier demotion and the termination of service as well –, and, as a measure apply probation, reprimand against an accused at liberty, upon a criminal offence punishable by a maximum of three years' imprisonment by law, if

a) the law permits the suspension of the execution of the imprisonment, imposition of a fine, the probation, or the application of an ancillary penalty as an individual punishment, respectively,

b) the facts of the case are simple,

c) the accused has confessed the commission of the criminal offence,

d) the objective of the punishment can be attained without a trial as well.

(2) A sentence for imprisonment exceeding one year may not be impose without a trial.

(3)[584] Unless regulated otherwise by this Act, the ruling delivered with the omission of a trial shall be governed by the provisions concerning judgements.

Section 545 (1) The ruling specified in Section 544 (1) may be delivered within three days following the arrival of the case at the court.

(2) In cases based on private accusation the deadline stipulated in subsection (1) shall be reckoned from the day of the personal hearing.

Section 546 (1) If the prosecutor did not make a motion in the indictment for the omission of the trial by the court, the court may request him to do so.

(2) The prosecutor may file the motion specified in subsection (1) within three days of the service of such request.

Section 547 (1) The court

a) in the case of the suspension of the execution of an imprisonment, or the imposition of a fine, may order as an ancillary penalty the suspension of the licence to practice, suspension of the driving licence, or expulsion – against a soldier demotion, the termination of service reduction in rank or the extension of the waiting period as well – and in the case of the suspension of the execution of an imprisonment may apply fine as ancillary penalty,

b) in the case of the suspension of the execution of an imprisonment, or probation, may impose supervision by a probation officer,

c)[585] may also order in its ruling confiscation or forfeiture of property, or admit a civil claim, or refer the enforcement of the civil claim to other legal means,

d)[586] may terminate or repeal the probation.

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[583] The text of the title of Chapter XVI was established by Section 267 (1) of Act I of 2002.
[584] Section 544 (3) bekezdése was established by Section 267 (2) of Act I of 2002.
[585] Section 547 (1) c) was established by Section 268 (1) of Act I of 2002.

(2) In respect of bearing the costs of criminal proceedings, the provisions set froth in Sections 338 to 340 shall be applied.

(3) The purview of the ruling delivered with the omission of a trial shall contain

a) the designation of the criminal offence,

b) the imposed sentence for imprisonment, fine, or the ancillary penalty, probation or reprimand applied as an individual punishment,

c) other dispositions based on legal regulations,

d) the warning of the conditions stipulated in Sections 548 and 550.

(4) To the justification of the ruling the provisions of Section 259 (1) shall be applied as appropriate.

(5)[587] The ruling may also delivered by the court secretary.

Section 548 (1) The ruling delivered with the omission of a trial shall not be subject to an appeal; the prosecutor, the private accuser, the accused, the defence counsel, the private party and the other interested party – within eight days of the service – may request that a trial be held. Upon such a request, the court shall hold a trial.

(2) The prosecutor may not request that a trial be held on the grounds that the court had acted pursuant to Section 544 (1).

(3)[588] The private party and the other interested may only request that a trial be held in connection with the disposition regarding the civil claim, and the confiscation and forfeiture of property, respectively. If the trial was requested only by the private party, at the trial the court shall repeal the disposition regarding the civil claim and refers the enforcement of the claim to other legal means.

(4) The request for holding a trial – with the exception of the case stipulated in Section 549 (2) – shall have a delaying effect on the execution of the ruling.

(5)[589] If the ruling delivered with the omission of a trial cannot be served on the accused, in respect of the consequences of the failed service the provisions of Section 70 (7) shall apply, providing however, that service by announcement cannot be applied and the court shall arrange for setting a date for the trial.

Section 549 (1)[590] After the commencement of the trial, the court presents the ruling delivered with the omission of a trial and the request for holding a trial.

(2) If the request for holding a trial was filed under Section 548 (3), or, if the prosecutor, the accused or the defence counsel protested solely against the disposition concerning confiscation or forfeiture of property, the civil claim or the costs of criminal proceedings, the court shall only decide in this issue at the trial.

(3) The court – with the exception of the case stipulated in subsection (2) – shall repeal its ruling delivered with the omission of a trial and thereafter conducts the trial in compliance with the provisions of Chapter XIII.

(4) In the absence of a request to the detriment of the accused, the court may only impose a graver punishment, or apply a graver measure in lieu of a punishment, if new evidence arises at the trial and thereby the court establishes a new fact necessitating a graver classification or the imposition of a significantly graver punishment, or apply a graver measure in lieu of a punishment.

(5) The ruling delivered pursuant to subsection (3) shall not be subject to an appeal.

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[586] Section 547 (1) d) was enacted by Section 268 (1) of Act I of 2002.
[587] Section 547 (5) was enacted by Section 268 (2) of Act I of 2002.
[588] Section 548 (3) was established by Section 269 (1) of Act I of 2002.
[589] Section 548 (5) was established by Section 269 (2) of Act I of 2002.
[590] The text of Section 549 (1) and (2) was established by Section 270 of Act I of 2002.

Section 550 (1) The petitioner may withdraw the request for holding a trial until the commencement thereof.

(2) The party having requested the trial shall be obliged to attend the trial. If he fails to attend the trial and forthwith provide a substantial excuse in advance his request shall be regarded withdrawn. This provision shall not apply to the prosecutor.

Chapter XXVII

PROCEDURE AGAINST PERSONS ENJOYING IMMUNITY

Persons enjoying immunity due to holding a public office

Section 551 (1) Against members of Parliament, Constitutional Court justice, civil right ombudsman and the general deputy thereof, the ombudsman for minority rights, the data protection commissioner, the president and vice-presidents of the State Audit Office – until they hold such office – criminal proceedings may only be instituted after the suspension of their immunity.

(2) Against professional judges and prosecutors, as well as associate judges criminal proceedings for a criminal offence committed in their capacity as such, may only be instituted after the prior consent of an authorised person.

(3) The persons enjoying immunity, as listed in subsections (1) and (2) may only be heard as suspects after the suspension of their immunity, or after obtaining the prior consent of an authorised person, and before that – with the exception of being caught in the act – no coercive measure may be applied against such persons.

(4) The bodies and persons authorised to suspend the immunity or grant their consent are designated in a separate act.[591]

Section 552 (1) If the criminal proceedings reveal any data suggesting that the defendant is a person enjoying immunity, in addition to the suspension of the proceedings, a motion shall be filed for the decision by the person authorised to suspend the immunity or grant the consent therefor. Prior to the filing of the indictment, this motion shall be submitted by the Prosecutor General, and thereafter, or in cases based on private accusation, by the court. In the event of catching the offender in the act, the motion shall be submitted immediately.

(2) If the person authorised to suspend the immunity or grant the consent therefor has rejected the motion, the proceedings shall be terminated. Unless provided otherwise by law, the termination of the proceedings on such grounds shall not prevent the conducting of the criminal proceedings after the cessation of the personal immunity.

(3) After the suspension of the immunity or granting the approval, expedited proceedings shall be conducted in compliance with this Act. The proceedings may only be conducted in respect of the act covered by the consent.

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[591] Please refer to Sections 4–7 of Act LV of 1990 on the Legal status of members of Parliament, Section 14 of Act XXXII of 1989 on the Constitutional Court, Sections 11–14 of Act LIX of 1993 on állampolgári jogok országgy• lési biztosáról, Section 20 (2) of Act LXXVII of 1993 on nemzeti és etnikai kisebbségek jogairól szóló, Section 23 (2) of LXIII of 1992 on a személyes adatok védelmér• l és a közérdek• adatok nyilvánosságáról, Section 9 of Act XXXVIII of 1989 on Állami Számvev• székr• l, Section 5 of Act LXVI of 1997 on bíróságok szervezetér• l és igazgatásáról and Section 23 of Act V of 1972 on Republic of Hungary prosecutorségér• l.

Persons enjoying immunity under international law

Section 553 (1) In the cases of persons enjoying diplomatic immunity or other immunity under international law (hereinafter collectively: diplomatic immunity)[592]), the provisions stipulated in Sections 551 and 552 shall be applied with the derogations set forth in this Section.

(2) Against persons enjoying diplomatic immunity, no criminal procedural action may be taken before the suspension of their immunity.

(3) The motion for suspending diplomatic immunity shall be submitted by the court through the minister of justice, and the Prosecutor General directly to the minister of foreign affairs.

Section 554 (1) Until a decision made on the issue of diplomatic immunity, the court shall suspend the proceedings even if the person enjoying immunity acts as a private accuser. If the court establishes the existence of immunity based on the position of the minister of foreign affairs, it shall terminate the proceedings.

(2) Should it become necessary in the course of the proceedings to hear a person enjoying diplomatic immunity as a witness, or should such a person act as a private party, prior to the filing of the indictment the Prosecutor General, and thereafter, or in cases based on private accusation the court, through the minister of justice submits the case – without suspending the proceedings – to the minister of foreign affairs requesting his opinion.

(3) If the immunity can be established based on the opinion of the minister of foreign affairs, the person enjoying immunity may not be heard and his civil claim may not be adjudicated.

(4) The persons enjoying immunity, as specified in Section 553 (1) may not act as a defence counsel or expert in criminal proceedings, and may not be employed as an official witness.

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[592] Please refer to Law-Decree No. 22 of 1965 on the Promulgation of the International Treaty on Diplomatic Relations signed in Vienna on April 18, 1961 and Sections 22, 24, 27, 29–32, 37–39 of the Treaty. Please also refer to Law-Decree No. 7 of 1973 on a diplomáciai or egyéb immunity esetében szükséges eljárásról.

PART SIX

Chapter XXVIII

SPECIAL PROCEDURES

Title I

GENERAL RULES

Section 555 (1) In special procedures, the provisions of this Act shall be applied with the derogations stipulated in this Chapter.

(2) Unless provided otherwise, in the course of special procedures

a) the procedure shall be instituted ex officio or upon the motion of the prosecutor, the defendant or the defence counsel,

b) the court that delivered a conclusive decision in the first instance (in the basic case) prior to the special procedure shall be the acting court,

c) the court shall act without the participation of associate judges, as a single judge,

d) the court shall terminate the procedure, if the prosecutor withdraws his motion,

e) the court shall adopt its decision based on the documents, and, if necessary, if shall hear the prosecutor, the defendant and the defence counsel at a session; and shall hold a trial if evidence is taken,

f) minutes shall be drawn up when the prosecutor, the defendant and the defence counsel are heard,

g) the court decision may be appealed by the prosecutor, the defendant and the defence counsel,

h) the court of appeal shall consider the appeal against the judgement of the court of first instance at a panel session as well,

i)[593] the costs of criminal proceedings shall be borne by the defendant, if the defendant was obliged to pay the costs of criminal proceedings in the basic case.

(3) For the purposes of this Chapter, the costs of criminal proceedings shall mean the costs and out-of-pocket expenses incurred in the course of the special procedure and advanced by the state [Section 74 (1)].

(4) In the course of the special procedure, the measures regulated in Section 73 may be implemented against an absconding defendant in order to hold a trial or session; a warrant of arrest may be issued if deprival of freedom may apply as a result of the special procedure. When a warrant of arrest is issued, upon location, the defendant may be taken into custody. The custody may last until the conclusion of the trial or session but not longer than six days.

Title II

THE SPECIFIC SPECIAL PROCEDURES

Subsequent establishment of the decree of security of imprisonment

Section 556 The court shall subsequently decide on the decree of security of imprisonment [Sections 41 (1) and 111 (2) of the Penal Code], if the final judgement did not

[593] Pursuant to the first sentence of Section 308 (2) of Act I of 2002, the original item i) of Section 555 (2) shall be repealed and shall not enter into force; concurrently, the second sentence of Section 308 (2) of Act I of 2002 amended the numbering of the original Section 555 (1) j) to Section 555 (1) i).

make a disposition thereon or the disposition was contrary to the law. The disposition based on Section 45 (2) of the Penal Code may not be substituted or reviewed.

Subsequent modification of the disposition concerning release on parole

Section 557 (1) The court adopts a decision subsequently, if the final judgement contained a disposition in respect of release on parole contrary to the law.

(2) If the court decides subsequently on the earliest date of release on parole from a life imprisonment, it shall hold a trial.

Postponement of the earliest day of release on parole in the case of life imprisonment

Section 558[594] The court shall decide ex officio or upon the motion of the prosecutor on the postponement of the earliest day of release on parole in the case of life imprisonment (Section 47/B of the Penal Code) at a trial.

Termination of parole

Section 559 The court shall adopt a decision concerning the termination of parole subsequently, if the court adjudicating the criminal offence committed during the parole has made no disposition to this effect.

Subsequent modification of the disposition concerning termination of release on parole.

Section 560 The court adopts a decision subsequently, if the final judgement contained a disposition on the termination of parole contrary to the law.

Subsequent establishment of compulsory labour service

Section 561 The court adopts a decision subsequently, if its final judgement imposing compulsory labour service failed to specify the work to be done as compulsory labour service.

Subsequent decision on imprisonment to replace fine as ancillary penalty

Section 562 The court adopts a decision subsequently, if the final judgement did not contain a disposition on the replacement of fine as ancillary penalty by imprisonment – upon non-payment –, or the disposition was contrary to the law.

Replacement of a fine with imprisonment

Section 563 (1) The court shall adopt a decision ex officio or upon the motion of the prosecutor on the replacement of the fine, or the fine as ancillary penalty with imprisonment, if the convict has defaulted his obligation to pay the fine.

(2) The ruling announcing the replacement shall not be subject to an appeal.

Subsequent inclusion of the suspension of driver's licence

Section 564 The court adopts a decision subsequently, if the final judgement did not contain a disposition on the inclusion of the withdrawal of the driver's licence of the convict from the period of the suspension of the same, or the disposition was contrary to the law.

Exemption from the permanent withdrawal of a licence to practice or a driver's licence, and from permanent expulsion [595]

Section 565 (1) The convict may request exemption from the permanent withdrawal of a licence to practice or a driver's licence from the court of first instance having proceeded in the basic case.

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[594] The text of Section 558 was established by Section 271 of Act I of 2002.

[595] The subtitle of Section 565 was established by Section 272 (1) of Act I of 2002.

(2) Prior to the consideration of the request, the court shall obtain the statement of the prosecutor. If the statutory conditions for the exemption are not met, the court shall reject the request, in other cases it shall adjudicate it on its merit.

(3)[596] The convict may request exemption from permanent expulsion from the court of first instance having proceeded in the basic case. The request may also be submitted to the foreign representation offices of the Republic of Hungary.

(4) Prior to the consideration of the request, the court shall obtain the statements of the prosecutor, the responsible immigration authority and – if possible – the authority entitled to provide legal assistance in criminal matters at the place of residence of the convict. If the statutory conditions for the exemption are not met, the court shall reject the request, in other cases it shall adjudicate it on its merit.

Review of the involuntary treatment in a mental institution

Section 566 (1)[597] The court shall decide on the review of the involuntary treatment in a mental institution – i.e. on the necessity of the maintenance or termination thereof – in a panel, at a trial, by way of a ruling. At the trial the prosecutor, the defence counsel and – provided that his health condition allows his attendance conditions and he is capable of exercising his rights – the person undergoing involuntary treatment in a mental institution shall be heard. The court to have competence for the review shall be the Pest Central District Court or the Metropolitan Court, if the case in the first instance was not proceeded by a Budapest-seated local court or a Budapest-seated county court, respectively.

(2)[598] The court shall review ex officio the necessity of a involuntary treatment in a mental institution prior to the lapse of one year calculated from the commencement thereof. If the court does not terminate the involuntary treatment in a mental institution, the review shall be performed annually. If the person obliged to undergo involuntary treatment in a mental institution had already been under the effect of the temporary involuntary treatment in a mental institution before the judgement has become final, the deadline shall be calculated from the commencement of the coercive measure.

(3) The involuntary treatment in a mental institution may be reviewed upon the motion of the prosecutor, the person undergoing the involuntary treatment in a mental institution, as well as the spouse, legal representative or defence counsel thereof, and the request of the head of the mental institution performing the involuntary treatment. The court may omit the review of the involuntary treatment in a mental institution upon a motion, if a review has taken place within six months therefrom.

(4)[599] Prior to the review, the expert opinion of a psychiatrist shall be obtained. During the procedure, the medical doctor of the mental institution performing the involuntary treatment may participate in formulating the psychiatrist's opinion as one of the experts.

(5) The ruling concerning the review of the involuntary treatment in a mental institution may be appealed both by the spouse and the legal representative of the person undergoing the involuntary treatment.

Subsequent order of supervision by probation officer

Section 567 (1) The court shall adopt a decision on ordering supervision by a probation officer subsequently, if the final judgement contained no disposition thereon; or the sentence for imprisonment was suspended indefinitely due to a pardon and the convict is a notorious criminal [Section 82 (1) of the Penal Code].

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[596] Section 565 (3) and (4) was enacted by Section 272 (2) of Act I of 2002.
[597] Section 566 (1) was established by Section 273 (1) of Act I of 2002.
[598] The thid sentence of Section 566 (2) was enacted by Section 273 (2) of Act I of 2002.
[599] The second sentence of Section 566 (4) was enacted by Section 273 (3) of Act I of 2002.

(2) Prior to ordering the supervision by a probation officer, the court shall obtain the motion of the prosecutor. The court shall hold a trial, if it deems that special rules of conduct should be prescribed [Section 82 (6) of the Penal Code], or the prosecutor makes a motion for the imposition of special rules of conduct.

Procedure in the case of probation

Section 568 (1)[600] The court having proceeded in the basic case shall ex officio or upon the motion of the prosecutor make a judgement at a trial on the extension of the probation period or the termination of the probation [Section 73 (1) and (2) of the Penal Code], if the convict on probation has gravely violated the rules of conduct related to supervision by a probation officer. The judgement shall pronounce the accused guilty of the criminal offence already charged to the accused and impose a punishment. In the event of a juvenile offender, the court may omit the pronunciation of the guilt and order his placement in a detention home.

(2) In respect of the appeal against the court decision the provisions pertaining to the legal remedy against conclusive decisions shall be applied.

(3) If a new procedure is instituted against the convict on probation due to a criminal offence committed before or during the probation period, and the court having competence and jurisdiction to adjudicate this latter case have not consolidated the cases [Section 265 (2) and (3)], the court shall make a decision thereon upon the motion of the prosecutor or ex officio and set a date for the trial. The trial shall be conducted in compliance with the provisions stipulated in Title III [601] of Chapter XV. The decision ordering consolidation shall not be subject to an appeal.

Procedure for confiscation and forfeiture of property [602]

Section 569 (1)[603] Upon the motion of the prosecutor the court shall decide upon the confiscation or forfeiture of property, if no criminal proceedings have been instituted against anyone, or the criminal proceedings have been terminated, or suspended due to the unknown location or mental disease of the defendant.

(2) The procedure shall be conducted by the court having competence and jurisdiction to adjudicate the criminal offence; or, if such court cannot be designated, the court at which prosecutor has filed the motion to this effect.

(3) The court decision shall not be subject to an appeal, however, within eight days of the service of the ruling, the prosecutor and those affected by the dispositions in the decision may request that a trial be held.

(4) The prosecutor and those interested owing to the motion shall be notified of the trial. Should the person interested be unknown or absconding, or fail to command the Hungarian language, the court shall appoint a representative to act on his behalf.

(5) In respect of the trial, the provisions set forth in Chapter XXVI shall be applied as appropriate. As regards bearing the costs of criminal proceedings, the relevant general provisions (Sections 338 to 340) shall be applied as appropriate. The interested person may also appeal the ruling delivered at the trial; such appeal shall have a delaying effect.

(6) The tasks of the court specified in subsections (1) and (2) may also be performed by the court secretary, without, however, being entitled to hold a trial.

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[600] The text of Section 568 (1) was established by Section 274 of Act I of 2002.

[601] The reference in the second sentence of Section 568 (3) was established by Section 88 (2) c) of Act II of 2003.

[602] The subtitle was established by Section 275 (1) of Act I of 2002.

[603] Section 569 (1) was established by Section 275 (2)of Act I of 2002.

Subsequent confiscation

Section 570 (1)[604] If the court made no disposition on confiscation or forfeiture of property in its conclusive decision delivered based on the trial, it shall made the relevant decision subsequently, upon the motion of the prosecutor or ex officio. The court procedure shall be governed by the provisions set forth in Section 569 (3).

(2) If the court holds a trial, its shall notify thereof the prosecutor, the defendant, the defence counsel and the person interested due to the motion. In respect of the trial, the provisions set forth in Chapter XXVI shall be applied as appropriate.

(3) The interested person may also appeal the ruling delivered at the trial; such appeal shall have a delaying effect.

Subsequent order on items seized

Section 571 If the court made no disposition in its conclusive decision on the issue or destruction of an item seized, or the transfer of such item into the ownership of the state, or its disposition was contrary to the law, it shall made the relevant decision subsequently, upon the motion of the prosecutor or ex officio, applying the provisions of Section 570 as appropriate.

Subsequent order to execute an indefinitely suspended sentence and subsequent order of imprisonment suspended for probation [605]

Section 572 (1) The court shall order the execution of an indefinitely suspended sentence upon the motion of the prosecutor or ex officio, if

a)[606]

b) owing to a criminal offence committed during the probation period, the convict was sentenced as specified in Section 91 (1) *b)* or 91 (3) of the Penal Code, and the court proceeding in the latter criminal offence made no disposition on the execution thereof,

c) if the convict on probation has gravely violated the rules of conduct related to supervision by a probation officer.

(2)[607] In the case specified in subsection (1) *c)*, the court shall adopt a decision at a trial.

(3) In the absence of an order to execute the indefinitely suspended sentence, the costs of criminal proceedings shall be borne by the state.

(4) The provision stipulated in subsection (1) *a)* may not be applied, if the defendant was sentenced pursuant to the application of Section 543.

(5) The appeal against the ruling ordering the execution of an indefinitely suspended sentence shall have a delaying effect.

(6)[608] The court shall subsequently repeal the order to execute the indefinitely suspended sentence, if it ordered the execution of the imprisonment in violation of the law.

Subsequent disposition on general amnesty

Section 573 The court shall make a decision on the effect and the related legal consequences of the general amnesty subsequently, made no disposition thereon in its final decision, or the disposition was contrary to the law.

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[604] The text of Section 570 (1) was established by Section 276 of Act I of 2002.

[605] The subtitle was established by Section 277 (1) of Act I of 2002.

[606] Section 572 (1) a) was annulled by Resolution No. 5/1999. (III. 31.) AB of the Constitutional Court with the effect of the promulgation (March 23, 1998) of this Act.

[607] In Section 572 (2), the provision referring to Section 572 (1) a) ("*a)* and") was annulled by Resolution No. 5/1999. (III. 31.) AB of the Constitutional Court. Pursuant to the Resolution of the Constitutional Court, Section 572 (2) shall enter into force with the text published here.

[608] Section 572 (6) was enacted by Section 277 (2) of Act I of 2002.

Concurrent sentencing

Section 574 (1) Concurrent sentencing shall fall in the competence of the court of first instance having proceeded in the latest case concluded, provided that the procedures were conducted by courts having identical competence; in other cases the court of first instance having the greater competence shall proceed.

(2)[609] If military criminal proceedings were instituted in any of the cases, the decision concerning concurrent sentencing shall be adopted by the court having conducted the military criminal proceedings, unless the effect of the military criminal proceedings in the latest case concluded was substantiated by the provisions of Section 470 (3).

(3) The court shall decide on concurrent sentencing in a judgement and reject the related motion in a ruling. In the judgement the court may make dispositions of the conditions specified in Sections 556 and 557.

(4) The power of attorney or appointment of the defence counsel in the case having been processed by the court with competence for concurrent sentencing shall extend to the concurrent sentencing procedure as well.

(5) Upon the absence of an order on concurrent sentencing, the costs of criminal proceedings shall be borne by the state.

Subsequent concurrent sentencing

Section 575 The court shall adopt a decision concerning concurrent sentencing, and the term of the concurrent sentence subsequently, if the final judgement announcing the concurrent sentence made a disposition thereon contrary to the law.

Subsequent inclusion of pre-trial detention and house arrest [610]

Section 576 (1) The court shall adopt a decision on the inclusion of pre-trial detention or house arrest subsequently, if it made no disposition thereon in its final judgement, or the disposition was contrary to the law.

(2) In the procedure conducted pursuant to subsection (1) the disposition based on Section 99 (3) of the Penal Code may only be reviewed if the related disposition in the final judgement violates the law.

Dispensation by court decision

Section 577 (1) The convict or the legal representative thereof may request subsequent dispensation from aggravating circumstances upon prior conviction from the court of first instance having proceeded in the basic case. In the case of several convictions, the court having the greater competence shall act, or, in the absence of such a court, the court having imposed the gravest punishment. If the sentences are of identical gravity, any of the courts may proceed in the case.

(2)[611] If military criminal proceedings were instituted in any of the cases, the court having conducted the military criminal proceedings shall act in the case, unless the effect of the military criminal proceedings in the latest case concluded was substantiated by the provisions of Section 470 (3).

(3) Prior to considering the request, the court shall obtain the statement of the prosecutor. If the statutory conditions for the dispensation are not met, the court shall reject the request, , in other cases it shall adjudicate it on its merit.

(4) The court shall repeal the decision announcing the dispensation subsequently, upon the motion of the prosecutor or ex officio, if the dispensation has lost its effect [Sections 102 (2)

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[609] The text of Section 574 (2) was established by Section 278 of Act I of 2002.
[610] Section 576 and the subtitle thereof were established by Section79 of Act II of 2003.
[611] The text of Section 577 (2) was established by Section 279 of Act I of 2002.

and 104 (2) of the Penal Code], or it is subsequently established that the dispensation was prohibited by law.

Subsequent decision concerning the costs of criminal proceedings

Section 578 The court shall make a decision on bearing the costs of criminal proceedings subsequently, if the final decision did not contain a disposition thereon, or the disposition was contrary to the law. The appeal against this ruling has a delaying effect.

Recognition of a foreign judgement

Section 579[612] Recognition of the judgement delivered by a foreign court shall (Section 6 of the Penal Code) fall within the competence and jurisdiction of the Metropolitan Court. In its procedure, the Metropolitan Court shall establish the detriments entailed by the conviction under the laws of Hungary, and, if required, the method of executing the judgement of the foreign court in compliance with the laws of Hungary. The rules of procedure for transposing a sentence for imprisonment imposed by a foreign court are regulated in a separate act.[613]

Title III

COMPENSATION AND REIMBURSEMENT

Compensation

Section 580 (1) Pre-trial detention and temporary involuntary treatment in a mental institution shall be subject to compensation, if

I. the investigation was terminated because

a) the action does not constitute a criminal offence,

b) it cannot be ascertained from the data of the investigation that the criminal offence has been committed,

c) it was not the suspect who committed the criminal offence, or it cannot be ascertained from the data of the investigation that the criminal offence has been committed by the suspect,

d) a ground for the preclusion of punishability exists,

e) the procedure cannot continue due to statutory limitation,

f) a final court verdict has already been delivered on the action;

II. the court

a) has acquitted the defendant,

b) has terminated the procedure due to statutory limitation of punishability, dropping the charges or because a final ruling has been delivered in the case.

(2) Notwithstanding subsection (1), no compensation shall be paid if the defendant

a) has escaped, or has attempted to escape, or absconded from the court, the prosecutor or the investigating authority,

b)[614]

c) was acquitted with an order to an involuntary treatment in a mental institution.

Section 581 (1)[615] The defendant shall be entitled to compensation for imprisonment, placement in a detention home or an involuntary treatment in a mental institution served under a final judgement, if the defendant was acquitted due to extraordinary legal remedy, received a less severe sentence, was placed on probation or was reprimanded, or the

[612] The text of Section 579 was established by Section 80 of Act II of 2003.
[613] Please refer to Act XXXVIII of 1996.
[614] Section 580 (2) b) was annulled by Resolution No. 41/2003. (VII. 2.) AB of the Constitutional Court.
[615] Section 581 (1) was established by Section 281 (1) of Act I of 2002.

procedure against him was terminated, or it was established that the involuntary treatment in a mental institution was ordered without legal justification.

(2) No compensation may be paid, if the defendant

a) failed to disclose in the basic case the facts and evidence underlying the judgement delivered after the re-trial,

b)[616]

c) was acquitted with an order to an involuntary treatment in a mental institution.

(3)[617] Subsection (2) *b)* may not be applied, if the condition for the compensation can be established on the basis of a decision adopted in the course of an appeal on legal grounds or a harmonisation procedure.

Section 582 In respect of the method and extent of the compensation the provisions of the Civil Code pertaining to liability for torts actionable *per se*.

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Section 583 (1)[618] The defendant may submit a claim for compensation within six months of being notified of the decision terminating the investigation, the final judgement of acquittal, the final ruling on termination, or the final decision delivered as a result of extraordinary legal remedy procedure.

(2) The claim shall specify the amount of compensation requested, the evidence underlying the claim and have the supporting documents attached.

(3)[619] If the investigation was terminated, the compensation claim shall be submitted to the court which had ordered the pre-trial detention or the temporary involuntary treatment in a mental institution.

(4) If the defendant dies prior to the conclusion of the compensation procedure, or dies prior to the lapse of the deadline without having submitted a claim, his heir may request that the procedure be conducted or submit a claim for compensation within the deadline, respectively.

Section 584[620] (1) The court shall send the claim, together with the documents of the criminal case for consideration to the court having competence and jurisdiction under the Code of Civil Procedures to conduct the procedure. The ruling ordering that the documents be forwarded shall not be subject to an appeal.

(2) In the course of considering the claim for compensation, the court specified in subsection (1) shall act in compliance with the rules set forth in the Code of Civil Procedures, while taking into account the derogations set forth in this Act. The litigating parties shall be the defendant (heir) as a plaintiff and the minister of justice representing the Hungarian State as the respondent.

(3) Prior to the consideration of a compensation claim substantiated by any of the provisions set forth in Section 580 (1) I. – if required – the court shall obtain the statement of the prosecutor having proceeded in the basic case. Upon the motion of the respondent, the statement of the prosecutor's office shall be obtained.

(4) The compensation shall be paid by the state.

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[616] Section 581 (2) b) was annulled by Resolution No. 41/2003. (VII. 2.) AB of the Constitutional Court.
[617] Section 581 (3) was enacted by Section 281 (2) of Act I of 2002.
[618] Section 583 (1) was established by Section 282 (1) of Act I of 2002.
[619] Section 583 (3) was established by Section 282 (2) of Act I of 2002.
[620] The text of Section 584 was established by Section 283 of Act I of 2002.

Reimbursement

Section 585 (1)[621] The amount paid as a fine and the costs of criminal proceedings shall be reimbursed to the defendant, if the defendant was acquitted, or the procedure against him was terminated due to an extraordinary legal remedy procedure, or the decision delivered thereby contains no such payment obligation, or contains a payment obligation for a lower amount.

(2) In the case of forfeiture of property and confiscation the provisions stipulated in subsection (1) shall be applied, provided that the confiscated item shall be returned in kind, or, if this is not practicable, the amount reimbursed shall be the market value established at the time of the forfeiture of property or confiscation, increased by the prevailing legal interest rate for the period lapsed up to the date of the reimbursement.

(3)[622] Reimbursement shall be ordered by the court having adopted the decision on the acquittal or the termination of the procedure, or the court which have omitted the obligation or ordered the payment of a lower amount. The reimbursement shall be settled by the Office of the National Judiciary Council.

Title IV

SECURITY

Section 586 (1) Upon the request of a defendant living abroad, up to the filing of the indictment the prosecutor, thereafter the court may permit the deposit of a security. In such a case the procedure may be conducted in the absence of the defendant.

(2)[623] The amount of the security shall be determined by the prosecutor, or the court, in an extent required for the enforcement of the fine, forfeiture of property to be foreseeably imposed on the defendant as well as the costs of criminal proceedings to be incurred.

(3) In the request for permission of depositing a security, the defendant shall authorise the defence counsel to receive the official documents addressed to the defendant (mailing agent).

(4) After depositing the security, the documents addressed to the defendant shall be served on the mailing agent. The mailing agent shall immediately advise the defendant of the summons addressed to the defendant. If the defendant leaves the territory of the Republic of Hungary and fails to be present despite the summons served on the mailing agent,

a) no arrest on a bench warrant is issued,

b) the procedure shall not be terminated,

c) the summons shall not be announced by way of a publication,

and the trial shall be held regardless of the absence of the defendant.

(5) If the prosecutor or the court permitted the deposit of a security, and the defendant left the territory of the Republic of Hungary, the provisions stipulated in Chapter XXIV may not be applied in the procedure.

(6) The participation of a defence counsel is statutory in the procedure.

Section 587 (1) If the court pronounces the defendant guilty, the security shall be transferred to the state when the decision becomes final.

(2)[624] If the court imposes a fine, applies forfeiture of property, or obliges the defendant to pay the costs of criminal proceedings, the security transferred to the state shall be expended to execute such dispositions.

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[621] Section 585 (1) was established by Section 284 (1) of Act I of 2002.
[622] Section 585 (3) was established by Section 284 (2) of Act I of 2002.
[623] The text of Section 586 (2) was established by Section 285 of Act I of 2002.

(3) Upon the imposition of a definite sentence of imprisonment, the security shall be repaid to the convict after the sentence has been served. no measures may be taken to execute other punishment.

(4)[625] The security shall be refunded to the defendant in full, or, in the case of several criminal offences in proportionate parts,

a) upon the partial termination of the investigation, and

b) if the court has partially acquitted the defendant or partially terminated the procedure against the defendant.

Chapter XXIX

EXECUTION OF THE DECISIONS

Title I

ENFORCEABILITY

Enforceability of the judgement

Section 588 (1) The judgement may be enforced after it has become final.

(2) The judgement of the court of first instance shall become final on the day when

a) it is announced, provided that this Act excludes the possibility of an appeal,

b) those entitled to lodge an appeal declare that they do not wish to lodge an appeal or when they withdraw the appeal,

c) the deadline for an appeal has lapsed without the announcement of an appeal,

d)[626] the court of appeal rejected the appeal, or upheld the judgement of the court of first instance.

(3)[627] The judgement of the court of appeal becomes final when it is announced.

(4) After the conclusive decision has become final, the presiding judge shall certify the finality and the enforceability thereof by a clause on the original copy of the decision, indicating the date when the decision has become final as well as the date of enforceability.

(5)[628] If the decision becomes partially final, the clause shall indicate the date of partial finality as well as the part which has become final and the disposition that may be enforced.

(6) If necessary, both the accused and the defence counsel shall be notified of the establishment of the finality and enforceability.

Enforceability of a ruling

Section 589 (1) The enforceability of a ruling shall be governed by the provisions of Section 347 (2).

(2) In the event that a ruling delivered with the omission of a trial may be subject to a request for holding a trial, the ruling shall become enforceable on the day when the deadline for submitting the request has lapsed and none of those entitled have requested that a trial be held, or the request for holding a trial was withdrawn by the petitioner, or the petitioner failed to attend the trial. This provisions shall also apply to the dispositions of the ruling delivered with the omission of a trial pursuant to Section 549 (2), in respect of which no request was submitted for holding a trial.

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[624] Section 587 (2) was established by Section 286 (1) of Act I of 2002.
[625] Section 587 (4) was established by Section 286 (2) of Act I of 2002.
[626] Section 588 (2) d) was established by Section 287 (1) of Act I of 2002.
[627] Section 588 (3) and (4) was established by Section 287 (2) of Act I of 2002.
[628] Section 588 (5) and (6) was enacted by Section 287 (3) of Act I of 2002.

Title II

THE TASKS OF THE COURT AND THE PROSECUTOR IN THE COURSE OF EXECUTING THE PUNISHMENT [629]

General provisions

Section 590 (1)[630] The execution of punishments and measures, as well as the collection of the disciplinary penalty, the execution of the detention replacing the disciplinary penalty and the collection of the costs of criminal proceedings due to the state shall be responsibility of the court having proceeded when the above become enforceable. The prosecutor shall be responsible for making arrangements for the collection of the disciplinary penalty imposed by the prosecutor, as well as the execution of supervision by a probation officer ordered during the postponement of filing the indictment and the reprimand applied by the prosecutor.

(2) The measures set forth in subsection (1) shall be implemented by the presiding judge.

(3) If the punishment or the remaining period of punishment should be enforced in respect of an absconding convict, the judge to enforce the punishment shall take measures for locating the convict and issues warrant of arrest in the case of a sentence for imprisonment.

Postponement of the execution of imprisonment

Section 591[631] (1) Upon the petition of the convict, the presiding judge may permit the postponement of the commencement of a sentence for imprisonment not exceeding two years, for a maximum of three months, for substantial reasons, thus, in particular with consideration to the personal or family conditions of the convict.

(2) If the disease of the convict directly jeopardises the life thereof, the presiding judge

a) may permit a postponement of a definite term in excess of that specified in subsection (1),

b) may extend the postponement permitted under subsection (1), or

c) may permit the postponement of a sentence for imprisonment even if it exceeding two years.

(3) Regardless of a petition, the execution of the sentence for imprisonment shall be postponed ex officio in the case of a woman, who

a) surpassed the fourth month of her pregnancy – maximum up to the end of the sixth month following the expected date of giving birth,

b) takes care of her less than six-month old baby.

(4) In the cases specified in subsections (2) and (3) *a)* the presiding judge shall establish the existence of the health conditions for postponement based on the opinion of a forensic medical expert, and shall make a decision on the petition considering the statement of the head of the Health Service of the National Headquarters of Law Enforcement regarding the feasibility of the medical treatment of the convict in the penal institution as required by the convict's state of health.

(5)[632] The execution of the sentence for a maximum of one-year imprisonment of a of a conscript due to a criminal offence committed prior to the commencement of his military service but having become final in the course thereof shall be postponed until the conscript is discharged.

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[629] The text of Title II of Chapter XXIX was established by Section 81 (1) of Act II of 2003.
[630] Section 590 (1) was established by Section 81 (2) of Act II of 2003.
[631] The text of Section 591 was established by Section 288 of Act I of 2002.
[632] In Section 591 (5) the words "conscript katonai" were established by Section 88-a (2) c) of Act II of 2003.

(6) Upon the existence of the conditions set forth in subsections (1) to (5) no postponement is allowed, if it gravely threatened the public safety or public order, or if there is a risk that the convict may escape or hide.

(7) If the petition for the postponement of the imprisonment is submitted at a time that does not allow for arrangements prior to the commencement of the sentence before the date set therefor, the presiding judge shall not consider the petition and notify the petitioner thereof. If the imprisonment has commenced, the petition shall be sent to the penal institution for a measure for the interruption of the execution of the imprisonment, if appropriate.

Postponement and permission of instalment payments in the case of fines and fines as ancillary penalty [633]

Section 592 (1) If the convict provides probable proof that the prompt and lump-sum payment of the fine or the fine as ancillary penalty caused significant financial difficulties to himself and his dependant relatives which surpasses the objective of the punishment, and there is reasonable cause to believe that the convict will duly meet his payment obligation by the extended deadline, the court may permit a maximum of three months' postponement, or may permit the payment of the fine or the fine as ancillary penalty over six months, in instalments.

(2) For substantial reasons, the postponement for the payment of the fine or the fine as ancillary penalty may be extended on one occasion, for a maximum of three further months. Should the extraordinary conditions of the case justify it, permission may be given for the payment the fine over a year in instalments.

(3) The instalment shall be a monthly amount, which can be divided by the daily sum payable according to the judgement concerning the fine, or, in the case of a fine as ancillary penalty, by the amount established in the judgement for the replacement of the fine with imprisonment.

(4) After the replacement with imprisonment, no instalment payment may be permitted for the settlement of the fine or the fine as ancillary penalty.

Postponement and permission of instalment payments in the case of a disciplinary penalty and costs of criminal proceedings due to the state [634]

Section 593 (1) Postponement or permission of instalment payment for the settlement of a disciplinary penalty and costs of criminal proceedings due to the state exceeding ten thousand Forints may be permitted in compliance with the conditions and within the limits stipulated in Section 592, after seizure has been implemented by the court bailiff, if the bailiff has submitted the report on seizure to the court.

(2) In the event of an obligation to pay disciplinary penalty and costs of criminal proceedings in an amount smaller than that stipulated in subsection (1) the presiding judge may grant a permission for a maximum of three months' postponement or instalment payment over three months without waiting for the seizure, based on the available data.

Postponement of corrective education

Section 594 The execution of a final judgement ordering the corrective education of a juvenile offender may be postponed by the presiding judge under the conditions and within the limits stipulated in Section 591 (1).

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[633] Section 592 and the subtitle thereof were established by Section 289 of Act I of 2002.
[634] Section 593 and the subtitle thereof were established by Section 290 of Act I of 2002.

Rules of procedure for permission of postponement and instalment payment [635]

Section 595 (1) The petition for postponement and instalment payment has no delaying effect.

(2) If the defendant submitted the petition immediately after the conclusive decision has become final, it shall be decided upon by the court which had delivered the conclusive decision; the court shall provide justification for its decision.

(3) If the petition was submitted later, its consideration shall be governed by the rules of special procedures (Chapter XXVIII).

(4) The decision concerning the postponement or the instalment payment of a fine, a fine as ancillary penalty, a disciplinary penalty and the costs of criminal proceedings due to the state shall not be subject to an appeal.

(5) The decision concerning the postponement of the execution of imprisonment and corrective education may be appealed by the prosecutor, the convict and the defence counsel. If the postponement was permitted by the court of appeal pursuant to subsection (2), in respect of the consideration of the appeal the provisions stipulated in Title IV of Chapter XIV[636] shall be applied as appropriate.

Measure to ensure the execution of the sentence [637]

Section 596 (1) The court may order the immediate execution of a five-year or more imprisonment imposed in a final judgement against a defendant at liberty. The court shall order the immediate execution of the imprisonment imposed in a final judgement, if the sentence was delivered on the grounds of a criminal offence committed in a criminal organisation.

(2) In the case specified in subsection (1) the court shall directly request the commander of the penal institution operating at its seat to appoint a prison guard and shall hand over the to such guard. In the absence of a penal institution at the seat of the court, or there is an obstacle to the appointment of a prison guard, the court shall directly contact the police to have the convict escorted to the penal institution.

(3) If the defendant is not in pre-trial detention at the time when the decision of the court concerning the definite sentence of imprisonment becomes final and the court does not order the immediate execution of the imprisonment, but – considering the imprisonment to be executed or other reasons there is reasonable cause to believe that the convict would avoid, through escape or hiding, the execution of the sentence, until the convict is received at the penal institution, a safety measure may be ordered to ensure that the sentence for imprisonment will be executed.

(4) The above measure shall be ordered, if the court granted permission for the postponement of a sentence for imprisonment exceeding two years [Section 591 (2) *c)*].

(5) The decision on ordering the safety measure shall be adopted by the court. The convict subject to the measure shall not be allowed to leave the area or district specified in the court decision without permission and may not change his place of stay or residence. The decision may also prescribe that defendant should regularly report to the police.

(6) Compliance with the safety measure shall be supervised by the police, in accordance with the rules pertaining the supervision of compliance with home curfew. If the convict violates the dispositions of the safety measure, the police shall forthwith notify the court having ordered the measure and may take the convict into custody until the court decision is adopted, but not longer than for six days. Upon the violation of the dispositions in the

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[635] Section 595 and the subtitle thereof were established by Section 291 of Act I of 2002.

[636] In the second sentence of Section 595 (5), the words “Chapter XIV” were established by Section 88-a (2) c) of Act II of 2003.

[637] Section 596 and the subtitle thereof were established by Section 292 of Act I of 2002.

decision on the safety measure, the court may order the immediate execution of the imprisonment and take the measures regulated in Section 590 (3).

(7) The measure to ensure the execution of the sentence for imprisonment shall be terminated if the sentence has become unenforceable.

(8) If the court ordered, in addition to an indefinite imprisonment, extradition of the defendant as ancillary penalty, and the conclusive decision becomes final upon its announcement, in order to execute extradition as an ancillary penalty, the court shall order that the defendant be escorted to the responsible immigration authority. For the effectuation of the escort, the presiding judge shall contact the police.

Title III

PROCEDURE FOR CLEMENCY

Plea for mercy

Section 597[638] (1) Motions for pardoning – ex officio or upon a petition – requesting the termination of criminal proceedings may be submitted by the Prosecutor General before the indictment is filed, or thereafter the minister of justice; while those requesting the waiver or mitigation of a yet unenforced sentence, or dispensation for aggravating circumstance upon prior conviction may be submitted by the minister of justice to the President of the Republic of Hungary.

(2) No plea for mercy may be submitted for the mitigation or waiver of a measure and the subsequent waiver of an already enforced punishment or measure.

(3) A plea for mercy may be submitted by the defendant, the defence counsel and the relative of the defendant.

(4) The plea for mercy requesting the termination of criminal proceedings shall be submitted to the prosecutor or court proceeding in the case. Plea for mercy requesting the waiver or mitigation of a yet unenforced sentence, or dispensation for aggravating circumstance upon prior conviction shall be submitted to the court of first instance having proceeded in the case.

(5) In the course of the procedure for clemency, the prosecutor and the court shall obtain and manage the personal data of the defendant required for the relevant decision.

Handling the plea for mercy

Section 598 (1) The documents containing the data required for the decision, and the plea for mercy shall be escalated

a) before the filing of the indictment, the prosecutor to the Prosecutor General,

b) after the filing of the indictment, the court to the minister of justice

without delay.

(2)[639] Upon a petition or a motion for the waiver or mitigation of the punishment the minister of justice may order the postponement or interruption of the execution of the sentence until the decision of the President of the Republic of Hungary. In the course of preparing the motion, the minister of justice may – with a delaying effect on the commencement of the sentence – order the medical examination of the convict by a specialist at the central hospital of penal institutions.[640]

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[638] The text of Section 597 was established by Section 293 of Act I of 2002.

[639] The second sentence of Section 598 (2) was enacted by Section 294 (1) of Act I of 2002.

[640] Please refer to az Decree No. 5/1998. (III. 6.) IM of the Ministry of Justice.

(3) The Prosecutor General or the minister of justice shall escalate the plea for mercy to the President of the Republic of Hungary even if they make no motion for granting pardon.

(4)[641] The notification on the decision of granting pardon shall be served on the defendant and the party having submitted the plea for mercy by the court or prosecutor proceeding in the case. If the plea for mercy is submitted after the decision has become final, the notification of the granting pardon shall be served on the defendant and the party having submitted the plea for mercy by the court which had processed the case in the first instance. If the convict serves a sentence of imprisonment, the notification of granting pardon shall be served by way of the penal institution.

(5) If the termination of the criminal proceedings due to a pardon was initiated by the court or the prosecutor ex officio, the defendant may request the resumption of the procedure within eight days of receiving the decision terminating the procedure.

Waiver of the costs of criminal proceedings or a disciplinary penalty

Section 599 (1) The obligation to pay the costs of criminal proceedings due to the state and a disciplinary penalty may be waived by the minister of justice for specifically sufficient reasons.

(2) In the course of the procedure described in subsection (1) the minister of justice shall obtain the personal data of the defendant required for the decision.

Chapter XXX

CLOSING PROVISIONS

Section 600[642] The court secretary may also respond to the requests received from other courts and may conduct the procedures specified in Title II and III of Chapter XXVIII, with the exception of those stipulated in Section 557 (2), Section 558, Section 565, Section 566, Section 568, 572-Section 577, Section 579, Section 586 and Section 587.

Interpreting provisions

Section 601 (1) Any provisions in this Act referring to the chief county prosecutor shall be construed to include the chief prosecutor for Budapest. Any provisions in this Act referring to county courts or local court shall be construed to include Metropolitan Court or the district and city courts.

(2) Any provisions in this Act referring to measures applied in lieu of punishment shall be construed to include reprimand (Section 71 of the Penal Code), probation (Section 72 of the Penal Code) and detention home (Section 118 of the Penal Code).

(3)[643] Regulations in this Act referring to a relative shall be governed by Section 137.6 of the Penal Code, and references to public organisations shall mean budgetary organisations.

(4) Regulations pertaining to business organisations in this Act shall refer to businesses listed under Section 685 *c)* of Act IV of 1959 on the Civil Code.

(5)[644] Whenever this Act makes legal consequences subject to a punishment stipulated by law, this shall be construed as the upper limit of the sentence that may be imposed pursuant to the Special Part of the Penal Code.

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[641] The third sentence of Section 598 (4) was enacted by Section 294 (2) of Act I of 2002.
[642] The text of Section 600 was established by Section 295 of Act I of 2002.
[643] Section 601 (3) was established by Section 296 (1) of Act I of 2002.
[644] Section 601 (5) was enacted by Section 296 (2) of Act I of 2002.

Interim provisions

Section 602 (1) If at the time of the entry into force of this Act, the investigating authority performs procedural actions in the case in order to supplement the complaint ordered pursuant to a former legal regulation, the investigating authority shall prepare a report within three days following the entry into force hereof and shall either reject the complaint or order an investigation, as stipulated in this Act.

(2) Protests filed in the course of an investigation pursuant to a former legal regulation shall be considered. If this Act allows the victim to act as a substitute private accuser after the rejection of the protest, the party having filed the protest shall be notified thereof.

(3) Supplementary investigations ordered in the case pursuant to a former legal regulation shall be conducted in compliance with the provisions of this Act.

(4) Investigations ordered by the court in the case of a private accusation or due to re-trial shall be conducted in compliance with the provisions of this Act.

Section 603 (1)[645] If the Supreme Court repeals the decision of the court adopted prior to the entry into force of this Act in an extraordinary legal remedy procedure, and orders the court to conduct a new procedure, the repeated procedure shall be conducted by the court having competence and jurisdiction under this Act.

(2) Pursuant to Section 417 (2), any motion filed against a decision delivered after the consideration of a motion for review or an appeal on legal grounds pursuant to a former legal regulation shall be regarded excluded by law. Motions for review under Section 406 (1) *a)* may also be submitted after the decision of the Court of Constitution published following the entry into force of this Act.

(3) If the court returns the documents to the prosecutor in the course of the prosecution, the subsequent procedure shall be conducted in compliance with the provisions of this Act.

(4)[646] If a trial was requested in connection with a court ruling delivered prior to the entry into force of this Act, the procedure shall be conducted in compliance with the provisions of this Act.

(5) If the court suspends the procedure, after the suspension the procedure shall be conducted in compliance with the provisions of this Act.

(6)[647] Procedures related to a motion for review or an appeal on legal grounds filed pursuant to a former legal regulation shall be conducted in compliance with the former legal regulation, if the motion has arrived at the Supreme Court prior to the entry into force of this Act.

Authorisations

Section 604[648] (1) The Government is hereby authorised to issue a decree for the regulation of the following:

a) the rules pertaining to the personal protection of the participants in the criminal proceedings, and the members of the court, prosecutor's office, investigating authority and penal institution proceeding in the case,[649]

b) the obligations relating to covert intelligence gathering of those performing communication service and forwarding mail and the detailed rules of their co-operation with the authorities,[650]

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[645] Section 603 (1) and (2) was established by Section 297 (1) of Act I of 2002.
[646] Section 603 (4) was established by Section 297 (2) of Act I of 2002.
[647] Section 603 (6) was enacted by Section 297 (3) of Act I of 2002.
[648] The text of Section 604 was established by Section 298 of Act I of 2002.
[649] Please refer to Government Decree No. 34/1999. (II. 26.) Korm.
[650] Please refer to Government Decree No.75/1998. (IV. 24.) Korm.

c) the tasks that may be performed by the court administrator in criminal cases.[651]

(2) The minister of justice is hereby authorised to issue a decree for the regulation of the following:

a) together with the relevant ministers and in agreement with the Prosecutor General – the detailed rules of the search for the place of stay of an absconding defendant, or an unknown person reasonably suspected of having committed a criminal offence, the establishment of the residence and identity and ordering the arrest of such persons,[652]

b)[653] together with the minister of interior and the minister of finance, and in agreement with the Prosecutor General – the costs of the defence counsel appointed in the course of criminal proceedings and the participants of criminal proceedings, the remuneration and costs of the representatives of these persons, and the detailed rules of personal exemption granted to the defendant and the substitute private accuser from paying the costs,[654]

c) together with the minister of finance and the minister of interior, and in agreement with the Prosecutor General – the rules of advancing the costs of criminal proceedings, and the collection and settlement of the costs of criminal proceedings due to the state, as well as the rules of the reimbursement of the out-of-pocket expenses of the accused and the defence counsel and the remuneration of the defence counsel by the state,[655]

d) together with the relevant ministers and in agreement with the Prosecutor General – the detailed rules of the remuneration of the expert and the advisor, the costs to be reimbursed by the witness and the expert, and the compensation for professional examination,[656]

e) together with the relevant ministers, and in agreement with the Prosecutor General – the institutions and bodies that may be appointed as experts, the operation of forensic experts and other issues regarding experts and not regulated by law,[657]

f) together with the minister of health[658] – the health institutions designated for making a diagnosis of mental state, the costs related to the diagnosis of mental state in a psychiatric hospital and the settlement of such costs,

g) together with the relevant ministers, and in agreement with the Prosecutor General – provisions pertaining to interpreters and translators, as well as the detailed rules of the remuneration and reimbursed costs of interpreters and translators,[659]

h) together with the minister of interior and in agreement with the Prosecutor General – the rules of implementing house arrest,[660]

i)[661] the rules for depositing bail at the court,[662]

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[651] Please refer to Government Decree No. 34/2003. (III. 27.) Korm.

[652] Please refer to Decree No. 1/2003. (III. 7.) IM of the Ministry of Justice.

[653] Section 604 (2) b) was established by Section 82 (1) of Act II of 2003.

[654] Please refer to Decree No. 7/2002. (III. 30.) IM of the Ministry of Justice, Joint Decree No. 26/2003. (VII. 1.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance, and Decree No. 9/2003. (V. 6.) IM of the Ministry of Justice.

[655] Please refer to Joint Decree No. 26/2003. (VII. 1.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance, and Joint Decree No. 21/2003. (VI. 24.) IM-PM-BM of the Ministry of Justice, Ministry of Finance and the Ministry of Interior.

[656] Please refer to Decrees No. 1/1969. (I. 8.) IM and No. 3/1986. (II. 21.) IM of the Ministry of Justice.

[657] Please refer to Decree No. 2/1988. (V. 19.) IM of the Ministry of Justice.

[658] Pursuant to Section 2 a) of Act XI of 2002, any reference to the minister of health in legal regulations shall be construed as the minister of health, social and family affairs.

[659] Please refer to Decree No. 24/1986. (VI. 26.) MT of the Council of Ministers and Decree No. 7/1986. (VI. 26.) IM of the Ministry of Justice.

[660] Please refer to Joint Decre No. 6/2003. (IV. 4.) IM-BM of the Ministry of Justice and the Ministry of Interior.

[661] Section 604 (2) i) – pursuant to Section 308 (3) of Act I of 2002 and Section 88 (2) a) of Act II of 2003 – shall enter into effect on July 1, 2003.

[662] Please refer to Decree No. 27/2003. (VII. 2.) IM of the Ministry of Justice.

j) together with the minister of interior and the minister of finance, and in agreement with the Prosecutor General – the rules of handling, registration, preliminary sale and destruction of items seized due to seizure and in the course of criminal proceedings,[663]

k) the rules of recording procedural action in a court procedure by means other than the minutes, and the detailed rules of holding a trial by way of a closed-circuit communication system,[664]

l) together with the relevant ministers, and in agreement with the Prosecutor General – the tasks to be performed by the court during the execution of decisions delivered in criminal cases,[665]

m) together with the minister of interior and the minister of finance, and in agreement with the Prosecutor General – the issue of copies of documents produced in the course of criminal proceedings,[666]

n) together with the minister of interior and the minister of finance, and in agreement with the Prosecutor General – the rules of notification by way of a press announcement applicable in criminal proceedings,[667]

o) in agreement with the National Judiciary Council – the rules of management of courts,[668]

p)[669] the rules of making a diagnosis of a mental state of a detained defendant and the implementation of the temporary involuntary treatment in a mental institution[670].

(3) The minister of interior and the minister of finance are hereby authorised to regulate – together with the minister of justice and in agreement with the Prosecutor General – in a Decree the detailed rules of the investigation conducted by the investigating authorities under their control, including recording procedural actions by means other than the minutes and the information to be disclosed to the press in the investigation stage of criminal proceedings.[671]

(4) Authorisation is granted

a) to the minister of defence to regulate – together with the relevant ministers[672], and in agreement with the Prosecutor General – the rules of implementing close control and surveillance of the home curfew ordered against a soldier,[673]

b) to the minister controlling the armed force,[674] to designate – together with the minister of justice, and in agreement with the Prosecutor General – the commanders entitled to conduct an investigation, as well as to establish the detailed rules of their competence and the investigation conducted by such commanders[675]

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[663] Please refer to Joint Decree No. 11/2003. (V. 8.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance.

[664] Please refer to Decrees No. 14/2003. (VI. 19.) IM and No. 22/2003. (VI. 25.) IM Ministry of Justice.

[665] Please refer to Decree No. 9/2002. (IV. 9.) IM of the Ministry of Justice.

[666] Please refer to Joint Decree No. 10/2003. (V. 6.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance.

[667] Please refer to Joint Decree No. 8/2003. (IV. 24.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance.

[668] Please refer to Decree No. 14/2002. (VIII. 1.) IM of the Ministry of Justice and Regulation No. 4 of 2002 of the OIT on the courtok egységes iratkezelésér• l.

[669] Section 604 (2) p) was enacted by Section 82 (2) of Act II of 2003.

[670] Please refer to Decree No. 36/2003. (IX. 3.) IM of the Ministry of Justice.

[671] Please refer to Joint Decree No. 23/2003. (VI. 24.) BM-IM of the Ministry of Interior and the Ministry of Justice, Joint Decree No. 26/2003. (VI. 26.) BM-IM of the Ministry of Interior and the Ministry of Justice, and Joint Decree No. 17/2003. (VII. 1.) PM-IM of the Ministry of Finance and the Ministry of Justice.

[672] In respect of civil national security services, please refer to Section 2 l) of Act XI of 2002.

[673] Please refer to Joint Decree No. 46/2002. (X. 10.) HM-BM-IM-MeHVM of the Ministry of Defence, the Ministry of Interior, the Ministry of Justice and … of the Prime Minister's Office.

[674] In respect of civil national security services, please refer to Section 2 l) of Act XI of 2002.

[675] Please refer to Joint Decree No. 19/2003. (V. 8.) HM-IM of the Ministry of Defecne and the Ministry of Justice, Joint Decree No. 25/2003. (VI. 24.) BM-IM of the Ministry of Interior and the Ministry of Justice,

in a Decree.

(5) Authorisation is granted

a) to the national commander (head) of the investigating authority to order in an injunction – together with the Prosecutor General – in connection with investigations,

b) to the Prosecutor General to order in an injunction in the course of performing the prosecutor's responsibilities relating to criminal proceedings,[676]

c) to the National Judiciary Council to order in the regulation pertaining to court procedures,[677]

d) to the minister of justice, to order in a Decree regarding the penal duties of the court, that a standard form be used for summons, notifications, decision, minutes and other documents frequently used in the procedure.[678]

(6)[679] The minister of health, social and family affairs is hereby authorised – together with the minister of youth and sports, and in agreement with the minister of interior, minister of justice and the Prosecutor General – to issue a Decree to determine the rules of a a treatment for drug addiction, other therapeutic process treating drug users or preventive education.[680]

Entry into force

Section 605 (1)[681] This Act – with the exception of Section 607 – shall enter into effect on July 1, 2003; its provisions shall also be applied to criminal proceedings pending at the time of entry into force hereof. The entry into effect of Section 607 is regulated in a separate legal regulation.[682]

(2) In respect of criminal proceedings pending at the time of entry into force of this Act, prior procedural actions having been taken in compliance with a former legal regulation shall remain in effect even if it is regulated otherwise by this Act.

(3)[683] The procedure shall be conducted by the court having competence and jurisdiction pursuant to the former legal regulation, if the documents of the case have arrived at the court prior to the entry into effect of this Act. Cases still pending at the Supreme Court, which fall in the competence of the tribunal pursuant to this Act, shall be referred to the tribunal by July 1, 2003.

(4)[684] If the court of appeal, or the tribunal or the Supreme Court repeals the decision of the court of first instance delivered prior to the entry into force of this Act, the repeated procedure – with the exception regulated in subsection (5) – shall be conducted by the court having competence and jurisdiction under this Act.

(5) Procedures repeated due to a repeal prior to the entry into force of this Act shall be conducted by the court having competence and jurisdiction under the former legal regulation, if the documents of the case to repeat the procedure have arrived at the court prior to the entry into force of this Act.

Decree No. 16/2003. (VI. 20.) IM of the Ministry of Justice and Joint Decree No. 7/2003. (VI. 27.) MeHVM-IM of the … of the Prime Minister's Office and the Ministry of Justice.

[676] Please refer to No. 6/2003. (ÜK. 6.) LÜ utasítást.

[677] Please refer to Regulation No. 5 of 2003 of OIT pertaining to the application of certain documents used in the course of criminal proceedings as standard forms (Bírósági Közlöny No. 2003/6).

[678] Please refer to the Appendix of Decree No. 9/2002. (IV. 9.) IM of the Ministry of Justice.

[679] Section 604 (6) was enacted by Section 82 (3) of Act II of 2003.

[680] Please refer to Joint Decree No. 26/2003. (V. 16.) ESzCsM-GyISM of the Ministry of Health, Social and Family Affairs and the Ministry of Youth and Sports.

[681] Section 605 (1) was established by Section 2 (6) of Act XXII of 2002.

[682] The entry into force of Section 607 of this Act was ordered by Section 163 (1) of Act CX of 1999.

[683] The first sentence and second sentences of Section 605 (3) were established by Section 299 (1) of Act I of 2002 and Section 82 (4) of Act II of 2003, respectively.

[684] Section 605 (4) was established by Section 299 (2)of Act I of 2002.

(6) Motions for retrial shall be considered by the court having competence and jurisdiction under the former legal regulation, if the motion have arrived at the court prior to the entry into force of this Act.

(7) Upon the entry into force of this Act, Act I of 1973 on Criminal proceedings shall be repealed. Legal regulations to be repealed or amended concurrently with the entry into force of this Act shall be specified in a separate act.[685]

(8)–(12)[686]

Section 606 (1) Should any legal regulation refer to Act I of 1973 repealed by this Act, it shall be construed as the relevant provision in this Act.

(2) The entry into force of the provisions in this Act pertaining or related to witness protection and covert investigators prior to the date of effect stipulated in Section 605 (1) shall be regulated in a separate Act[687] – by the appropriate amendment of Act I of 1973.

(3) The separate act specified in subsection (2) shall also regulate the entry into force of the provisions regarding the amendment of Act XXXIV of 1994 on the Police [Section 605 (8) to (12)] prior to the date of entry into force of this Act as stipulated in Section 605 (1).[688]

Section 607 (1)–(2)[689]

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[685] Please refer to Section 308 (1) of Act I of 2002.

[686] Section 605 (8)–(12) amended certain provisions of Act XXXIV of 1994 on the Police. These provisions – with modifications – entered into force by virtue of Section 61 (4) and Section 63 of Act LXXV of 1999 (Szbt.) on September 1, 1999.

[687] Please refer to Act LXXXVIII of 1998 amending Act I of 1973. Act I of 1973 was repealed by Section 605 (7) of this Act, while Act LXXXVIII of 1998 was repealed by Section 308 (1)of Act I of 2002.

[688] Please refer to Act LXXV of 1999.

[689] Section 607 (1) and (2) inserted Sections 85/A and 87/C in Act IV of 1978 on the Penal Code. The entry into force of these sections were provided for by Section 163 (1) of Act CX of 1999.