CRIMINAL PROCEDURE ACT

SECTION ONE
GENERAL PROVISIONS

Chapter One
FUNDAMENTAL PRINCIPLES

Article 1

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

(2) Before a legally binding court judgement (hereinafter judgement) has been passed the freedom and rights of a defendant may only be restricted under the conditions provided by this Act.

Article 2

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

Article 3

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

Article 4

(1) Any person deprived of freedom shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his loss of freedom. A person deprived of freedom shall immediately be instructed that he is not bound to make any statements, that he

is entitled to the legal assistance of a lawyer of his own choice and that the competent body is bound to inform upon his request his immediate family of his being deprived of freedom.

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

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

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

Article 5

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

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

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

Article 6

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

Article 7

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

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

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

Article 8

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

translation of their statements and of the statements of others, and the translation of documents and other written evidence, must be provided.

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

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

Article 9

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

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

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

Article 10

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

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

Article 11

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

Article 12

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

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

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

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

Article 13

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

Article 14

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

Article 15

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

Article 16

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

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

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

Article 17

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

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

Article 18

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

(2) The court may not base its decision on evidence obtained in violation of human rights and basic freedoms provided by the Constitution, nor on evidence which was obtained in violation

of the provisions of criminal procedure and which under this Act may not serve as the basis for a court decision, or which were obtained on the basis of such inadmissible evidence.

Article 19

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

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

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

Article 20

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

Article 21

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

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

Article 22

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

Article 23

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

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

Chapter II
JURISDICTION OF COURTS

1. Real jurisdiction and composition of courts

Article 24

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

Article 25

(1) In first instance:
1) in circuit courts, cases of criminal offences carrying a sentence of fifteen or more years imprisonment shall be heard by panels of two professional judges and three lay judges; criminal offences carrying less severe sentences, and criminal offences of libel committed by the press, radio, television or other mass media shall be tried before circuit courts, by panels of one professional judge and two lay judges;
2) in district courts, cases of criminal offences carrying as principal penalty a fine or a prison term of up to three years, shall be heard by a judge sitting alone;
3) a district court judge sitting alone shall in procedures of extraordinary legal remedies be additionally competent to decide on the following procedural acts which under this Act fall within the competence of the presiding judge or of the panel of judges referred to in the sixth paragraph of this Article, namely:
a) to decide on petitions for the reopening of criminal proceedings (1st paragraph, Article 412);
b) to dismiss requests for extraordinary mitigation, and to propose a motion to the supreme court (3rd and 4th paragraphs, Article 419);
c) to dismiss requests for protection of legality (2nd paragraph, Article 422);
d) to decide on a change of protective measures (2nd paragraph, Article 496);
d) to decide on the remission of a suspended sentence (3rd and 4th paragraphs, Article 506);
e) to decide on the quashing of a conviction (5th paragraph, Article 511);
f) to decide on termination of protective measures (4th paragraph, Article 513).

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

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

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

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

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

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

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

2. Territorial jurisdiction

Article 26

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

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

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

Article 27

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

Article 28

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

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

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

Article 29

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

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

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

Article 30

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

Article 31

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

3. Joinder and severance of proceedings

Article 32

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

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

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

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

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

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

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

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

Article 33

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

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

4. Transfer of territorial jurisdiction

Article 34

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

(2) No appeal shall be permitted against a ruling on the transfer referred to in the preceding paragraph.

Article 35

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

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

(3) There shall be no appeals against the ruling from the first paragraph of this Article.

5. Consequences of non-jurisdiction and disputes over jurisdiction

Article 36

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

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

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

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

Article 37

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

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

Article 38

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

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

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

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

Chapter III
EXCLUSION

Article 39

A judge or lay judge may not perform judicial duties:
1) if he himself has suffered harm through the criminal offence;
2) if he is married to or lives in a domestic partnership with the defendant, the defence counsel, the prosecutor, the injured party and their legal representatives or attorneys, or if he is related to the aforesaid persons by blood in direct line at any remove or collaterally up to four removes, or related through marriage up to two removes;
3) if his relationship with the defendant, the defence counsel, the prosecutor or the injured party is that of a custodian or a ward, adopter or adoptee, foster parent or foster child;
4) if he conducted acts of investigation in connection with the same criminal offence, or took part in determining objections to the indictment or a request of the presiding judge referred to in Articles 271 and 284 of the present Act, or conducted the preparatory procedure as a judge for juvenile offenders and a proposal for punishment was submitted, or took part in the proceedings as prosecutor, defence counsel, legal representative or attorney of the injured party or plaintiff, or was examined in the matter as a witness or an expert;
4.a) if in the course of determining any question within the proceeding he became acquainted with evidence which under this Act must be excluded from the files (Article 83), he may not in the same matter decide on the charge or appeal or extraordinary legal remedy against the decision that determined the charge, unless the content of evidence is of such nature that it obviously could not influence his decision.
5) if he took part in the passing in a lower court of a decision in the same matter or took part in the passing in the same court of a decision challenged by an appeal or a request for the protection of legality;
6) if circumstances exist that give rise to doubts over his impartiality.

Article 40

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

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

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

Article 41

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

(2) A party must request that a judge or lay judge be excluded as soon as he becomes aware of the reason warranting his exclusion, and in any case by the end of the main hearing at the latest. He may only request that a judge or lay judge be excluded during the main hearing for the reasons from points 4a or 6 of Article 39 of this Act if the reason warranting exclusion arose after the main hearing had commenced and, if it arose earlier, only if the party did not know or could not have known about it.

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

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

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

Article 42

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

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

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

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

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

Article 43

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

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

Article 44

(1) The sense of provisions referring to the demand for exclusion of judges and lay judges shall apply to public prosecutors and persons who under the Law on the Office of Public Prosecutor are authorised to represent the public prosecutor in an action at law, as well as to recording clerks, interpreters, professionals and experts unless these are subject to some other provisions (Article 251). The exclusion of a state prosecutor may not be requested for reasons from points 4a or 6 of Article 39 of this Act.

(2) Exclusion of the public prosecutor and assistant public prosecutor shall be decided by the head of the Office of Public Prosecutor. Exclusion of the head of the Office of Public Prosecutor shall be decided by the head of the immediately superior Office of Public Prosecutor. Exclusion of the state prosecutor of the Republic of Slovenia shall be decided by the Minister of Justice.

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

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

Chapter IV
PUBLIC PROSECUTOR

Article 45

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

(2) In respect of criminal offences prosecuted *ex officio*, the public prosecutor shall have the jurisdiction:
1) to take the necessary steps concerning the detection of criminal offences, tracing of perpetrators and directing of preliminary criminal proceedings;
2) to request that investigations be undertaken;
3) to prefer and press indictment or a charge sheet before the competent court;

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

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

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

Article 46

Consistent with the Law on the Office of Public Prosecutor, the public prosecutor shall have jurisdiction in legal actions before appropriate courts.

Article 47

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

Article 48

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

Article 49

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

Article 50

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

Article 51

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

Chapter V
INJURED PARTY AND PRIVATE PROSECUTOR

Article 52

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

(2) If the prosecutor has filed private charges against the criminal offence of slander, until the conclusion of the main hearing the accused may bring an action against the prosecutor who has returned the slander (counter-action) even after the expiry of the time limit from the preceding paragraph. In this case the court shall adjudicate the matter in a single judgement.

Article 53

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

(2) If the injured party has himself reported a crime or petitioned for the satisfying through criminal proceedings of a property rights claim, he shall be considered to have thereby also made a motion for prosecution.

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

Article 54

(1) In the case of minors and those declared legally incapable of work, the motion or private charges shall be filed by their legal representatives.

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

Article 55

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

Article 56

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

Article 57

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

Article 58

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

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

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

(4) No appeal shall be permitted against a ruling whereby reinstatement of the previous state of affairs is granted.

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

Article 59

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

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

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

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

Article 60

(1) If the public prosecutor finds that there are no grounds to prosecute a criminal offence by virtue of office or to prosecute some of the accused participants he shall within eight days

inform the injured party thereof and shall instruct him that he may start prosecution by himself. The same procedure shall be applied by the court when the public prosecutor abandons prosecution.

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

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

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

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

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

Article 61

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

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

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

(4) The decision by which the charge in the instance referred to in the first paragraph of this Article was dismissed shall become final after the expiry of the terms for filing an application for reinstatement of the previous state of affairs.

Article 62

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

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

Article 63

(1) The injured party in his capacity as prosecutor shall have the same rights as the public prosecutor, excepting those vested in the public prosecutor *ex officio*.

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

Article 64

(1) Where the injured party is a minor or a person declared legally incapable of work, his legal representative shall be entitled to make all statements and perform all acts which the injured party is entitled to make or perform under this Act.

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

Article 65

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

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

(3) In criminal procedures which are taking place due to criminal offences against sexual inviolability from Chapter XIX of the Penal Code of the Republic of Slovenia, the criminal offence of neglect of minors and cruel treatment under Article 201 and the criminal offence of trafficking in human beings under Article 387a of the Penal Code, the minor-injured party must from the initiation of the criminal procedure onwards have an authorised person to care for their rights, particularly in connection with the protection of their integrity during examination before the court and during the exercising of property-law demands. Minors-

injured parties who have no authorised person shall be assigned an authorised person from among lawyers by the court *ex officio*.

Article 66

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

Chapter VI
DEFENCE COUNSEL

Article 67

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

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

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

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

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

Article 68

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

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

Article 69

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

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

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

Article 70

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

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

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

(4) If in the cases of mandatory defence referred to in the preceding paragraphs the accused fails to retain defence counsel by himself, the president of the court shall appoint defence counsel *ex officio* for the further course of criminal proceedings until the finality of the judgement; if the accused has been sentenced to thirty years in prison or is deaf, mute or otherwise incapable of successfully defending himself, he shall have defence counsel appointed for him for the extraordinary judicial review as well. If defence counsel is appointed *ex officio* after the charge sheet has been filed, the accused shall be informed thereof at the time the charge sheet is served on him. If in the case where defence is mandatory the accused remains without defence counsel and fails to retain one by himself, the president of the court before which the proceedings are conducted shall appoint defence counsel *ex officio*.

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

Article 71

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

(2) The defendant may file a request from the preceding paragraph after the indictment has been served. The request shall be decided by the judge presiding the panel and defence counsel shall be appointed by the president of the court. The provision of paragraph 5 of the preceding Article shall apply to the question of who may be appointed as defence counsel.

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

Article 72

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

(2) The appointed defence counsel may move to be withdrawn from the case only with good cause.

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

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

Article 73

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

Article 74

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

Article 75

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

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

Chapter VII
SUBMISSIONS AND RECORDS

Article 76

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

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

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

(4) In asking the applicant to correct or supplement his submission, the court shall inform him of the consequences of failure to comply with the order.

Article 77

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

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

Article 78

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

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

Article 79

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

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

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

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

Article 80

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

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

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

Article 81

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

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

Article 82

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

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

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

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

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

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

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

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

Article 83

(1) Before the public prosecutor submits a request for investigation (paragraph 1, Article 168) or a motion for non-investigation (paragraph 1, Article 170) to the investigating judge, or files an indictment without investigation (paragraph 6, Article 170) or a summary charge sheet on the basis of a crime report (paragraph 2, Article 430), or files a motion for execution of individual acts of investigation (paragraph 1, Article 431) or for issue of a punitive order (paragraph 1, Article 445.a) with a single judge, the public prosecutor shall exclude from the documents he will send to the court the information which the police has gathered from the suspect before the latter was instructed as provided in paragraph 4 Article 148 of this Act. The public prosecutor shall make an official note on the exclusion, enclose it with the papers he will send to the court and keep the excluded information in his file. If the record of the interrogation of the suspect (paragraph 1, Article 148.a), the records of the acts of investigation performed (Articles 164-166) or other evidence which in the opinion of the public prosecutor may not serve as basis for the decision of the court are enclosed with the crime report, he shall send the papers containing such evidence to the investigating judge or a judge sitting alone who shall deal with them as provided by the provisions of the second and third paragraphs of this Article.

(2) Where this Act provides that a court decision may not be based on a statement by the suspect or defendant, witness or expert, or on the records, objects, recordings, reports or pieces of evidence, the investigating judge or the judge who carries out individual acts of investigation shall issue *ex officio*, or on the motion of a party, a decision excluding the

aforesaid evidence from the papers immediately upon establishing that the statements or evidence of such a nature are involved. He shall act in the same manner in respect of the information referred to in the preceding paragraph unless the public prosecutor has already excluded it, as well as in respect of the information disclosed to the police by persons who may not be examined as witnesses (Article 235) or who under this Act have renounced testimony (Article 236) or may not under this Act be appointed as experts (Article 251). The parties may request the exclusion of records and other evidence only until the opening of the main hearing and may request it in the main hearing only if they were not able do it before.

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

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

(5) The provisions of the preceding paragraph shall apply correspondingly when the court of second instance determines an appeal from a judgement, whereby the appeal also challenges the decision on the exclusion of evidence (paragraph 4, Article 340)."

Article 84

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

(2) The recording must contain data referred to in the first paragraph of Article 80 of this Act, information necessary for identification of the person whose statement is being recorded and information as to the capacity in which the person is giving the statement. If statements of several persons are being recorded, the recording must show clearly which persons made which statements.

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

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

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

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

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

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

Article 85

As regards records of the main hearing, the provisions of Articles 314 to 317 inclusive of the present Code shall also apply.

Article 86

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

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

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

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

Chapter VIII
TIME LIMITS

Article 87

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

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

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

(4) The accused who is in pre-trial detention may make a statement from the second paragraph above orally, to be entered in the record at the court where the case is pending, or may send it to a prison administration. Persons serving prison terms or inmates of institutions enforcing security or educational measures may deliver such statements to the warden. The day on which the oral statement is entered in the record or a written statement is delivered to the administration of an institution shall be considered as the day of delivery to the authorised recipient.

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

Article 88

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

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

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

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

Article 89

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

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

Article 90

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

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

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

Article 91

The petition for reinstatement of the previous state of affairs shall not, as a rule, stay the execution of the judgement, or of the ruling on the protective or educational measure, or of the ruling on the abstraction of a property benefit, although the court with jurisdiction to decide on the petition shall be allowed to stay the execution until the petition has been decided upon.

Chapter IX
COSTS OF CRIMINAL PROCEDURE

Article 92

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

(2) The costs of criminal proceedings shall include:
1) expenses for witnesses and the costs of viewing, and fees and expenses of experts, interpreters and professionals,
2) transportation expenses for the accused,
3) costs incurred in producing the accused or the arrested person,
4) transportation and travel expenses for officials,
5) medical expenses for the accused while in detention and expenses for child delivery,
6) lump sum,
7) fees and necessary expenses for defence counsel, necessary expenses for the private prosecutor and the injured party acting as prosecutor and for their representatives, and fees and necessary expenses of their attorneys,
8) necessary expenses of the injured party and his legal representative, and the fees and expenses of his attorney.

(3) The lump sum shall be in the range of a minimum of one third of the last officially announced average net monthly salary in the Republic of Slovenia per employee and a maximum of ten times that salary. In determining the lump sum the court shall take into

consideration the duration and complexity of the case and the financial position of the person required to pay the sum.

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

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

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

Article 93

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

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

(3) The decision on a complaint against the special ruling on the costs of criminal proceedings shall be passed by a panel of judges (paragraph 6, Article 25).

Article 94

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

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

Article 95

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

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

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

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

Article 96

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

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

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

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

Article 97

(1) The fees and necessary expenses of defence counsel and attorneys who have been retained by the private prosecutor or the injured party shall be paid by the person who has retained them regardless of the court decision as to who is liable for the costs, except where under the provisions of this Act the fees and the necessary expenses of defence counsel are to be charged to the budget. If defence counsel has been appointed and the payment of the fees and necessary expenses of defence counsel would imperil the sustenance of the accused or of persons whom he is bound to support, these expenses shall be reimbursed from budgetary funds. The same shall apply to cases where the attorney has been appointed for an injured party acting as prosecutor.

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

(3) If the accused is not instructed to pay the costs of the criminal procedure, the costs of the appointed authorised person of the injured party from the third paragraph of Article 65 of this Act shall be borne by the budget.

Article 98

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

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

Article 98a

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

Article 99

The refunding of the costs of criminal procedure shall be determined in greater detail by the Minister of Justice.

Chapter X
CLAIMS FOR INDEMNIFICATION

Article 100

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

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

Article 101

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

Article 102

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

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

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

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

Article 103

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

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

Article 104

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

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

Article 105

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

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

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

Article 106

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

Article 107

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

Article 108

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

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

Article 109

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

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

Article 110

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

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

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

Article 111

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

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

Chapter XI
RENDERING AND ANNOUNCING OF DECISIONS

Article 112

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

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

Article 113

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

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

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

which are the most prejudicial to the accused to those less prejudicial until the required majority is reached.

(4) Members of the panel may not abstain from voting on issues put to the vote by the presiding judge. However, a panel member who has voted for the acquittal of the accused or the annulment of a judgement and has been outvoted by other members shall not be required to vote on criminal sanctions. If he does not vote he shall be deemed to support the vote most favourable to the accused.

Article 114

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

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

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

Article 115

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

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

Article 116

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

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

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

Chapter XII
SERVING OF DOCUMENTS AND INSPECTION OF FILES

Article 117

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

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

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

Article 118

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

Article 119

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

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

(3) If it is established that the person to be served with a document is absent and by that reason the persons referred to in the first paragraph of this Article are not in a position to

deliver it to him in the proper time, the document shall be returned with a note as to his whereabouts attached to it.

Article 120

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

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

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

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

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

Article 121

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

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

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

Article 122

(1) The recipient and server shall acknowledge serving of a document with their signatures. The recipient shall write the date of receipt in words on the service form.

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

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

Article 123

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

Article 124

(1) Military personnel, members of the police, guards in prisons and persons employed in road, rail, maritime and air transport shall be served with summons through the intermediary of their command or immediate superiors. If necessary, they may be served with other documents in the same manner.

(2) Serving of documents on prisoners shall be made in the court or via the administration of institutions in which they serve their prison terms.

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

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

Article 125

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

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

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

Article 126

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

Article 127

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

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

(3) The transmission of a summons or of a decision in the manner described in the first or second paragraph of this Article shall be officially noted on the file.

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

Article 128

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

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

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

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

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

(6) The state prosecutor shall enable the defendant and defence counsel to view the official notes about the information which the public prosecutor has excluded from the files (paragraph 1, Article 83).

Chapter XIII
EXECUTION OF DECISIONS

Article 129

(1) A judgement shall be considered to be finally binding when it can no longer be challenged by an appeal or if no appeal is permitted.

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

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

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

Article 130

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

Article 131

(1) With regard to the costs of criminal proceedings, the appropriation of property and indemnification claims, the judgement shall be executed by the competent court according to provisions which apply to enforcement procedure.

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

(3) If a judgement provides for confiscation of objects, the court which has passed the judgement in first instance shall decide if the objects should be sold according to provisions

applying to execution procedure, or handed over to the crime museum or some other institution, or destroyed. The money obtained by the sale of objects shall be transferred to the budget.

(4) The sense of the third paragraph of this Article shall apply to decisions on confiscation of objects under Article 498 of this Act.

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

Article 132

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

(2) A ruling shall become final when it can no longer be challenged by an appeal or if no appeal is permitted.

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

Article 133

(1) If doubt arises about the permissibility of execution of a judicial decision, or about the setting of a penalty, or if final judgement fails to include in the calculation the time spent in pre-trial detention or within an earlier served sentence, or if these periods are computed erroneously, the matter shall be decided in a special ruling by the presiding judge of the court which adjudicated in first instance.

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

Article 134

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

Article 135

(1) Criminal records and records of educational measures decreed shall be kept by the Ministry of Justice.

(2) The manner of keeping the records from the preceding paragraph shall be prescribed by the Minister of Justice.

Chapter XIV
MEANING OF THE LEGAL TERMS USED IN THIS ACT AND OTHER PROVISIONS

Article 136

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

Article 137

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

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

(3) An appeal may be lodged against a ruling issued under the first or second paragraph of this Article, although such appeal shall not stay execution.

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

Article 138

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

Article 139

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

Article 140

(1) The court may during the procedure impose a fine referred to in the first paragraph of Article 78 of this Act on the defence counsel, attorney or legal representative, the injured party, the injured party as prosecutor or private prosecutor if their behaviour is obviously intended to protract criminal proceedings.

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

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

Article 141

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

(2) If doubt arises about the eligibility of a person to such exemption, the court shall consult the Ministry of Foreign Affairs.

Article 141a

(1) The defendants whose punishment may be mitigated in certain cases (point 3 of Article 42 and third paragraph of Article 297 of the Criminal Code) and witnesses referred to in Article 240.a of this Act who face real danger for their life or body, a personal security to the largest extent possible shall be provided in the pre-trial procedure, during and after the completed criminal procedure.

(2) Pursuant to the provisions of the Act referred to in the third paragraph of this Article the personal security shall also be provided for their close relatives (point 1 to 3 of the first paragraph of Article 236) and for other endangered persons on a proposal of defendants and/or witnesses referred to in the above-mentioned paragraph.

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

Article 142

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

Article 143

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

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

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

Article 144

The meaning of individual expressions in this Act is as follows:
- the suspect, meaning a male or female suspect, is a person against whom the competent government agency undertook, before the introduction of criminal proceedings, a specific act or measure because grounds existed to suspect that he had committed, or participated in the commission of, a criminal offence,
- the accused is the person against whom investigation is conducted or against whom the indictment, charge sheet or private charges have been filed,
- the defendant is the person against whom the indictment has become final,
- the convicted person is the person whose liability for a criminal offence has been determined by a final judgement,
- the term "the accused", used to denote either male or female, is used in this Act as a generic term covering the accused, the defendant and the convicted person,
- the injured party, either male or female, is the person whose personal or property rights have been violated or jeopardised,
- the prosecutor, either male or female, is the public prosecutor, the private prosecutor and the injured party acting as prosecutor,
- the party is both the prosecutor and the accused,
- domestic partnership is the union of a man and woman who have lived together for a longer period without being married,
- depending on the context, the police may mean a police station or any other police unit or another state body whose employees have police powers in the pre-trial procedure laid down in this Act.

SECTION TWO
COURSE OF PROCEEDINGS
A. PRELIMINARY PROCEDURE

Chapter XV
PRE-TRIAL PROCEDURE

Article 145

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

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

Article 146

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

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

Article 147

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

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

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

Article 148

(1) If grounds exist for suspicion that a criminal offence liable to public prosecution has been committed, the police shall be bound to take steps necessary for discovering the perpetrator, ensuring that the perpetrator or his accomplice do not go into hiding or flee, detecting and preserving traces of crime or objects of value as evidence, and collecting all information that may be useful for the successful conducting of criminal proceedings.

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

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

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

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

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

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

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

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

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

Article 148a

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

(2) The interrogation of the suspect shall be conducted by the police according to the provisions of this Act applying to the interrogation of the defendant (Articles 227 to 233 inclusive).The record of the interrogation shall be drawn up according to the provisions of Articles 79 to 82 inclusive of this Act. This record may be used as evidence in criminal

proceedings. The interrogation of the suspect may be recorded by the sound and picture recording device after the recording has been announced to the suspect.

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

Article 149

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

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

(3) Where it is necessary to ascertain the identity of fingerprints and biological traces on individual objects, the police may take fingerprints and mouth swabs of persons likely to have come into contact with such objects.

Article 149a

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

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

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

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

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

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

(6) Secret surveillance shall be ordered in writing by the investigating judge, at the written request of the state prosecutor, in the following cases:
1) if he envisages the use of technical devices for the transmission and recording of sound in the application of the measure, where this measure may be ordered only for criminal offences from the second paragraph of Article 150 of this Act;
2) if application of the measure requires the installation of technical devices in a vehicle or in other protected or closed premises or objects in order to establish the position and movements of a suspect;
3) for application of a measure in private premises, if the owner of these premises so allows;
4) for the application of a measure against a person who is not a suspect (second paragraph of this article).

(7) Proposals and orders shall be constituent parts of criminal files and must contain:
1) information that allows the person against whom the measure is being requested or ordered to be identified accurately;
2) reasonable grounds or the adducement of reasonable grounds for suspicion;
3) in the case from the second paragraph of this article, information that allows a suspect from the first paragraph of this article to be identified accurately, and the establishment of probability that application of the measure will lead to the identification of the suspect, his whereabouts or his place of residence;
4) the written consent of the owner of the private premises in which the measure will be applied;
5) the method of application, the scope and the duration of the measure, and other important circumstances that dictate use of the measure;
6) the grounds for or establishment of need to use the measure in question as opposed to another method of gathering information.

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

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

(10) Application of a measure may last a maximum of two months. If due cause is adduced, it may be extended every two months by means of a written order. The measure may last a total of:
1) six months in the case from the sixth paragraph of this article;
2) 24 months in cases from the fifth paragraph of this article if they relate to criminal offences from the fourth paragraph of this article, and 36 months if they relate to criminal offences from the second paragraph of Article 151 of this Act.

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

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

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

Article 149b

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

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

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

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

Article 150

(1) If there are well-founded grounds for suspecting that a particular person has committed, is committing or is preparing or organising the committing of any of the criminal offences listed in the second paragraph of this Article, and if there exists a well-founded suspicion that such person is using for communications in connection with this criminal offence a particular means of communication or computer system or that such means or system will be used,

wherein it is possible to reasonably conclude that other measures will not permit the gathering of data or that the gathering of data could endanger the lives or health of people, the following may be ordered against such person:
1) the monitoring of electronic communications using listening and recording devices and the control and protection of evidence on all forms of communication transmitted over the electronic communications network;
2) control of letters and other parcels;
3) control of the computer systems of banks or other legal entities which perform financial or other commercial activities;
4) wire-tapping and recording of conversations with the permission of at least on person participating in the conversation;

(2) The criminal offences in connection with which the measures from the previous paragraph may be ordered are:
1) criminal offences against the security of the Republic of Slovenia and its constitutional order, and crimes against humanity and international Act for which the law prescribes a prison sentence of five or more years;
2) the criminal offence of kidnapping under Article 144, the showing, possession, manufacture and distribution of pornographic material under Article 187,illegal production of and trade in drugs under Article 196, enabling the taking of drugs under Article 197, blackmail under Article 218, abuse of inside information under Article 243, unlawful acceptance of gifts under Article 247, unauthorised giving of gifts under Article 248, money laundering under Article 252, smuggling under Article 255, accepting of a bribe under Article 267, giving of a bribe under Article 268, acceptance of gifts to secure unlawful intervention under Article 269, giving of gifts to secure unlawful intervention under Article 269a, criminal association under Article 297, illegal manufacture of and trade in arms or explosives under Article 310, and causing danger with nuclear substances under Article 319 of the Penal Code of the Republic of Slovenia;
3) other criminal offences for which the law prescribes a prison sentence of eight or more years.

Article 151

(1) If there exist well-founded reasons to suspect that a particular person has committed, is committing, or is preparing or organising the committing of any of the criminal offences listed in the second paragraph of this Article, wherein it is possible to reasonably conclude that it will be possible in a precisely defined place to obtain evidence which more lenient measures, including the measures from Articles 149a, 149b and 150 of this Act, would not be able to obtain or the gathering of which could endanger the lives of people, bugging and surveillance in another person's home or in other areas with the use of technical means for documentation and where necessary secret entrance into the aforementioned home or area may exceptionally be ordered against such person.

(2) Measures from the previous paragraph may be ordered in connection with all criminal offences from the first clause of the second paragraph of the previous Article, criminal offences from the second clause of the same paragraph, except for the criminal offence of kidnapping under Article 144, enabling the taking of drugs under Article 197, blackmail under Article 218, money laundering under the first, second, third and fifth paragraphs of Article 252 and smuggling under Article 255 of the Penal Code of the Republic of Slovenia, and in connection with other criminal offences from the third clause of the same paragraph for

which the law prescribes a prison sentence of eight or more years only if there exists a real danger to the lives of people.

Article 152

(1) The measures from Articles 150 and 151 of this Code shall be ordered by means of a written order by the investigating judge following the public prosecutor's written proposal. The proposal and the order must contain:
1) data that allows the person against whom the measure is proposed or ordered to be identified accurately;
2) the justification or determination of the grounds for suspicion concerning the committing, preparation or organisation of the criminal offences stipulated in Articles 150 or 151 of this Code;
3) the measure being proposed or ordered, the method of implementation of the measure, the scope and duration of the measure, precise specification of the area or place in which the measure will be implemented, the means of electronic communication and other important circumstances which require the use of an individual measure;
4) the justification or determination of the unavoidable necessity of the use of individual measures in relation to the collection of evidence in another manner and the use of less severe measures;
5) justification of the grounds for the early implementation of the order in instances from the second paragraph of this Article."

(2) By way of exception, if a written order cannot be obtained in due time and when there is a danger of deferment, the investigating judge may, following an oral proposal by the public prosecutor, order the execution of the measures stipulated in Article 150 of this Code by means of an oral order. The investigating judge writes an official note on the public prosecutor's oral proposal. A written order must be issued no later than twelve hours after the issuing of the verbal order. There must exist well-founded grounds for early implementation; in the opposite case, the court shall, regardless of the justification of the use of measure, always act according to the fourth paragraph of Article 154 of this Act.

(3) If in the implementation of measures from clause 2 of the first paragraph of Article 150 of this Act the police assess that the contents of a letter or other package are such as could be evidence in a criminal procedure, they shall be obliged to inform the investigating judge thereof, who shall decide how to deal with the package. The investigating judge shall compile special records on this.

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

(5) The police shall implement orders from the first paragraph of this Article. Operators of electronic communication networks shall be obliged to enable the police to implement the order.

(6) The police shall cease application of measures from Articles 150 and 151 of this Act as soon as the reasons for which they were ordered are no longer in place. The police shall notify

the investigating judge of the cessation without delay and in writing. The investigating judge may at any time, *ex officio*, order in writing that application of the measure be halted if he assesses that the reasons for the measure are no longer in place or if the measure is being applied in contravention of his order.

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

Article 153

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

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

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

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

Article 154

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

(2) If the state prosecutor declares that he will not commence criminal prosecution against a suspect, or if he does not issue such a declaration within two years of the end of application of the measures from Article 149a, the first paragraph of Article 149b and Articles 150, 151, 155, 155a and 156 of this Act, the material from the preceding paragraph shall be destroyed under the supervision of the investigating judge. The investigating judge shall make an official note of the destruction. Before destruction the investigating judge shall inform the suspect of the use of these measures or, in cases from the second or ninth paragraphs of Article 149a of this Act, the person against whom the measure was applied, who shall have the right to be informed of the material obtained and, in cases where this material was of greater scope, of the report from the first paragraph of Article 153 of this Act. In cases where the measures from the second or ninth paragraphs of Article 149a of this Act were used and the state prosecutor commenced criminal prosecution, the investigating judge shall inform the person against whom the measures were applied, who shall have the right to be informed of

the material obtained, of the use of the measures by submission of the charge at the latest or immediately after the person on whose account the measure was applied is arrested. If it is reasonable to conclude that informing the person of the material could threaten human life and health or if due cause of a different nature is adduced, the investigating judge may decide, at the request of the state prosecutor or *ex officio*, not to inform the suspect, or in cases from the second or ninth paragraphs of Article 149a of this Act the person against whom the measure was applied, of part or all of the material obtained.

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

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

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

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

Article 155

(1) If it is possible to justifiably conclude that a particular person is involved in criminal activities relating to criminal offences from the second paragraph of Article 150 of this Act, the public prosecutor may, pursuant to a reasoned proposal from the internal affairs bodies, by written order permit measures of feigned purchase, feigned acceptance or giving of gifts or feigned acceptance or giving of bribes. The proposal and order shall become constituent parts of the criminal record.

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

(3) In the implementation of measures from the first paragraph of this Article, internal affairs bodies and their staff may not incite criminal activities. In determining whether the criminal activity was incited, primary consideration must be given to whether the measure as

implemented led to the committing of a criminal offence by a person who would otherwise not have been prepared to commit this type of criminal offence.

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

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

Article 155a

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

(2) Undercover operations shall be carried out by undercover operatives and involve the continual gathering of information or repeat sessions of information gathering on a person and his criminal activities. Undercover operations shall be carried out by one or more undercover operatives under the direction and supervision of the police, using false information about an operative, false information in databases and false documents in order to prevent the information gathering process or the status of the operative from being disclosed. An undercover operative may be a police officer, a police employee of a foreign country or exceptionally, if undercover operations cannot be carried out in any other way, by another person. An undercover operative may, under conditions from this article, participate in legal transaction using false documents. When information is being gathered under the conditions from this article, technical devices for transmitting and recording sound, photography and video recording may also be used.

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

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

(5) Proposals and orders shall be constituent parts of criminal files and must contain:
1) information that allows the person against whom the measure is being requested or ordered to be identified accurately;
2) reasonable grounds or the adducement of reasonable grounds for suspicion;
3) the method of application, the scope and the duration of the measure, and other important circumstances that dictate use of the measure;

4) the type, purpose and scope of use of false information and documents;
5) if the undercover operative will take part in legal transactions, the permitted scope of this participation;
6) if the undercover operative is not a police officer or police employee from another country but another person, the adducement of reasonable grounds for deploying this person;
7) in the case from the preceding paragraph, determination of the type and method of use of technical devices for transmitting and recording sound, photography and video recording;
8) the grounds for or establishment of need to use the measure in question as opposed to another method of gathering information.

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

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

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

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

Article 156

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

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

(3) Subject to conditions from the first paragraph of this Article, the investigating judge may upon a properly reasoned proposal by the public prosecutor order a bank, savings bank or savings-credit service to keep track of financial transactions of the suspect, the defendant and other persons reasonably presumed to have been implicated in financial transactions or deals of the suspect or the defendant, and to disclose to him the confidential information about the transactions or deals the aforesaid persons are carrying out or intend to carry out at these institutions or services. In the order, the investigating judge shall set the time period within which the bank, savings bank or savings-credit service shall provide him with the data.

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

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

Article 156a

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

Article 157

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

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

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

(4) If the suspect states that he wants to retain a lawyer, the police shall adjourn interrogating him as well as other acts of investigation, except those which it would be unsafe to delay, until the arrival of the lawyer, but no longer than two hours after the suspect was granted the opportunity to inform the lawyer. The police shall at the request of the suspect help him to retain a lawyer. The interrogation of the suspect shall be conducted in the presence of the lawyer, in accordance with the provisions of Article 148.a of this Act. If the suspect states that

he will not retain a lawyer or the chosen lawyer does not arrive within two hours, the police shall act in accordance with paragraph 6 of Article 148 of this Act.

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

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

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

8) The police shall on each arrest immediately inform the public prosecutor thereof who may give them instructions as to further measures (Article 160.a). The police shall be bound to abide by those instructions.

Article 158

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

(2) The statutory body of the Ministry responsible for defence may arrest a person caught while committing in a military facility a criminal offence for which the perpetrator is prosecuted *ex officio*. A person so deprived of freedom should immediately be brought before the investigating judge or the police. Should that be impossible, one of these agencies should immediately be informed thereof.

(3) The statutory body of the Ministry responsible for defence may arrest a military person for the purpose of bringing him before or delivering him to the investigating judge or the police if reasons exist to suspect that he has committed a criminal offence from chapter XXVII of the Penal Code of the Republic of Slovenia.

(4) The police shall in cases referred to in the second and third paragraphs of this Article act as per the preceding Article.

Article 158a

(1) If there are grounds for suspicion that a criminal offence that is prosecuted *ex officio* was committed by an officer employed in the police or another officer employed in internal affairs agencies or in a statutory body within the Ministry responsible for defence that has police powers in pre-trial procedure, or an officer seconded to a mission abroad, police officers in a specialised the team of state prosecutors in charge of fighting organised crime (hereinafter

police officers of the specialised team) shall be vested with police powers laid down in this Act.

(2) Police officers of the specialised team shall be obliged to inform without delay the competent state prosecutor from the specialised team of state prosecutors in charge of fighting organised crime about the grounds for suspicion that a criminal offence from the preceding paragraph was committed and to keep him informed about the planning and course of the pre-trial procedure.

(3) The state prosecutor from the preceding paragraph shall direct and supervise the pre-trial procedure from the preceding paragraphs and decide on its course and termination. He shall have the right to inspect files, participate in the collection of evidence and directly perform individual acts in the procedure. The assigned police officers shall be obliged to act as directed by the state prosecutor.

(4) Under the conditions laid down by this Act police officers of the specialised team may arrest a person from the first paragraph of this Article who is caught while committing a criminal offence in the police, the Slovenian Army or on a mission abroad.

(5) Police officers of the specialised team must notify without delay the competent state prosecutor from the second paragraph of this Article about the arrest, and bring the arrested person without delay before the investigating judge.

Article 159

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

Article 160

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

Article 160a

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

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

Article 160b

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

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

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

(4) The agreement referred to in the previous paragraph shall lay down which authorities are to conclude the agreement, in which case the joint investigation team will act, the purpose of functioning of the team, the State Prosecutor of the Republic of Slovenia who is its Head in the territory of the Republic of Slovenia, other team members and the duration of its functioning. The State Prosecutor General must notify in writing the Ministry of Justice of the concluded agreement.

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

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

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

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

Article 161

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

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

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

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

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

Article 161a

(1) The public prosecutor may transfer a crime report or a charge for a criminal offence punishable by a fine or not more than three years' imprisonment is prescribed and for a criminal offence from the second paragraph of this article to a settlement procedure. In so doing, he shall take account of the type and nature of the offence, the circumstances in which it was committed, the personality of the offender and his or her prior convictions for the same type or for other criminal offences, as well as his or her degree of criminal responsibility.

(2) If special circumstances exist, settlement may also be permitted for the criminal offences of aggravated bodily harm (first paragraph of Article 134 of the Penal Code), grievous bodily harm (fourth paragraph of Article 135), grand larceny (point 1 of the first paragraph of Article 212), misappropriation (fourth paragraph of Article 215) and damage to property (second

paragraph of Article 224). If the charge is brought against a minor, this may also apply for criminal offences for which the Penal Code prescribes a prison sentence of up to five years.

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

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

(5) On receiving notification of the fulfilment of the agreement, the public prosecutor shall dismiss the report. The adjuster is also obliged to inform the public prosecutor of the failure of settlement and the reasons for such failure. The interval for the fulfilment of the agreement may not be longer than three months.

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

(7) General instructions issued by the general public prosecutor shall define in greater detail the conditions and circumstances from the first paragraph of this Article and the special circumstances from the second paragraph of this Article which influence the transfer of the report to a settlement procedure.

Article 162

(1) The public prosecutor may, with the consent of the injured party, suspend prosecution of a criminal offence punishable by a fine or not more than three years' imprisonment and of a criminal offence from the second paragraph of this article if the suspect is willing to behave as instructed by the public prosecutor and to perform certain actions to allay or remove the harmful consequences of the criminal offence. These actions may be:
1) elimination or compensation of damage;
2) payment of a contribution to a public institution or a charity or fund for compensation for damage to victims of criminal offences;
3) execution of some generally useful work;
4) fulfilment of a maintenance liability.

(2) If special circumstances exist, criminal prosecution may also be suspended for the criminal offences of rendering an opportunity for the consumption of drugs (first paragraph of Article 197 of the Penal Code), grand larceny (point 1 of the first paragraph of Article 212), misappropriation (fourth paragraph of Article 215), blackmail (first and second paragraphs of Article 218), damage to property (second paragraph of Article 224), business fraud (first paragraph of Article 234a), embezzlement (first paragraph of Article 245) and the presentation of bad cheques and the abuse of bank or credit cards (first and second paragraphs of Article 253). If the charge is brought against a minor, this may also apply for criminal offences for which the Penal Code prescribes a prison sentence of up to five years.

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

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

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

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

Article 163

The public prosecutor shall not be obligated to start criminal prosecution, or shall be entitled to abandon prosecution:
1) where the Penal Code lays down that the court may or must grant remission of penalty to a criminal offender and the public prosecutor assesses that in view of the actual circumstances of the case a sentence alone without a criminal sanction is not necessary;
2) where the Penal Code provides for a specific offence a fine or imprisonment up to one year and the suspect or the accused, having genuinely repented of the offence, has prevented harmful consequences or compensated for damage and the public prosecutor assesses that in view of the actual circumstances of the case a criminal sanction would not be justified.

Article 163a

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

(2) If the public prosecutor needs to obtain certain information directly from the suspect or injured party in order to be able to decide whether to leave the case to be resolved in a settlement (Article 161a), or desist from starting criminal prosecution (Article 163), or move for the issue of a punitive order (Article 445a), he may summon the suspect and the injured party, or only one of them, to the Public Prosecutor's Office. The suspect shall be informed by the public prosecutor of the crime report and decisions the prosecution might take in acting upon the crime report, and the injured party shall be informed of his rights.

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

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

Article 164

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

(2) If the investigating judge is late in coming to the scene of a crime, the police may themselves conduct the view and determine the necessary expert examination, except post mortem and exhumation. If the investigating judge arrives at the scene during the conducting of these acts he may take over and execute such acts by himself.

(3) The police or the investigating judge shall be bound to notify the public prosecutor of acts from the first and second paragraphs of this Article without delay.

Article 165

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

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

Article 165a

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

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

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

Article 166

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

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

Chapter XVI
INVESTIGATIONS

Article 167

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

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

Article 168

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

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

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

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

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

Article 169

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

(2) Before rendering the ruling, the investigating judge shall examine the person against whom investigation is requested, except where it would be unsafe to postpone investigation or

where, in view of the already executed interrogation according to Article 148.a of this Act and the submitted request for investigation, he assesses that another investigation is not necessary.

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

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

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

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

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

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

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

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

Article 170

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

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

motion to the public prosecutor and to the person against whom a charge sheet is to be preferred.

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

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

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

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

(7) The provisions from the first to sixth paragraphs of this Article shall also apply in the case of criminal prosecution at the request of the injured party as prosecutor or of the private prosecutor. In that case, however, the time limit from the third paragraph of this Article may not be extended. The provisions of paragraph 6 of this Article shall also apply to the filing of private charges against honour and good name committed by way of the press, radio, television or other mass media.

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

Article 171

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

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

Article 172

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

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

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

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

Article 173

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

Article 174

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

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

Article 175

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

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

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

Article 176

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

Article 177

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

(2) The parties and the injured party may make the motions from the preceding paragraph also to the investigating judge or the internal affairs agency entrusted with the performance of

individual investigative acts. If the investigating judge or the police disagrees with the motion they shall make their disagreement known to the party which made the motion and the latter may repeat the motion to the investigating judge of the court of jurisdiction.

Article 178

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

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

(3) The public prosecutor and defence counsel may attend the search of a dwelling.

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

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

(6) The investigating judge may order the accused to be removed from interrogation if a witness is unwilling to testify in the presence of the accused or if circumstances indicate that the witness will fail to tell the truth in the presence of the accused or in instances where a recognizance will be required after hearing the witness. The accused may not be present during the questioning of witnesses younger than 15 who are victims of any of the criminal offences from the third paragraph of Article 65 of this Act.

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

performance of individual acts be entered in the record, and may propose that individual pieces of evidence be taken.

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

(9) The provisions from first to eight paragraphs of this Article shall also apply to acts of investigation performed before the ruling to open investigation has been passed.

Article 179

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

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

(3) The investigating judge shall resume investigation after the obstacles which had occasioned suspension have disappeared.

Article 180

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

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

Article 181

(1) In the following instances the panel of judges shall suspend investigation by a ruling (sixth paragraph of Article 25) when deciding on any matter in the course of an investigation:
1) if it finds that the offence the accused is charged with is not a criminal offence
2) if circumstances exist which exclude criminal responsibility of the accused and there are no grounds for application of security measures
3) if criminal prosecution is statute-barred, or the offence is covered by amnesty or pardon, or other circumstances exist which bar prosecution

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

(2) If the investigating judge finds that there are reasons to suspend investigation under the first paragraph of this Article he shall notify the public prosecutor thereof. If within eight days the public prosecutor does not inform the investigating judge that he abandons prosecution the investigating judge shall request the court panel to decide on the suspension of investigation.

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

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

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

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

Article 182

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

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

Article 183

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

Article 184

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

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

(3) If the investigating judge declines the motion of the public prosecutor for investigation to be supplemented, he shall request the panel to decide the matter (sixth paragraph of Article 25). If the panel rejects the motion of the public prosecutor, the time period from the preceding paragraph shall start to run from the day the public prosecutor was informed of the decision of the panel.

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

Article 185

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

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

Article 186

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

(2) The institution, conduct, suspension and discontinuance of an investigation shall meaningfully be governed by those provisions of this Act which apply to the instituting and conducting of investigation at the request of the public prosecutor. If the injured party as prosecutor and the private prosecutor fail to appear at the interrogation of the accused in spite of being duly summoned, and if their attorney at law does not appear either, they shall be considered to have withdrawn the request for prosecution or to have refrained from criminal prosecution. As regards reinstatement to the previous state of affairs the provisions of Article 58 of this Act shall apply accordingly.

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

Article 187

If the investigating judge needs assistance (criminological, technical and other) of internal affairs agencies or other state agencies in connection with his investigation, these agencies shall be bound to help him if requested to. The investigating judge may also demand assistance from enterprises and other legal entities if that is necessary for an act of investigation that permits of no delay.

Article 188

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

Article 189

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

Article 190

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

(2) The accused may not be fined.

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

Article 191

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

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

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

1. Common provision

Article 192

(1) The measures which may be used to ensure the presence of the accused, to prevent re-offending and to ensure successful conduct of the criminal proceedings are: summons, compulsory appearance or promise by the accused not to leave his residence, prohibition on approaching a specific place or person, attendance at a police station, bail, house arrest and detention.

(2) In deciding on which of the measures to apply to ensure the presence of the accused, the court shall be obliged to take account of the conditions stipulated for individual measures. In selecting the measures, it shall also be obliged to ensure that it does not apply stricter measures if less strict measures would suffice.

(3) These measures shall be abolished when reasons which necessitated them disappear or shall be replaced by more lenient measures if the requirements are met for this.

2. Summons

Article 193

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

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

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

(4) The accused shall be bound immediately to notify the court of any change of his address or the intention to change the place of residence. The accused should be informed of the aforesaid obligation on the occasion of the first examination or the serving of a charge sheet preferred without the investigation (sixth paragraph of article 170) or of a motion for prosecution or a private charge. On that occasion the accused shall be warned of the consequences of non-compliance as provided by this Act.

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

3. Compulsory appearance

Article 194

(1) A decree to produce the accused under compulsion may be issued by the court against a detainee kept in custody under a warrant of arrest, or against the accused who, after being duly summoned, fails to appear and to justify his absence, it being evident from the circumstances that he is trying to evade the obligation under the summons.

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

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

(4) The person in charge of execution of the decree shall serve the decree to the accused and ask the latter to accompany him. If the accused refuses to comply the officer shall bring him by force.

(5) The decree on compulsory production of military persons, police members or guards in an institution in which arrested persons are kept in custody shall be executed through the intermediary of their command or warden.

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

Article 195

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

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

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

4.a Prohibition of approaching a specific place or person

Article 195a

(1) If the circumstances from clauses 2 or 3 of the first paragraph of Article 201 of this Act exist, but the risk that the accused will destroy traces of the criminal offence, will influence witnesses, participants or persons involved in concealment, or that the accused will repeat the criminal offence, complete an attempted criminal offence or commit a threatened criminal

offence can be prevented through the prohibition on the accused approaching a specific place or person, the court shall use such a measure.

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

(3) If the distance which the accused must respect is intentionally violated by the person protected under the measure, the court may each time penalise with the monetary fine from Article 78 of this Act the protected person.

(4) Courts shall decide on the measures from this Article in a reasoned ruling; the explanation must contain justification for the suspicion that the accused committed a criminal offence, the circumstances from the first paragraph of this Article and the use of this measure.

4.b Attendance at police stations

Article 195b

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

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

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

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

(5) The investigating judge shall always decide, either *ex officio* or at the suggestion of the public prosecutor.

5. Bail

Article 196

(1) If the sole reason to detain the accused, or to extend detention in case the accused is already under custody, is the fear that he may flee, the accused may be released on bail given

by himself or by someone else and against the pledge that he will not go into hiding or leave his abode without permission.

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

Article 197

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

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

(3) If the accused runs away the amount given as bail shall under a ruling be assigned to the budget.

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

Article 198

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

(2) In the case referred to in the preceding paragraph, bail shall be cancelled. The deposited money, valuables, securities or other movables shall be returned, mortgage shall be erased. The same shall apply if criminal procedure is finally concluded ends with a suspension order, rejection of the charge sheet or with a conviction.

(3) Where bail was given pursuant to the second paragraph of Article 196 of this Act, it shall be cancelled once the criminal proceedings are finally concluded. The bail shall be treated in the same manner as in the previous paragraph.

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

Article 199

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

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

5. House arrest

Article 199a

(1) If the grounds from clauses 1 to 3 of the first paragraph of Article 201 of this Act exist but the ordering of detention is not unavoidably necessary for the safety of people or for the progress of the criminal proceedings, the court may order house arrest against the accused. The ruling on the ordering, extension or removal of house arrest shall in all cases also be sent to the police station on the territory of which the measure is implemented.

(2) Through the ruling on ordering house arrest, the court shall determine that the accused may not move from the building in which he permanently or temporarily resides or from a public treatment or care institution. The court may restrict or prohibit contacts between an accused subject to house arrest and persons with whom they do not live or who are not dependent on the accused.

(3) Exceptionally, the court may allow an accused person subject to house arrest to move for a specific time away from the premises where house arrest is being implemented whenever this is unavoidably necessary to ensure essential living needs or to perform work. The court shall inform the police station on the territory of which the measure is implemented thereof.

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

(5) The court shall supervise the implementation of the measure of house arrest, either directly itself or through internal affairs bodies. The police may at any time, even without a court request, verify the implementation of the measure of house arrest, and shall inform the court without delay of any possible violations of the measure.

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

(7) The panel shall in all cases decide on the extension of house arrest prior to the submission of the indictment based on a reasoned proposal of the investigating judge or public prosecutor (sixth paragraph of Article 25). The accused must be acquainted with the proposal, as must his defence counsel where the accused has such, within the interval from the second paragraph of Article 205 of this Act.

6. Remand in custody

Article 200

(1) Remand in custody may only be ordered on grounds provided for by this Act.

(2) Remand in custody shall last the shortest possible time. All agencies participating in criminal proceedings and agencies which provide legal assistance to them shall be duty bound to proceed with special despatch if the accused has been remanded in custody.

(3) Remand in custody shall at any stage of proceedings be cancelled as soon as the reasons for this cease to exist.

Article 201

(1) If a well-grounded suspicion exists that a person has committed a criminal offence remand in custody against that person may be ordered:
1) if he is in hiding, if his identity cannot be established or if other circumstances exist which point to the danger of his attempting to flee,
2) if there is ground for concern that he will destroy the traces of crime or if specific circumstances indicate that he will obstruct progress of the criminal proceedings by influencing witnesses, accomplices or harbourers,
3) if the seriousness of the offence, or the manner or circumstances in which the criminal offence was committed and his personal characteristics, previous life, the environment and conditions in which he lives or some other personal circumstances indicate a risk that he will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he has threatened to commit.

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

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

Article 202

(1) Remand in custody shall be ordered by the investigating judge of the court of jurisdiction at the proposal of the public prosecutor.

(2) Remand in custody shall be ordered in a written ruling comprising: the name and surname of the person to be deprived of freedom; the criminal offence of which he is accused; the legal grounds for remand in custody; instructions on the right to appeal; explanation of all decisive facts which dictated remand in custody, wherein the investigating judge shall be obliged to state precisely the grounds for the justified suspicion that the person committed a criminal offence, to explain the decisive facts from clauses 1 to 3 of the first paragraph of the previous Article, and to state why the ordering of remand in custody in the concrete example is unavoidably necessary for the safety of people or for the progress of the procedure.

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

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

(5) If the investigating judge disagrees with the motion of the public prosecutor for remand in custody to be decreed the investigating judge shall request that the matter be decided by the panel (sixth paragraph of article 25). The detained person may appeal the ruling by which the panel has ordered remand in custody but the complaint shall not stay execution. As regards the ruling and the filing of a complaint the provisions of paragraphs three and four of this Article shall apply.

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

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

Article 203

(1) The investigating judge shall be bound to give the arrested person information under Article 4 of this Act immediately after the arrested has been brought to him. In case of a foreign citizen, the investigating judge must also inform the arrested that the relevant body shall, following a request by the arrested, be obliged to notify the consulate of the relevant country about the arrest. The information by the investigating judge and the statement of the arrested thereon shall be entered in the record. The investigating judge shall, if necessary, help the arrested person to find a lawyer.

(2) The investigating judge shall be obliged to question persons who have been deprived of their freedom without delay, and no later than within forty-eight hours of such person being brought to the judge.

(3) If the person who has been deprived of freedom fails to retain defence counsel within twenty-four hours of being informed of such right or declares that he will not retain defence counsel, the court shall *ex officio* appoint defence counsel for him.

(4) In instances from the previous paragraph, the investigating judge shall by decree order detention for the necessary time but for no longer than forty-eight hours from the hour when the person who has been deprived of freedom was brought to the judge. The provisions of the seventh paragraph of Article 157 of this Act shall apply *mutatis mutandis* to appeals against such ruling.

(5) Detention under the previous paragraph shall be implemented in remand premises.

Article 204

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

Article 204a

(1) Immediately after questioning, the public prosecutor shall be obliged to declare whether he or she will request the initiation of criminal proceedings and propose remand in custody or any of the substitute measures from this chapter.

(2) If the public prosecutor announces the application of the previous paragraph of this Article, he shall be obliged to explain the circumstances which could influence the decision on individual measures. The accused and his defence counsel may in response to the statement of the public prosecutor give their proposals and viewpoints.

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

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

Article 205

(1) The accused who is detained under the ruling of the investigating judge may be remanded in custody one month from the day he was arrested at the longest. After that time period he may be kept in custody only under a ruling ordering the extension of remand in custody.

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

(3) If a charge sheet is not filed before the expiry of the time limits from the preceding paragraph remand in custody shall be cancelled and the accused released.

Article 206

Apart from cancelling remand in custody by reason of the expiry of the time limit or because the public prosecutor has refrained from prosecution, the investigating judge may cancel remand in custody while an investigation is in progress subject to consent of the public prosecutor if the proceedings are conducted under his request. If the investigating judge and the public prosecutor cannot reach agreement on the issue of cancellation, the investigating judge shall ask the panel to decide the matter. The panel shall be bound to pass the decision within forty-eight hours.

Article 207

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

(2) Upon the expiry of two months from the last ruling on remand in custody the panel shall be bound to examine, even in the absence of a motion by the parties, if reasons for remand in custody still exist, and to render a ruling by which remand in custody is extended or abrogated.

(3) An appeal from the rulings referred to in the first and second paragraphs of this Article shall not stay execution.

(4) No appeal shall be permitted against the ruling by which the panel rejects the motion for the ordering or cancelling of remand in custody.

(5) After the charge sheet has been filed remand in custody may last two years at most. If a sentence of condemnation is not passed on the accused within this period, remand in custody shall be cancelled and the accused released.

Article 208

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

7. Implementation of remand

Article 209

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

(2) Only those restrictions which are necessary to prevent escape or consultation which could harm the successful implementation of the proceedings may be used against persons on remand.

Article 210

(1) Detainees shall be accepted in institutes in which remand is served (hereinafter: institute) pursuant to a written ruling on remand.

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

(3) In instances from the previous paragraph, the responsible worker of the institute shall be obliged to produce an official record which states the competent court which requested the acceptance and the date and time of the acceptance of the detainee in the institute.

(4) If the institute does not receive the written ruling on remand within the interval from the previous paragraph, it shall release the detainee and inform the competent court thereof.

Article 211

(1) The institute shall collect, process, store and maintain a database on detainees due to the lawful and proper implementation of remand.

(2) The database from the previous paragraph shall comprise:
1. data on the identity of the detainee and on his personal status,
2. data on the ruling on remand,
3. data on the work performed while on remand,
4. data on acceptance into remand and the duration, extension and cancellation of remand,
5. data on the behaviour of the detainee and on disciplinary measures.

(3) Data from the database shall be stored and used for the duration of remand; after the remand is cancelled, the data shall be archived and stored permanently.

(4) The institute shall forward the data from the second paragraph of this Article to the central records on detainees, and to other users only if they are authorised to use the data by law or pursuant to the written permission or request of the individual to whom the data refers.

(5) The Minister responsible for Justice shall issue regulations to define in greater detail the data from the second paragraph of this Article.

Article 212

(1) Detainees shall be held on remand in special remand premises or in a separate, closed part of an institute for the serving of prison sentences or of a department thereof.

(2) People of the opposite sex may not be held in the same room. As a rule, persons who have participated in the same criminal offence, and persons serving prison sentences may not be held with those on remand. If possible, persons who are accused of repeat criminal offences may not be held in the same room as other prisoners who could be subjected to harmful influences.

(3) The competent court may transfer a detainee from one institute to another for reasons of safety, order and discipline or for the successful and rational implementation of the criminal proceedings, at the proposal of the director of the institute in which the detainee is held.

Article 213

While on remand, detainees may have on their person and use items for personal use, to maintain hygiene, equipment to receive public media, printed matter, professional and other literature, money and other items which with regards to size and quantity enable functional living in the living area and which do not disturb other detainees. Other items shall be confiscated and put into storage during personal inspection of the detainee .

Article 213a

(1) Detainees shall have the right to eight hours uninterrupted rest in twenty-four hours. In addition, detainees must be ensured no less than two hours of outdoor exercise per day.

(2) Detainees may be used for work which is necessary to maintain order and cleanliness in their area. In accordance with the possibilities of the institute and on condition that it is not harmful to the criminal proceedings, detainees must be allowed to work in activities which suit their mental and physical abilities. The investigating judge or the president of the panel shall decide on this in agreement with the management of the institute.

(3) Detainees shall have the right to payment for work performed. The Minister responsible for Justice shall prescribe in greater detail the manner and amount of payment.

Article 213b

(1) With the permission of the investigating judge who is conducting the investigation and under his supervision or the supervision of someone appointed by him, close relatives, and at his request also a doctor and others, may visit the detainee within the confines of the house order of the institute. Individual visits may be prohibited if this could cause harm to the proceedings.

(2) Diplomatic and consular representatives of foreign countries shall have the right, with the knowledge of the investigating judge performing the investigation, to visit and to talk unsupervised with detainees who are citizens of their country.

(3) The human rights ombudsman or his deputy may visit detainees and may correspond with them without prior notification and without supervision of the investigating judge and without supervision by the investigating judge or someone appointed by him. The letters which detainees send to the Office of the Human Rights Ombudsman may not be examined.

(4) Detainees may correspond or have other contacts with persons outside the institute. If dictated by the reasons for which detainment was ordered, the investigating judge, following a proposal by the public prosecutor may, by means of a written decision, order supervision of letters and other packages as well as other contacts a detainee has with persons outside the institute. The investigating judge may prohibit a detainee from sending and receiving letters and other packages or from establishing contacts which are harmful to the procedure, but may

not prohibit detainees from sending requests or complaints. An appeal against this decision shall not stay the execution of the decision.

(5) After the indictment until the judgement is legally binding, the president of the panel shall have the rights from the first to fourth paragraphs of this Article.

Article 213c

(1) Detainees may be disciplined for disciplinary breaches. The investigating judge or the president of the panel may impose a disciplinary punishment.

(2) Disciplinary breaches are:
- physical attacks on other detainees, employees of the institute or other official persons,
- the production, acceptance or introduction of items for attacks or escape,
- the introduction and production of alcoholic beverages and narcotics and their distribution,
- violations of the regulations on safety at work, fire safety, explosions and other natural disasters,
- repeated violations of the house order of the institute,
- causing serious material damage intentionally or through serious negligence,
- insulting and undignified behaviour.

(3) For disciplinary breaches, a prohibition or restrictions on visits and correspondence may be imposed. Restrictions or prohibition of visits shall not apply to visits by the defence counsel, doctors, the human rights ombudsman and diplomatic and consular representatives of the country of which the detainee is a citizen.

(4) Complaints may be lodged with the panel (sixth paragraph of Article 25) against the ruling on punishments imposed under the first paragraph of this Article within twenty-four hours of receipt thereof. Complaints shall not stay execution of the ruling.

Article 213c

(1) Unless otherwise stipulated by this Act and by regulations issued pursuant thereto, the provisions of the law which governs the implementation of penal sanctions and of regulations issued pursuant thereto shall apply *mutatis mutandis* to the monitoring, pursuit, surveillance, maintenance of order and discipline, the use of force, personal search and house searches for detainees.

(2) In performing official duties, authorised official persons of the institute may use firearms only if they are otherwise unable to protect the lives of people, to rebuff a direct attack on their person which endangers their life or to rebuff an attack on a person or structure which he is protecting.

Article 213d

(1) Supervision of the treatment of detainees shall be implemented by the president of the district court.

(2) The president of the court, or a judge appointed by him, shall be obliged at least once a week to visit detainees and to ask, if he considers it necessary, including without the presence

of warders, them how they are being treated. He shall be obliged to take the necessary action to remove irregularities which he noticed during his visit to the institute. The appointed judge may not be the investigating judge.

(3) The president of the court and the investigating judge may at any time visit detainees, talk with them and accept complaints.

Chapter XVIII
ACTS OF INVESTIGATION

1. House search and personal search

Article 214

(1) A search of the dwelling and other premises of the accused or other persons may be conducted if there are reasonable grounds for suspecting that a specific person has committed criminal offence and there is a likelihood of apprehending the accused during the search or of discovering the traces of the crime or objects of importance for criminal procedure.

(2) A search of a person may be made if there are reasonable grounds for suspecting that a specific person has committed criminal offence and it seems probable that traces and objects important for criminal procedure will be found during the search.

Article 215

(1) A search shall be ordered by the court in the form of a reasoned decree.

(2) Before beginning the search the decree shall be handed over to the person whose premises or person are to be searched. The person to be searched shall be informed of his right to send word to his lawyer, the latter being entitled to be present during the search. If the person to whom the decree on the search relates demands that his lawyer be present during the search, the start of the search shall be adjourned until the lawyer arrives, but no longer than two hours.

(3) Before starting the search the person whom the decree on the search concerns shall be asked to surrender voluntarily the person or the objects sought.

(4) A search may be undertaken even without the prior presentation of the decree or the prior demand for surrender of the person or objects sought if armed resistance is expected, or the search has to be conducted instantly and without warning, or where a search is conducted on public premises.

(5) Searches shall as a rule be conducted between 6 a.m. and 10 p.m. They may also be conducted outside these times if they began within these hours and are not completed by 10 p.m., or if the reasons from Article 218 of this Act exist, or if the investigating judge assesses that a delay could lead to destruction of traces of a criminal offence or of items important for the criminal proceedings and specifically permits this.

(6) The provisions of this and other Articles which refer to house and personal searches shall also apply *mutatis mutandis* to searches of concealed spaces in means of transport.

Article 216

(1) The person whose flat or other premises are searched or a representative of that person shall have the right to be present during the search.

(2) Locked premises, furniture or other objects may be forced only if their owner is not present or refuses to open them voluntarily. In forcing these objects care should be taken not to do unnecessary damage.

(3) When a house search or personal search is conducted, two adult persons shall be required to be present as witnesses. A female person may only be searched by a female person, and the witnesses of the act may only be females. Before the search begins the witnesses shall be warned to observe closely how the search is conducted, and shall be informed of their right to make objections, if any, to the contents of the record of the search before it is signed.

(4) If a search is conducted on the premises of a state agency, enterprise or other legal person, the head thereof shall be invited to attend the search.

(5) If a search is conducted on a military facility the appropriate senior officer shall be invited to attend it.

(6) Searches of residential premises and persons shall be carried out considerately, to avoid disturbing the peace.

(7) Each house search or personal search shall be registered in a record which shall be signed by the person whose premises or person have been searched, his lawyer if present during the search, and persons whose presence is obligatory. When conducting a search, only the objects and documents related to the purpose of that particular search may be seized. The objects and documents seized shall be entered and accurately described in the record, and the same shall be indicated in the receipt which shall be immediately given to the person whose objects or documents have been seized.

Article 217

If during a house search or personal search objects are found which are not related to the criminal offence that occasioned the search but which point to another criminal offence subject to public prosecution, these objects shall also be described in the record and seized, and a certificate of seizure shall immediately be issued. A notification thereof shall immediately be sent to the public prosecutor to start criminal prosecution. The objects seized shall be returned immediately if the public prosecutor finds that there are no grounds for criminal prosecution, nor any other statutory ground for confiscating the objects (Article 498).

Article 218

(1) Police officers may without a decree of the court enter and, if necessary, search the accommodation and other premises of a person if the occupant so desires, if someone is calling for help, if a perpetrator caught in the act of committing a criminal offence is to be

apprehended, if reasons of safety of people and property so require, and if a person whose apprehension or compulsory production under a decree of the competent state agency, or a person being prosecuted, is to be found in the dwelling or other premises.

(2) In the instance referred to in the preceding paragraph a record shall not be made but the occupant shall be given a certificate with an indication as to the reason for the entry of the accommodation or other premises. If during the entry from the preceding paragraph a search was also conducted, the provisions of the third and sixth paragraphs of Article 216 shall be applied.

(3) A search may be carried out without witnesses being present if their presence cannot be secured immediately and it would be unsafe to delay the act. The reasons for the search without the attendance of witnesses shall be cited in the record.

(4) Police officers may search a person without a search warrant and witnesses present when acting under a decree on compulsory appearance of a person or when apprehending a person, provided grounds exist to suspect that the person is carrying weapons for attack or that he will throw away, hide or destroy objects which must be taken away from him as evidence in criminal proceedings.

(5) Where police officers have carried out a search without a decree to search they shall be bound immediately to submit a report thereof to the investigating judge, or to the competent public prosecutor where proceedings are not yet pending.

Article 219

If a search has been conducted without a written decree by the court (first paragraph of Article 215) or without the presence of the persons who must be present during the search (first and second paragraph of Article 216), or if a search has been conducted contrary to the provision of the first, third and fourth paragraphs of the preceding Article, the court may not base its decisions on evidence thus obtained.

2. Seizure of objects

Article 220

(1) Objects which must be seized under the Penal Code, or which may prove to be evidence in criminal procedure, shall be seized and delivered to the court for safekeeping or secured in some other way.

(2) Custodians of such objects shall be bound to hand them over at the request of the court. A custodian who declines to deliver the objects may be fined under the first paragraph of Article 78 of this Act; if after being fined he still refuses to surrender them, he may be arrested. The detention shall last until the objects have been delivered or until the end of criminal proceedings, but no longer than one month.

(3) A complaint from the decision by which a fine or imprisonment were pronounced shall be determined by the panel (sixth paragraph of article 25). A complaint against the decision on the imprisonment shall not stay the execution of the decision.

(4) Police officers shall be entitled to seize objects referred to in the first paragraph of this Article when proceeding under Articles 148 and 164 of this Act or when executing orders of the court.

(5) The determination of the identity of objects seized shall be secured by indicating after seizure where they were found, by giving a description of the objects or, as the case may require, in some other way. A certificate of seizure shall be issued for the objects seized.

Article 221

(1) State agencies may decline to have their documents and papers inspected or to deliver them if they consider that a disclosure of their contents would harm the general interest. If they do so, the final decision thereon shall be given by the panel (sixth paragraph of article 25).

(2) Enterprises and other juridical persons may request that information concerning their business be not published.

Article 222

(1) If files of evidentiary value are seized a list of them shall be mad. If that is not possible they shall be put in an envelope and sealed. The owner of the file may put his seal on the envelope.

(2) The person whose files have been seized shall be invited to attend the opening of the envelope. If he does not appear after being summoned, or if he is absent, the envelope shall be opened in his absence.

(3) In examining the files care should be taken that unauthorised persons should not become acquainted with their contents.

Article 223

(1) The investigating judge may order that the post, telegraphic and other organisations engaging in the transmission of information should hold, and against his certificate of receipt deliver to him, the letters, telegrams and other shipment addressed to the accused or sent by him if circumstances exist which justify anticipation that these deliveries will prove to be evidence in the proceedings.

(2) The investigating judge shall open the shipments delivered to him in the presence of two witnesses. In opening the shipments care should be taken that the seals be not damaged. The envelopes with the addresses shall be preserved, and a record of the opening shall be made.

(3) The content of a shipment may be reported in full or in part to the accused or the person to whom it is addressed, and the shipment itself may be delivered to the aforesaid persons, provided that does not affect the interests of the proceedings. If the accused is absent the contents of a shipment or the shipment itself shall be reported or delivered to one of his relatives, and where none of them is to be found the shipment shall be returned to the sender provided that does not affect the interests of the proceedings.

Article 224

Objects seized during the criminal procedure shall be returned to the owner or actual holder if the procedure is discontinued and there are no grounds for them to be confiscated (Article 498).

3. Treatment of objects of doubtful ownership

Article 225

(1) If an object of unknown ownership is found on the accused the agency conducting the proceedings shall describe it and post the notice with the description of the object on the bulletin board of the court of first instance in the territory in which the accused lives and in the territory in which the criminal offence was committed. The notice shall call on the owner to come forward within a year or the object will be sold. The money obtained by the sale shall be remitted to the budget.

(2) If the objects are of considerable value the notice may also be advertised in the daily press.

(3) If the object is perishable or its keeping involves considerable expense it shall be sold according to the provisions applying to enforcement procedure and the money so obtained shall be entrusted to a monetary institution for safekeeping.

(4) The provisions from the preceding paragraph shall also apply to the treatment of objects belonging to an absconder or unknown criminal offender.

Article 226

(1) If within a year no person claims the object or the proceeds from its sale a ruling shall be issued that the object become the property of the Republic of Slovenia or that the money be transferred to the budget.

(2) The owner shall have the right to sue for the restitution of the object or of the proceeds from its sale. The statute of limitation for the aforesaid civil action shall apply as from the day of publication of the notice.

4. Interrogation of the accused

Article 227

(1) It his first interrogation the accused should be asked his first name, family name and nickname, if any; the name and surname of his parents and the maiden name of his mother; his place of birth and place of residence; the day, month and year of his birth; his personal identification number; his nationality and citizenship; his occupation and family conditions; whether he is literate; his education; whether, where and when he did military service; whether he is a non-commissioned or commissioned officer or a military employee; whether he has been conscripted and, if so, at which defence agency; whether he has been decorated; his personal income and his financial position; whether he has been convicted and the sentence has not yet been deleted; whether he has served a sentence and, if so, when and for

what criminal offence; whether a criminal procedure against him for some other criminal offence is in progress; if he is a minor, the identity of his legal representative. He shall be informed of the obligation to appear when summoned and to report any change of his address or an intended change of the place of residence, and shall be warned of consequences of failure to comply therewith.

(2) The defendant shall then be informed of the offence he is charged with and of the grounds for the charge. He shall be instructed that he is not obliged to plead and answer questions, that if he pleads he is not obliged to incriminate himself or his fellow beings or to confess guilt, that he is entitled to retain a lawyer of his choosing or to have a lawyer appointed for him *ex officio* under conditions defined by this Act, and that the lawyer may be present at the interrogation.

(3) If criminal offences for which the Penal Code lays down that the defendant may have his punishment mitigated in certain cases (point 3 of Article 42 and the third paragraph of Article 297 of the Penal Code) are involved, he must be informed of this as well.

(4) The accused shall be interrogated orally. He may be permitted to make use of his notes during the interrogation.

(5) During the interrogation the accused should be enabled to declare himself in an uninterrupted narrative on all the circumstances adverse to him and to put forward all the facts advantageous to his defence.

(6) After the accused has finished his narrative he shall be asked questions if there are gaps to be filled or contradictions and ambiguities to be cleared up in his account.

(7) The interrogation shall be conducted with full respect for the person of the accused.

(8) Force, threats or any similar means of extorting a statement or confession from the accused must not be used (third paragraph of article 266).

(9) The defendant may be interrogated in the absence of a lawyer if he has explicitly waived that right and defence is not mandatory, or if the lawyer is not present although he was notified of the interrogation (Article 178).

(10) If the defendant was not instructed about his rights under the second paragraph of this Article, or the instruction and the statement of the defendant concerning the right to a lawyer are not entered in the record, or the interrogation was conducted in violation of the provisions of the eighth or ninth paragraph of this Article, the court may not base its decision on the statement of the defendant.

Article 228

(1) The accused should be asked questions in a clear, distinct and precise manner so that he can completely understand them. Questions must not proceed from the assumption that the accused has admitted something he has not admitted. The accused must not be asked questions which in themselves suggest how they should be answered. The accused must not be misled in order to obtain a statement or confession.

(2) If the subsequent statements of the accused are at variance with his previous statements and, in particular, if he denies his previous statements he shall be asked to adduce the reasons for this.

(3) If the interrogation was conducted in violation of the provisions of the first paragraph of this Article, the court decision may not be based on the statement of the defendant.

Article 229

(1) The accused may be confronted with a witness or another accused if their statements on important facts diverge.

(2) The persons confronted with one another shall each be interrogated separately about every point on which their statements differ and their answers shall be entered in the record.

Article 230

Objects related to criminal offence or used as evidence shall first be described by the accused and then presented to him for identification. If such objects cannot be brought before the accused he shall be taken to the place where the objects are located.

Article 231

(1) Statements of the accused shall be written down in the record in the form of a narrative. Questions and answers shall be entered in the record if so requested by the parties or counsel, or if the investigating judge deems it necessary. The record shall be kept so as to make clear whose questions were answered.

(2) The accused shall be allowed personally to dictate his statements into the record.

Article 232

Notwithstanding a confession of the accused the court which conducts proceedings shall be required to continue gathering evidence. If the confession is unambiguous and circumstantial and supported by other evidence, further evidence shall only be gathered on the motion of the parties.

Article 233

(1) The accused shall be interrogated through an interpreter in instances provided by this Act.

(2) If the accused is deaf he shall be asked questions in writing, and if he is dumb he shall answer questions in writing. If the interrogation cannot be carried out in that way, a person who knows how to communicate with the accused shall be invited to act as interpreter.

(3) If the interpreter is not on oath he shall swear to interpret accurately the questions put to the accused and the answers of the accused.

(4) The provisions of this Act applying to experts shall pertinently apply to interpreters as well.

5. Examination of witnesses

Article 234

(1) Persons likely to give some information about the criminal offence, the perpetrator and other material circumstances shall be summoned as witnesses.

(2) The injured party, the injured party as prosecutor and the private prosecutor may be examined as witnesses.

(3) Any person summoned as a witness shall be duty bound to abide by the summons and, unless provided otherwise by this Act, to testify.

Article 235

The following may not be examined:
1) a person who by giving testimony would violate the obligation to keep an official or military secret, until the competent body absolves him of that obligation;
2) defence counsel, on matters confided to him by the accused, unless the accused himself requests so.

Article 236

(1) The following shall be exempt from the duty to testify:
1) the spouse of the accused or the person with whom he lives in domestic partnership;
2) persons related to the accused by blood in direct line, persons related to him collaterally at three removes and persons related to him by marriage at two removes;
3) the adopter or adoptee of the accused;
4) the father confessor, on matters confessed to him by the accused or by another person;
5) counsel, doctor, social worker, psychologist or another person, on facts he came to know in the exercising of his profession, if bound by the duty to keep secret what he learns of in the exercising of his profession, except in instances referred to in the third paragraph of Article 65 of this Act, or if statutory conditions are fulfilled under which such persons are absolved from the duty to guard secret or are bound to disclose confidential information to competent bodies.

(2) The court conducting proceedings shall be bound to instruct the persons referred to in the preceding paragraph, each time before examining them, that they are not obliged to testify the moment the court learns that there are circumstances that absolve said persons from the duty to testify. If a witness declares that he waives that right and wants to testify, he shall be warned that the court might base its decision on his testimony even if he waives the testimony in the main hearing. The instruction and the answer shall be entered in the record.

(3) Minors who in view of their age and the stage of their intellectual development cannot understand the meaning of the right to decline testimony may not be examined as witnesses except where the accused himself demands it.

(4) A witness entitled to refuse to testify against one of the accused shall be exempt from the duty to testify against other defendants if his testimony cannot, in view of the character of the case, be confined solely to them.

Article 237

If a person who has been examined as a witness is a person who may not be examined as a witness (Article 235), or a person who is not obliged to testify (Article 236) but has not been instructed of that right or has not explicitly waived that right or the instruction and the waiver were not entered in the record, or if a person examined as a witness is a minor who could not understand the meaning of his right to refuse testimony, or the testimony was extorted by force, threat or a similar prohibited means (third paragraph of article 266), the court may not base its decision on such testimony.

Article 238

A witness shall not be obliged to answer those questions by which he would be likely to disgrace, inflict considerable material damage or make liable to criminal prosecution himself or his near kin (clauses 1 to 3, first paragraph of article 236).

Article 239

(1) Witnesses shall be summoned by a writ of summons in which shall be indicated: the first name, surname and occupation of the person summoned, when and where he is to appear, the criminal case in connection with which he is summoned, indication that he is summoned as a witness, and the consequences of non-compliance with the summons.

(2) Minors under the age of sixteen shall be summoned as witnesses through their parents or legal representative, except where that is not possible for reasons of urgency or some other circumstances.

(3) Witnesses who by reason of old age, illness or serious disability are unable to comply with the summons shall be examined in their dwelling places.

Article 240

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

(2) A witness shall first be told that it is his duty to speak the truth and that he may not withhold anything, whereupon he shall be warned that a false testimony is a criminal offence. A witness shall also be instructed that he need not answer questions referred to in Article 238, and the instruction thereon shall be entered in the record.

(3) After that the witness shall be asked to tell his name and surname, occupation, place of residence, place of birth, his age and his relation to the accused and the injured party. He shall be warned of the obligation to report to the court any change of address or place of residence. A police officer who appears as a witness shall, as a rule, be asked the address and name of the unit to which he belongs rather than his address of residence. A person who has carried out measures from Articles 149a, 150, 151, 155 and 155a of this Act directly shall not, as a

rule, be required to give his personal data but it shall suffice that he identifies himself by means of his official working name and an official document that proves his identity.

(4) A person under age, especially if that person has suffered damage from the criminal offence at issue, should be examined considerately to avoid producing harmful effect on his state of mind. If necessary, a pedagogue or some other expert should be called to assist in the examination of a minor.

Article 240a

(1) If disclosure of individual personal data or the whole identity of a certain witness could represent serious danger to his life or body, the life or body of his immediate family (points 1 to 3 of the first paragraph of Article 236) or of persons proposed by the witness in accordance with the provisions of the law stipulated in the third paragraph of Article 141a of this Act, the court may order one or more of the following measures to protect him or his immediate family:
1) deletion of all or certain data from the third paragraph of Article 240 of this Act from the criminal file;
2) the marking of all or some of the data from the preceding point as an official secret;
3) the issuing of an order to the defendant, his counsel and the injured party or his legal representative and counsel to keep certain facts or data secret;
4) the assignment of a pseudonym to the witness;
5) the taking of testimony using technical devices (protective screen, devices for disguising the voice, transmission of sound from separate premises and other similar technical devices).

(2) Protective measures from the preceding paragraph shall be ordered in writing by the investigating judge at the request of the state prosecutor, the witness, the injured party, the defendant, his legal representatives and counsel, or *ex officio*. The decision may not contain data that could lead to the disclosure of data that is the subject of the protective measure.

(3) Prior to the issuing of the decision on the use of protective measures, the investigating judge shall obtain from the witness the data from the third paragraph of Article 240 of this Act. If protective measures are ordered, the appropriate data from the third paragraph of Article 240 of this Act shall be removed from the case records and kept as an official secret immediately after identification of the witness and before his testimony is taken. Its inspection and use shall be permitted only in procedures for deciding on an appeal against a decision from the preceding paragraph and in the case of identity control pursuant to the ninth paragraph of this Article.

(4) The decision on the use of protective measures by means of which the identity of the witness is entirely concealed from the defendant and his advocate (anonymous witness) may be issued by the investigating judge only after a special hearing has been held, if he assesses:
1) that there is serious danger to the life and body of the witness, the life or body of his immediate family or of persons proposed by the witness in accordance with the provisions of the law stipulated in the third paragraph of Article 141a of this Act;
2) that the witness's testimony is important to the criminal proceedings;
3) that the witness shows a sufficient level of credibility;
4) that the interests of justice and the successful conduct of criminal proceedings outweigh the interests of the defence in knowing the identity of the witness.

(5) Only the necessary court staff and staff providing security may be present at the hearing from the preceding paragraph, in addition to the state prosecutor and the witness for whom the protective measure has been requested. At the hearing the investigating judge shall inspect the enclosed documents and take testimony from the witness and from other people able to supply information that could have a bearing on his decision. The statements given by the witness or by other people at this hearing shall be removed from the case records immediately after the hearing, and kept as an official secret. They may only be inspected and used in procedures relating to decision-making on an appeal against the decision from the second paragraph and in the case of identity control pursuant to the ninth paragraph of this Article. If the investigating judge establishes at the hearing that protection measures referred to in the first paragraph of this Article do not prove sufficient to ensure personal security, he may propose to the State Prosecutor to take the initiative in compliance with the provisions of the law stipulated in the third paragraph of Article 141a of this Act.

(6) If urgent protection measures or measures under the protection programme under the law as referred to in the third paragraph of Article 141a of this Act are already ordered before the hearing as to a certain witness, the investigating judge shall gather data from the witness at the hearing pursuant to the third paragraph of Article 240 of this Act and shall verify whether in fact the same witness is concerned for whom the measures were ordered. The findings shall be recorded in the minutes. The data gathered shall be removed from the file immediately after their identification and before the hearing of the witness and shall be kept as an official secret. In the case of such a witness the investigating judge shall decide on the concealed identity by the decision for the purposes of court procedure after the assessment made as referred to in point 4 of the fourth paragraph of this Article.

(7) While testimony is being taken from a witness in relation to whom the measures from the first paragraph of this article or the measures under the protection programme as referred to in the third paragraph of Article 141.a of this Act have been ordered, the investigating judge shall prohibit all questions whose answers could disclose protected information.

(8) After the charge has been submitted to the court and until the end of the main hearing, the powers of the investigating judge from this article shall be exercised by the president of the panel.

(9) If it is necessary for testimony to be taken from a witness at the main hearing in relation to whom the protective measure from point 4 of the first paragraph of this Article or the measure pursuant to the sixth paragraph of this Article has been ordered, the president of the panel must, before testimony is taken, verify that it is indeed the same witness for whom the protective measure has been ordered. He shall enter his findings in the records.

Article 241

(1) After the witness has been asked about the general data on himself he shall be called upon to say whatever he knows about the case considered, whereupon he shall be asked questions aimed at checking, supplementing and clarifying his testimony. Misleading and leading questions shall not be permitted during the examination of the witness.

(2) A witness shall always be asked from which source he has obtained the facts about which he is testifying.

(3) Witnesses may be confronted if their testimonies regarding material facts are mutually at variance. Such witnesses shall be examined separately about each circumstance on which their
testimonies clash and their answers shall be entered in the record. Only two witnesses may be confronted at a time.

(4) The injured party examined as a witness should be asked if he intends to seek satisfaction of his indemnification claim in the criminal proceedings under way.

Article 242

(1) Where there is need to establish if a witness can recognise a person or an object he shall first be asked to describe them and indicate their distinctive marks. Only after that the witness shall be shown the person together with other persons unknown to him, or the object together with other objects of the same kind if possible. Identification by means of other senses (hearing, touch, smell etc.) shall proceed in a corresponding way.

(2) Before identification, the witness shall be warned according to the second paragraph of Article 240 of this Act.

(3) The investigating judge who conducts the identification process shall ensure that before the identification the witness does not see the persons or objects he is about to identify.

(4) A record of the identification shall be made and a group photograph of all the persons viewed shall be enclosed with it.

Article 242a

If there is serious danger to the life or body of the person doing the identification or his close relatives (point 1-3, first paragraph of article 236) or there is a likelihood that the person being identified might influence the course of the identification process, the identification shall be conducted in such a way that the person being identified cannot see the person making the identification.

Article 243

If a witness is examined by the intermediary of interpreter, or if a witness is deaf or dumb, he shall be examined as provided in Article 233 of this Act.

Article 244

(1) If a witness who has been duly summoned fails to appear and does not justify his non-appearance, or if he leaves the place where he should be examined without permission or a valid reason, that witness may be produced by force and may be punished by the fine provided for in the first paragraph of Article 78 of this Act.

(2) If a witness appears when summoned and after being warned of the consequences refuses to give testimony without statutory reasons he may be punished by the fine provided for in the first paragraph of Article 78. If after that he still refuses to testify, he may be detained. This

detention shall last as long as the witness refuses to testify and his testimony becomes unnecessary, or until criminal proceedings terminate, but not beyond the period of one month.

(3) A complaint against the ruling by which a fine or detention was imposed shall always be decided by the panel (sixth paragraph of article 25). An appeal from the ruling on detention shall not stay execution.

(4) Military personnel and police members may not be taken into custody, but their refusing to testify shall be reported to their respective commands.

6. Inspection

Article 245

An inspection is carried out when determination or explanation of an important fact for the proceedings calls for immediate observation.

Article 246

(1) With a view to checking the evidence taken or determining facts material to the elucidation of the matter the agency which conducts the procedure may order that the event be reconstructed by recreating facts or situations under the circumstances in which on the basis of the evidence taken the event had occurred. If facts or situations are presented differently in testimonies of individual witnesses the reconstruction of the event shall as a rule be carried out with each of the witnesses separately.

(2) In reconstructing the event care must be taken not to violate law and order, offend public morals or endanger lives or health of people.

(3) In carrying out the reconstruction new evidence may be taken if necessary.

Article 247

(1) The agency which conducts inspection or reconstruction of the event may ask the assistance of criminologists, transportation and other specialists to seek, protect or describe traces, make the necessary measurings and recordings, draw sketches or gather other information.

(2) An expert may also be invited to attend the inspection or reconstruction of the event if his presence is considered of service to determining the event and forming an opinion thereon.

7. Expert opinion

Article 248

Experts shall be engaged when determination or assessment of a material fact call for the finding and opinion of a specialist possessing the necessary expertise for the task.

Article 249

(1) Expert opinion shall be ordered by a written decree of the agency which conducts the procedure. The decree shall specify the facts to be established or assessed by experts, as well as persons to whom the expert opinion shall be entrusted. The decree shall also be served on the parties.

(2) If a particular kind of expertise falls within the domain of a scientific institution or the expertise can be performed in the framework of a particular state agency, the task, especially if it is a complex one, shall as a rule be entrusted to such an institution or state agency. The institution or the agency shall assign one or several experts to provide the expert opinion.

(3) Where an expert is appointed by the agency which conducts the procedure, the agency shall as a rule appoint one expert, but if a complex expertise is involved it shall appoint two or more experts.

(4) If a court expert is appointed for some type of expert work, the court may only appoint other experts if it would be dangerous to delay, if the court experts are delayed, or if other circumstances so require.

Article 250

(1) A person summoned as an expert shall be bound to comply with the summons and give his findings and his opinion.

(2) If an expert who has been duly summoned fails to appear and does not justify his absence, or if he refuses to perform an expert examination, he may be fined as provided by the first paragraph of Article 78 of this Act; if his failure to appear is unjustifiable, he may be produced by force.

(3) A complaint against the ruling by which a fine has been imposed shall be decided by the panel (sixth paragraph of article 25).

Article 251

(1) A person who may not be examined as a witness (Article 235), or who is exempted from the duty to testify (Article 236), or against whom a criminal offence was committed, may not be appointed as expert; should such person be appointed as expert the judicial decision may not be based on his finding and opinion.

(2) The reason for the exclusion of an expert (Article 44) shall also exist in respect of persons who are employed at the same employer as the accused or the injured party, and in respect of persons who are employed by the injured party or the accused.

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

(4) Where it is possible to appeal against the ruling by which the challenge of an expert has been rejected (fourth paragraph of Article 42), the appeal shall stay the expert examination, except where it would be unsafe to delay.

Article 252

(1) Before the hearing of expert evidence commences, the expert shall be instructed that he is bound to study the object of the examination carefully, indicate precisely whatever he observes and finds, and give an unbiased opinion thereon in accordance with the rules of science and professional expertise. He shall be warned in particular that false testimony is a criminal offence.

(2) The expert may be required to take an oath before commencing expert examination. Prior to the main hearing the expert may be sworn in only before the court and only where there is a danger that he might be kept from appearing at the main hearing. The reason for his taking an oath shall be entered in the record. A permanent expert who has taken a general oath for the type of examinations concerned shall before starting examination be only reminded of the oath taken. The swearing in shall be conducted as provided for by Article 333 of this Act.

(3) The agency in charge of the procedure shall direct the expert examination, indicate to the expert the objects he is to examine, ask him questions and, if need be, demand explanations regarding his finding and opinion.

(4) The expert may be given explanations and may be allowed to inspect the case file. He may propose that evidence be taken or that objects and data material to his analysis and opinion be secured. If an expert attends inspection, the reconstruction of the event or some other investigative act he may suggest that specific circumstances be elucidated or that the person being interrogated be asked specific questions.

Article 253

(1) The expert shall examine objects in the presence of the agency in charge of the procedure and the recording clerk, except where and extensive examination is necessary, or the examination is conducted in a scientific institution or a state agency, or where moral considerations render it inappropriate.

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

Article 254

The expert finding and opinion shall immediately be entered in the record. The expert may be allowed to submit his findings or opinion in writing within a set period determined by the agency before which the procedure is conducted.

Article 255

(1) If an expertise is entrusted to a professional institution or a state agency, the agency in charge of the procedure shall advise them that they may not engage as participants in the expert examination persons referred to in Article 251 of this Act and persons who for some other reason provided for by this Act may not be appointed as experts, and shall warn them of consequences of presenting a false finding or biased opinion.

(2) The scientific institution or the state agency shall be provided with the material necessary for the expertise and, if need be, the cooperation referred to in the fourth paragraph of Article 252 of this Act.

(3) The scientific institution or the state agency shall send the court their findings and opinion in writing, signed by the persons who carried out the expertise.

(4) The parties may request from the head of the scientific institution or the state agency the names of the experts who will perform the expertise.

(5) The provisions of the first, second and third paragraphs of Article 252 of this Act shall not apply when the expertise has been entrusted to a scientific institution or a state agency. The agency in charge of the procedure may request the scientific institution or the state agency to provide explanations regarding their findings and opinion.

Article 256

The record of the expertise or the written result of the examination and opinion shall indicate the name of the person who performed the expertise, his occupation, professional education and speciality.

Article 257

If data in the findings of experts differ on essential points, or if their findings are ambiguous, incomplete, contradictory in themselves or with respect to the circumstances examined, and if such deficiencies cannot be removed by a new hearing of experts, the expertise shall be repeated with the participation of the same or different experts.

Article 258

If the opinion of experts contains contradictions or deficiencies, or if a reasonable doubt arises about the correctness of the presented opinion, and these deficiencies or doubt cannot be removed by a new hearing of experts, the opinion of other experts shall be required.

Article 259

(1) The post mortem inspection and autopsy shall be performed whenever a doubt exists, or it appears obvious, that death was caused by a criminal offence or is connected with the commission of a criminal offence. If the body has been buried exhumation shall be ordered to take a view of the body and perform autopsy.

(2) In carrying out an autopsy all necessary operations should be performed to establish the identity of the body, for which purpose its external and internal physical characteristics should be accurately described.

Article 260

(1) If the autopsy has not been performed in a scientific institution it shall be performed by a physician, or by two or more physicians if necessary, preferably forensic medicine specialists.

This expertise shall be directed by the investigating judge who shall enter the expert findings and opinion in the record.

(2) The autopsy may not be entrusted to the physician who treated the deceased. He may be called in during the autopsy to give explanations about the course and circumstances of the disease.

Article 261

(1) In giving their opinion experts shall indicate in particular the immediate cause of death, what brought it about, and the time when death occurred.

(2) If an injury was found on the body the examination should establish if it was inflicted by someone else and, if so, in which way, how long before death occurred and whether that injury had caused death. If several injuries are discovered on the body the examination should establish if each one was inflicted by the same instrument and which of them had caused death, and if there were several fatal injuries it should be established which of them by their combined effect had caused death.

(3) In the instance from the preceding paragraph it should be established in particular if the character itself and general nature of the injury had caused death, or it was due to the physical properties or peculiarities of the organism of the deceased, or to accidental circumstances or the circumstances in which the injury was inflicted.

(4) It should also be established if a timely extended aid might have prevented death from occurring.

Article 262

(1) In inspecting and performing autopsy on a foetus attention should focus in particular on establishing its stage of development, capacity to survive outside the womb and the cause of its death.

(2) In inspecting and performing autopsy on a neonate attention should focus in particular on establishing if it was delivered alive or dead, if it was viable, how long it lived, when it died and what was the cause of death.

Article 263

(1) If poisoning is suspected suspicious substances found in the body or elsewhere shall be sent to an institute for toxicological research for expert analysis.

(2) In analysing suspicious substances the expert shall focus in particular on establishing the kind, quantity and effect of the poison discovered. If suspicious substances were found in the body the quantity of the poison used should also be established wherever possible.

Article 264

(1) In the case of bodily injuries the expert shall as a rule examine the injured person. If that is not possible or is not necessary, he shall perform examination on the basis of medical documentation or other information in the files.

(2) After describing the injuries in detail the expert shall in particular give his opinion as to the type and gravity of each individual injury and their combined effect relative to their nature and the specific circumstances of the case, the habitual effect of such injuries and their specific effect in the case on hand, which instrument was used in inflicting the injuries and in which manner they were inflicted.

Article 265

(1) If it is suspected that due to a lasting or temporary mental illness, temporary mental disturbance, mental retardation or some other incurable mental disorder the accused is not accountable or his mental capacity has been diminished an order shall be issued for him to be subjected to psychiatric examination.

(2) If the experts opine that a longer examination of the accused is indicated he shall be sent to an appropriate medical institution for observation. The ruling thereon shall be issued by the investigating judge. The appeal shall not stay the execution of the ruling. The observation may be extended beyond two months only upon a reasoned motion by the head of the medical institution after the latter has obtained the opinion of experts, but may under no circumstances last longer than the period of remand in custody.

(3) If experts find that the accused suffers of mental disorder they shall determine its nature, type, degree and its anticipated duration, and shall give their opinion as to how such mental condition affected and still affects the perception and behaviour of the accused, as well as whether and in which degree the mental disorder existed at the time of commission of criminal offence.

(4) If the investigating judge transfers the accused who has been remanded in custody to a medical institution he shall inform the institution of the reasons for detention so that it can take measures required thereby.

(5) The accused who has not retained a lawyer and is transferred for observation under paragraph 2 of this Article shall have counsel appointed for him under a ruling on observation.

(6) The time which the accused spends in the medical institution shall be reckoned in his detention term or penalty, if any.

Article 266

(1) Physical examination of the accused shall be performed even without his consent when it is necessary to establish facts material to criminal procedure. Physical examination of other persons may be performed without their consent only when it is necessary to establish if a particular trace or consequence of criminal offence has been left on their body.

(2) Taking of blood samples and other medical procedures normally undertaken for the analysis and determination of other facts of importance for criminal procedure may be

performed without the consent of the person being examined, save where such procedures would be harmful to his health.

(3) The application on the accused or a witness of such medical interventions or such agents as would influence their will when giving testimony shall be prohibited.

Article 267

(1) When an expert audit of business books is called for, the agency in charge of the procedure shall instruct experts as to the aim and scope of the audit and the facts and circumstances which have to be ascertained.

(2) If an expert audit of business books of an enterprise or another legal person requires that their bookkeeping should first be set in order, the costs of that prior operation shall be borne by the enterprise or the other legal person.

(3) The ruling on the putting of bookkeeping in order shall be rendered by the agency which conducts the procedure upon a written and substantiated report by the experts appointed to examine the business books. The ruling shall also specify the amount to be deposited with the court by the enterprise or another legal person as advance on the costs entailed in setting the bookkeeping in order. No appeal shall be permitted against this ruling.

(4) After the bookkeeping has been put in order the agency in charge of the procedure shall, on the basis of the report of experts, issue a ruling by which it shall determine the amount of the costs incurred thereby and order that the costs be borne by the enterprise or the other legal person. The enterprise or the other legal person may challenge the ruling in respect of the adjudication to refund the costs and in respect of the amount to be refunded. The complaint shall be decided by the panel of the court of first instance (sixth paragraph of article 25).

(5) Unless advanced by a deposit with the court, the amount of the costs shall be enforced in favour of the agency which advanced the costs and the fees of experts.

Chapter XIX
CHARGE SHEET AND OBJECTION TO THE CHARGE SHEET

Article 268

(1) After the investigation has been completed, or in the case when a charge sheet may be preferred without the investigation (Article 170), proceedings before court may be conducted only on the basis of a charge sheet filed by the public prosecutor or by the injured party acting as prosecutor.

(2) Provisions on the charge sheet and on objection thereto shall meaningfully apply to the private charge if filed against a criminal offence which falls under the jurisdiction of the circuit court.

Article 269

(1) The charge sheet shall contain:

1) the first name and surname of the accused, his personal data (Article 227), indication as to whether and since when he has been remanded in custody, whether he is at liberty and, in the event that he was released prior to the filing of the charge sheet, how long he was remanded in custody
2) description of the act evincing that it falls within the statutory definition of a criminal offence, the time and place of commission of the criminal offence, the object upon which and the instrument by which the criminal offence was committed, and other circumstances necessary to determine the criminal offence with precision
3) the statutory name of the criminal offence with an indication of the provisions of the criminal law which, pursuant to the motion of the public prosecutor, are to be applied
4) indication of the court before which the trial is to be held
5) proposal as to which evidence is to be taken at the main hearing with an indication of the names of witnesses and experts to be present, documents to be read and objects to be produced for evidence taking
6) exposition in which are listed, in accordance with the results of the investigation, evidence which establishes the key facts, arguments of the accused and the position of the public prosecutor on the allegations of the defence.

(2) If the accused is at liberty the charge sheet may put forward the motion to place him in detention, and if he is under detention it may put forward the motion for his release.

(3) A charge sheet may be filed against several criminal offences or several defendants only where, in accordance with Article 32 of this Act, a joinder is possible.

Article 270

(1) The charge sheet shall be submitted to the court of jurisdiction in as many copies as there are defendants and counsel, plus an extra copy for the court.

(2) Immediately upon receiving the charge sheet the presiding judge of the panel before which the main hearing will be held shall check if the charge sheet is drawn up properly (Article 269). If he finds that it does not comply with the provisions of the aforesaid Article he shall return it to the public prosecutor to amend it within three days. Provided there is good reason the panel may, on the motion of the public prosecutor, extend this term. If the injured party as prosecutor or the private prosecutor fail to observe the aforesaid time limit it shall be considered that they have refrained from prosecution and the proceedings shall be suspended.

Article 271

(1) If the injured party as prosecutor prefers a charge sheet without an investigation being conducted before the charge sheet is preferred (sixth paragraph of article 170), or a private charge is filed for a criminal offence for which no investigation was conducted, the presiding judge of the circuit court (sixth paragraph of article 25) shall refer the matter to be decided by the panel if, with circumstances referred to in Article 277, clause 1, 2 or 3 of this Code present, he considers that there are no grounds for prosecution.

(2) If the injured party as prosecutor or the private prosecutor, contrary to clause 1 and 2 of Article 170 of this Act, prefers a charge sheet or a private charge without the prior investigation against the criminal offence punishable by more than five years imprisonment, it shall be considered that he has submitted the motion for investigation.

(3) The injured party as prosecutor or the private prosecutor shall be entitled to take appeal from the ruling of the panel.

Article 272

(1) If the charge sheet contains the motion for remand in custody to be ordered against the accused or the motion for his release, the panel shall adjudicate thereon (sixth paragraph of article 25) immediately and no later than in forty-eight hours.

(2) If the accused has been remanded in custody and the charge sheet contains no motion for his release the panel shall in its line of duty examine within three days of receipt of the charge sheet if reasons for his remaining in remand still exist and shall render a ruling thereon extending or cancelling remand in custody. A complaint against this ruling shall not stay execution.

Article 273

(1) The accused who is at liberty shall be served the charge sheet without delay, and if he is in detention within twenty-four hours of being detained.

(2) If under a ruling of the panel (Article 272) remand in custody is ordered against the accused the charge sheet shall be served on him at the time of his arrest, together with the ruling ordering remand in custody.

(3) If the accused who is in detention is not held in the prison of the court before which the main hearing will be conducted the presiding judge shall order his immediate transfer to the court prison, where he shall be served with the charge sheet.

Article 274

(1) The accused shall have the right to submit an objection to the charge sheet within eight days of it being served. The court shall inform the accused of this right at the time of serving of the charge sheet.

(2) Objection to the charge sheet may be submitted by defence counsel subject to authorisation from the accused, but not against his will.

(3) The accused may renounce the right to object to the charge sheet.

Article 275

(1) Belated objection and objection filed by an unauthorised person shall be dismissed by a ruling of the presiding judge of the panel before which the trial is to be held. A complaint against this ruling shall be determined by the panel (sixth paragraph of article 25).

(2) If the presiding judge does not dismiss the objection under first paragraph of this Article he shall submit it together with the file to the panel (sixth paragraphs, Article 25) which shall decide thereon at its session. Before taking a decision the panel shall send a copy of the objection to the public prosecutor who may file an answer within three days of receipt.

Article 276

(1) If the court panel does not dismiss the objection as belated or submitted by an unauthorised person, it shall set about the examination of the charge sheet.

(2) If in considering the objection the panel discovers errors or deficiencies in the charge sheet (Article 269) or in the procedure itself, or finds that the verification of the charge sheet requires that matters be further elucidated, it shall return the charge sheet to the prosecutor to remove the established deficiencies or to supplement or open investigation. The prosecutor shall within three days of being advised of the decision of the panel submit an amended charge sheet or request the opening or supplementing of investigation. Provided there is good cause, the panel may, upon motion by the prosecutor, extend the above time limit. If the injured party as prosecutor or the private prosecutor does not honour the aforesaid time limit it shall be considered that he has refrained from prosecution and the proceedings shall be suspended. If the public prosecutor does not comply with the set time limit he shall be bound to inform the higher public prosecutor of the reasons for this.

(3) If the panel finds that the criminal offence against which the charge sheet has been preferred falls within the jurisdiction of another court it shall pronounce the court with which the charge sheet was preferred not competent in this matter, and after this decision has become final, shall refer the matter to the court of jurisdiction.

(4) If the panel establishes that records or information referred to in Article 83 of this Act have been included in the files, it shall render a ruling by which they should be excluded from the files. A special appeal from this ruling shall be allowed. After the ruling has become final the presiding judge referred to in the sixth paragraph of Article 25 of this Act shall, prior to sending the case to the presiding judge who schedules the main hearing, see to it that the excluded records and information be sealed in a separate envelope and delivered to the investigating judge to keep them apart from other files. These records and information may not be examined, nor used in the proceedings.

Article 277

(1) In deciding on an objection to the charge sheet the panel shall rule that the charge is disallowed and the criminal procedure is discontinued if it finds that:
1) the act charged is not a criminal offence
2) circumstances exist which exclude criminal liability and that there are no grounds for application of security measures
3) the criminal prosecution is statute-barred, or the act is covered by an amnesty or pardon, or other circumstances exist which exclude prosecution
4) there is not enough evidence to suspect with good reason that the accused has committed the act with which he is charged.

(2) If the panel finds that there is no request of the authorised prosecutor nor the required motion or authorisation for prosecution, or that other circumstances exist which temporarily bar prosecution, it shall reject the charge sheet by a ruling.

Article 278

(1) When the panel of judges decides on the objection to the charge sheet preferred by the public prosecutor in accordance with paragraph six of Article 170 of this Act or on the request of the presiding judge concerning the said charge sheet, or when, in instances referred to in the first paragraph of Article 271 of this Act, it decides on the request of the presiding judge of the panel of the court of first instance who disagrees with the charge sheet filed by the injured party as prosecutor or with the private charge, the panel shall issue a ruling dismissing the charge sheet or the charge if it finds that some of the reasons from clause 1, 2 or 3 of the first or second paragraph of the preceding Article exist; if investigative acts have been carried out, the panel shall likewise dismiss the charge sheet or the private charge if it finds that the reason cited in clause 1 of the first paragraph of the aforesaid Article exists.

(2) If upon objection to the charge sheet filed by the public prosecutor as per first paragraph of this Article, or upon the request of the presiding judge concerning that charge sheet (Article 284) the investigation was opened (second paragraph of article 276) and the panel finds thereupon that one of the reasons from the first paragraph of the preceding Article exists, the panel shall rule that the charge is disallowed and the criminal procedure discontinued.

Article 279

(1) In rendering the ruling from third paragraph of Article 276 and the rulings from Articles 277 and 278 of this Act the panel shall not be bound by the judicial opinion of the prosecutor as set forth in the charge sheet.

Article 280

(1) If the panel does not render any of the rulings from first to third paragraph of Article 276 and from Articles 277 and 278 of this Act, the court panel shall dismiss objection as unfounded.

(2) By the same ruling the panel shall also decide motions for joinder or severance of cases.

Article 281

Where only some of several accused persons have filed objection to the charge sheet and the reasons on which the court based its decision to disallow the charge or reject the charge sheet also extend to some of the accused who have not filed objection, the panel shall decide as if they had also submitted such objection.

Article 282

All decisions passed by the panel of judges in connection with objections to the charge sheet shall be well-reasoned but in such a way as not to prejudice the adjudication of issues which will be considered in the trial.

Article 283

(1) The decision of the panel referred to in the third paragraph of Article 276 of this Act may be appealed against, and the decision from Articles 277 and 278 of this Act may be appealed

against by the prosecutor and the injured party. Other decisions passed by the panel in connection with objections to the charge sheet may not be challenged.

(2) If a ruling of the panel is challenged only by the injured party and his appeal is satisfied, the injured party shall be considered to have thereby assumed prosecution.

Article 284

(1) If the charge sheet was not challenged by an objection or the objection was dismissed, the court panel (sixth paragraph of article 25) may, upon request of the presiding judge of the panel before which the main hearing will take place, adjudicate any issue on which, pursuant to this Act, decisions relating to objections are taken.

(2) The presiding judge may submit the request from the preceding paragraph only before the main hearing has been fixed and no later than two months since the charge sheet was received by the court.

(3) The provisions of the second paragraph of Article 275, Articles 276 through 279, and Articles 282 and 283 of this Act shall meaningfully apply to adjudication of the request referred to in the first paragraph of this Article.

Article 285

The charge sheet shall come into effect on the day when objection is dismissed; if no objection was submitted or the objection was dismissed it shall become effective on the day when the panel dealing with the request of the presiding judge (Article 284) ruled that the charge sheet is allowed; if such request was not made it shall become effective on the day when the presiding judge scheduled the trial or after the time period from the second paragraph of the preceding Article has expired.

B. MAIN HEARING AND JUDGEMENT

Chapter XX
PREPARATIONS FOR THE MAIN HEARING

Article 286

(1) The day, hour and venue of the main hearing shall be determined by a decree issued by the presiding judge.

(2) The presiding judge shall schedule the main hearing for within two months of the charge sheet being received at the court at the latest, and where the request from Article 284 of this Act was submitted he shall schedule it as soon as the pertinent decision of the panel permits. Should he fail to schedule the main hearing within the aforesaid period he shall inform the president of the court of the reasons for this. The president of the court shall take the necessary steps to fix the main hearing.

(3) If the presiding judge establishes that the case file contains records or information from Article 83 of this Act he shall, before fixing the main hearing, rule that they be excluded from

the file, and after the ruling has become final he shall seal them in a separate envelope and hand them over to the investigating judge to keep them apart from other files.

(4) When the panel of judges (sixth paragraph of Article 25) hears an appeal from the decision referred to in the preceding paragraph, the panel may rule that, in view of the substance of the excluded evidence, the main hearing be conducted before another president of the panel.

Article 287

(1) The main hearing shall be held at the place in which the court has its seat, and in the courthouse.

(2) Where space in the courthouse is inadequate for a specific trial the president of the court may rule that the trial be held in another building.

(3) The main hearing may also be held in another place within the territory of the court of jurisdiction if upon a well-reasoned motion of the president of the court approval is granted by the president of a higher court.

Article 288

(1) The persons summoned to appear at the main hearing shall include the defendant, his counsel, the prosecutor, the injured party and their legal representatives and attorneys, and the interpreter. Witnesses and experts proposed by the prosecutor in the charge sheet and by the accused in his objection to the charge sheet, except those whose presence at the main hearing in the opinion of the presiding judge is not necessary, shall also be summoned to the main hearing. The prosecutor and the defendant may repeat at the main hearing their motions which the presiding judge had not approved.

(2) As regards the contents of the summons served on the defendant and witnesses the provisions of Articles 193 and 239 of this Act shall apply. The summons served on the defendant shall contain information that the main hearing may take place in his absence if statutory requirements for this are met (third paragraph of Article 307).

(3) The defendant shall be served with the summons so as to have enough time left, which may not be less than eight days, between the service and the main hearing to prepare his defence. At the request of the defendant, or at the request of the prosecutor agreed to by the defendant, this time period may be shortened.

(4) The injured party who has not been summoned to appear as a witness shall be informed in the summons that the main hearing may be held in his absence and that his claim for indemnification shall be read. He shall likewise be instructed that in the event of his failure to appear it will be considered that he does not intend to assume prosecution in case the public prosecutor withdraws the charge.

(5) The injured party as prosecutor and the private prosecutor shall be informed in the summons that in the event of failure to appear at the main hearing or to send the attorney it will be considered that they have withdrawn the charge.

(6) The defendant, witness and expert shall be informed in the summons of the consequences of the failure to appear at the main hearing (Articles 307 and 309).

Article 289

(1) The parties and the injured person may request even after the main hearing has been scheduled that new witnesses or new experts be summoned, or new evidence produced. The request should be well-reasoned and should indicate which facts are to be proved and by which of the proposed evidence.

(2) If the presiding judge rejects the motion for new evidence to be produced, such motion may be repeated during the main hearing.

(3) The presiding judge may even without the motion of the parties order that new evidence be produced for the main hearing.

(4) The parties shall be informed of the order to produce new evidence prior to the opening of the main hearing.

Article 290

If it appears that the main hearing may last for some time the presiding judge may request the president of the court to assign one or two judges or lay judges to attend the main hearing and replace members of the panel who might be prevented from attending the trial.

Article 291

(1) If it transpires that a witness or an expert who was summoned to the main hearing but has not yet been examined is unable to appear because of a durable illness or some other impediments, such witness or expert may be examined at the place where he resides.

(2) The witness or the expert shall be examined, and the expert shall be sworn in if necessary, by the presiding judge or a judge assigned to the panel; he may also be examined by the investigating judge of the court in whose territory the witness or the expert resides.

(3) The parties and the injured party shall be informed of the time and place of the examination if that is possible considering the urgency of the procedure. If the defendant has been remanded in custody the presiding judge shall decide if his presence at the examination is necessary. When the parties and the injured party are present at the examination they shall be entitled to exercise their rights under the seventh paragraph of Article 178 of this Act.

Article 292

The presiding judge may for weighty reasons adjourn the main hearing upon motion of the parties or by virtue of his office.

Article 293

(1) If the prosecutor withdraws the charge sheet prior to the opening of the main hearing the presiding judge shall notify thereof all those who were summoned to the main hearing. The

injured person shall in addition be notified of his right to continue prosecution (Articles 60 and 62). If it has been impossible to deliver notification to the injured party because the injured party has failed to report changes of address or residence to the court, the injured party shall be deemed not to intend to continue the prosecution.

(2) If the injured party abandons prosecution the presiding judge shall discontinue criminal proceedings by a ruling. The ruling shall be sent to the parties and the injured person.

(3) The president of the panel shall discontinue criminal proceedings by a decision also in instances where, after the indictment or a private charge has taken effect, it is established that some other circumstances exist that would require the rendering of a judgement of rejection in the main hearing (2nd, 3rd and 4th point of Article 357).

Chapter XXI
MAIN HEARING

1. Public nature of main hearing

Article 294

(1) The main hearing shall be held in open court.

(2) The main hearing shall be attended by persons who have attained the age of majority.

(3) Persons present at the main hearing may not carry arms or dangerous instruments, save the guard of the defendant who may be armed.

Article 295

At any time from the beginning until the end of the main hearing the panel may on the motion of the parties or on its own, but always after it has heard the parties, exclude the public from the trial or a part thereof if so required by the interests of protecting secrets, maintaining law and order, by moral considerations, the protection of the personal or family life of the defendant or the injured party, protection of the interests of minors, and if in the opinion of the panel a public trial would be prejudicial to the interests of justice.

Article 296

(1) The exclusion of the public shall not apply to the parties, the injured person, their representatives and counsel.

(2) The panel may grant permission for certain officials, scientific workers, public figures and, on request of the defendant, also the spouse of the defendant or the person with whom he lives in domestic partnership and his close relatives, to be present at a main hearing which is not open to the public.

(3) The presiding judge shall warn those attending the main hearing closed to the public of their obligation to keep secret all information that comes to their knowledge at the trial, and shall inform them that disclosing of secrets is a punishable offence.

Article 297

(1) The exclusion of the public shall be determined by the panel in a well-reasoned and publicly announced ruling.

(2) The ruling on the exclusion of the public may only be challenged in an appeal against the judgement.

2. Conducting of the main hearing

Article 298

(1) The presiding judge, members of the panel, the recording clerk and the replacements of judges and lay judges (Article 290) shall be continuously present at the main hearing.

(2) It shall be the duty of the presiding judge to verify if the panel of judges has been constituted pursuant to law and whether reasons exist to exclude a panel member or the recording clerk (clause 1 through 5 of Article 39).

Article 299

(1) The presiding judge shall direct the main hearing, call on the parties, the injured person, legal representatives, attorneys, counsel, the expert and panel members to make their statements, and shall interrogate the defendant and question witnesses and experts.

(2) It shall be the duty of the presiding judge to see to it that the case is elucidated from all aspects, that the truth is discovered and that whatever might protract proceedings without contributing to elucidation of the case be eliminated.

(3) The presiding judge shall rule on the motions of the parties, unless the ruling thereon falls within the domain of the panel.

(4) Motions on which the parties disagree and concurrent motions of the parties with which the presiding judge disagrees shall be decided by the panel. The panel shall also decide on objections to measures taken by the presiding judge in conducting the main hearing.

(5) The rulings of the panel shall always be announced and entered in the record of the main hearing.

Article 300

The main hearing shall proceed in the sequence provided by this Act. However, the panel may alter the established sequence by reason of specific circumstances, especially when there are many defendants and many criminal offences charged or when evidence is of a considerable volume.

Article 301

(1) The presiding judge shall be obliged to attend to the maintenance of order in the courtroom and the protection of the dignity of the court. To this end he may immediately upon the opening of the session warn those persons present to behave properly and not to obstruct the proceedings. The presiding judge may order a personal search of those present at the main hearing.

(2) The panel may order that the audience present at the main hearing be removed if an undisturbed course of the main hearing cannot be secured by measures provided by this Act for the maintenance of order.

(3) Recordings by camera shall not be permitted in the courtroom. However, the president of the Supreme Court may exceptionally authorise such recordings at a particular main hearing. Where camera recordings at the main hearing have been permitted the panel may on valid grounds order that specific parts of the main hearing not be recorded.

Article 302

(1) If the defendant, counsel, the injured person, legal representative, attorney, witness, expert, interpreter or some other person attending the main hearing disturbs order or fails to comply with the directions of the presiding judge regarding the maintaining of order, the presiding judge shall warn him. If the warning is of no avail the panel may order that the defendant be taken out of the courtroom. As for other persons, it may not only order them out but also fine them as provided by the first paragraph of Article 78 of this Act.

(2) Under the order of the panel the defendant may be removed from the courtroom temporarily, but if he was already interrogated in the main hearing he may be removed for the entire process of taking evidence. Before the hearing of evidence is concluded the presiding judge shall call the defendant in and inform him of the course of the main hearing. If the defendant continues to violate order or if he abuses the dignity of the court the panel may order him to be removed again. In that case the trial shall be concluded in his absence and the judgement shall be announced to him by the presiding judge or a judge sitting in the panel, in the presence of the recording clerk.

(3) The panel may deny defence counsel or attorney the right to defend or represent at the main hearing if after being punished they continue to disturb order, in which case the party shall be requested to retain another counsel or attorney. If the defendant cannot engage another counsel immediately or the latter cannot be appointed by the court without prejudice to the defence, the main hearing shall be recessed or adjourned. If the private prosecutor or the injured party as prosecutor does not retain another attorney immediately the panel may decide to hold the main hearing in the absence of the attorney if after a careful consideration of all circumstance it finds that the absence of the attorney will not prejudice the interests of the person whom he represents. The ruling thereon, together with an explanation, shall be entered in the record of the main hearing. A special appeal against this ruling shall not be allowed.

(4) If the court removes from the courtroom an injured party as prosecutor or private prosecutor who have no attorney, or if it removes their legal representative who has no attorney, the main hearing shall be recessed or postponed until they retain an attorney.

(5) If the public prosecutor violates order the presiding judge shall notify the competent public prosecutor thereof, and may also suspend the main hearing and ask the competent public prosecutor to appoint another prosecutor for the case.

(6) If the court punishes a lawyer or an articled clerk it shall advise the Bar thereof.

Article 303

(1) An appeal against the ruling imposing punishment may be lodged; however, the panel may revoke the ruling.

(2) No appeal shall be permitted against other decisions bearing upon the maintenance of order and the directing of the main hearing.

Article 304

(1) If the defendant commits a punishable offence at the main hearing, the provisions of Article 345 of this Act shall apply.

(2) If someone else commits a punishable offence while the court is in session at the main hearing the panel may, upon an oral accusation by the prosecutor, interrupt the main hearing and try the criminal offence committed right away, or may consider it after concluding the main hearing.

(3) Where grounds exist to suspect a witness or an expert of having given a false testimony at the main hearing, such offence may not be tried forthwith. In that instance the presiding judge may order that a separate record be made of the testimony of the witness or the expert and the record be referred to the public prosecutor. This record shall be signed by the witness or the expert questioned.

(4) If the perpetrator of a criminal offence subject to public prosecution cannot be tried immediately a notice thereof shall be addressed to the competent public prosecutor for further action.

3. Preconditions for the main hearing

Article 305

The presiding judge shall open the session and announce the case to be tried at the main hearing and the composition of the panel of judges. Thereupon he shall verify if all those summoned have appeared and where they have not he shall check if they were served with a summons and if the persons absent have excused their failure to appear in court.

Article 306

(1) If the public prosecutor fails to appear at the main hearing scheduled upon a charge sheet preferred by him the main hearing shall be adjourned and the presiding judge shall notify the higher public prosecutor thereof.

(2) If the injured party as prosecutor or the private prosecutor or their attorney fails to appear at the main hearing after being duly summoned the panel shall suspend proceedings by a ruling.

Article 307

(1) If a duly summoned defendant fails to appear at the main hearing without excusing his default the panel shall order that he be brought to court by force. If he cannot be produced immediately the panel shall postpone the main hearing and order the defendant produced for the next session. If the defendant provides an excuse for his non-appearance before being made to appear by force the presiding judge shall rescind the decree on his compulsory appearance.

(2) If a duly summoned defendant is obviously trying to evade appearing at the main hearing and none of the reasons for his detention under Article 201 of this Act exists, the panel may decree that he be put in detention in order to ensure his presence at the main hearing. A complaint against this ruling shall not stay its execution. The detention decreed for this reason shall be subject to application of provisions of Article 200, the second, third, fourth and sixth paragraphs of Article 202, and Articles 208 through 213 of this Act. Unless cancelled earlier, the detention shall last until the announcement of the judgement, but no longer than one month.

(3) If a duly summoned defendant fails to appear at the main hearing the panel may order that the trial be held in his absence if his presence is not indispensable, if his defence counsel is present at the trial and if the defendant has already been heard. If the defendant has no lawyer, the panel shall act according to the first paragraph of this Article and may also decide that a lawyer be appointed for the defendant *ex officio*.

(4) The ruling ordering that the defendant be tried in absentia shall be rendered by the panel after the latter has heard the prosecutor and defence counsel. A complaint against the ruling shall not stay is execution.

Article 308

If duly summoned defence counsel fails to appear at the main hearing without notifying the court of the reasons for his default, or if he leaves the main hearing without permission, the court shall ask the defendant to retain another counsel forthwith. If the defendant does not comply with the request and it is impossible to appoint defence counsel without prejudicing the defence the trial shall be adjourned.

Article 309

(1) If a duly summoned witness or an expert fails to appear without good reason the panel may order that he be produced immediately.

(2) The main hearing may commence without the duly summoned witness or expert, in which case the panel shall decide while the trial is in progress whether it can be continued in the absence of the witness or the expert or should be interrupted or postponed.

(3) The panel may impose a fine provided for in the first paragraph of Article 78 of this Act on a duly summoned witness or expert who fails to appear for no valid reason, and may also order them brought to the main hearing. Where a valid reason exists, the panel may revoke the decision on the fine.

4. Adjournment and recess of the main hearing

Article 310

(1) In addition to instances specified in this Act the main hearing may be adjourned under a ruling of the panel if new evidence has to be produced, or if it is established in the course of the trial that the defendant upon committing the criminal offence has become afflicted by a temporary mental illness or a temporary mental disorder, or if other impediments exist which prevent successful completion of the main hearing.

(2) If possible, the ruling by which the main hearing is adjourned shall specify the day and hour at which the trial will be resumed. The panel may order under the same ruling that evidence which might disappear through the passage of time be meanwhile gathered.

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

Article 311

(1) If the composition of the panel has changed the adjourned trial shall start afresh. However, after hearing the parties the panel may in this case decide not to examine the witnesses and experts anew, nor to conduct a new inspection, but rather to read the statements they had given at the previous trial or to read the record of the inspection.

(2) If the composition of the panel has not changed the adjourned main hearing shall be resumed and the presiding judge shall give a short account of the course of the previous trial. However, the panel may in this case decide to start the main hearing afresh.

(3) If the main hearing has been adjourned for more than three months or if it is held before a new presiding judge the trial shall start afresh and all evidence shall be taken anew.

Article 312

(1) In addition to instances specified in this Act the presiding judge may recess the main hearing for rest, or because the court day is over, or in order to allow a short period of time for specific evidence to be produced or the prosecution or defence to become prepared.

Article 313

If in the course of the main hearing held before a panel of one professional judge and two lay judges it is discovered that the facts on which the indictment rests indicate a criminal offence falling within the competence of a panel of two professional judges and three lay assessors, the panel shall be supplemented and the main hearing shall start afresh.

5. Record of the main hearing

Article 314

(1) A record of the main hearing shall be kept, with the essential details of the entire course of action entered therein.

(2) The presiding judge may order that the entire course of the main hearing or parts thereof be taken down in shorthand. The stenographic notes shall within forty-eight hours be transcribed, checked and enclosed with the record.

(3) The presiding judge may order audio or video recording of the main hearing. With regard to the recording, the provisions of Article 84 of the present Code shall apply *mutatis mutandis*.

(4) The presiding judge may upon a motion of a party or *ex officio* order that statements which he considers particularly important be entered in the record verbatim.

(5) When necessary, and especially where a statement has been entered in the record verbatim, the presiding judge may order that particular part of the record to be read out at once. Statements shall always be read out forthwith if so requested by a party, counsel or the person whose statement has been entered in the record.

Article 315

(1) The record shall be completed at the end of the session. It shall be signed by the presiding judge and the recording clerk.

(2) The parties shall be entitled to check the completed record and enclosures, to make comments on the contents and to demand corrections.

(3) Corrections of incorrectly entered names, numbers and other obvious writing errors may be ordered by the presiding judge upon motion by a party or a person questioned or *ex officio*. Other corrections of and additions to the record may only be ordered by the panel.

(4) Comments and motions of parties regarding the record, as well as corrections of and amendments to the record, shall be entered in the addendum to the completed record. The reasons why certain suggestions and comments have not been accepted shall also be indicated in the addendum. The presiding judge and the recording clerk shall sign the addendum to the record.

Article 316

(1) The introductory part of the record shall indicate: the court in which the main hearing is held; the place and time of the session; the names of the presiding judge, panel members, recording clerk, prosecutor, defendant and his counsel, the injured party and his legal representative or attorney, and the name of the interpreter; the criminal offence being tried and whether the hearing takes place in open court or is closed to the public.

(2) The record shall contain in particular the following information: which charge sheet was read in the main hearing and whether the prosecutor had changed or expanded the charges; which motions were made by the parties and what the presiding judge or the panel have ruled

thereon; which evidence was taken; whether certain records and other writings were read, or sound or other recordings reproduced, and comments of the parties thereon. If the public was excluded from the main hearing it shall be indicated that the presiding judge had warned those present of the consequences of unauthorised disclosure of confidential information of which they learned at the main hearing.

(3) Statements by the defendant, witnesses and experts shall be entered in the record by presenting their essential content. They shall be entered in the record only insofar as they contain a change of or an amendment to their previous statements. Upon a request of a party, the presiding judge shall order that the record of a previous statement, or a part thereof, be read out.

(4) Upon a request of a party a question or an answer which the panel had dismissed shall also be entered in the record.

Article 317

(1) The record of the main hearing shall have the complete wording of the judgement (third, fourth and fifth paragraphs of Article 364) entered in it and an indication as to whether the judgement was announced publicly. The wording of the sentence as written down in the record shall be considered as the original.

(2) A ruling on remand in custody (Article 361), if issued, shall also be entered in the record of the main hearing.

6. Commencement of the main hearing and interrogation of the defendant

Article 318

After the presiding judge has established that all those summoned have appeared at the main hearing or the panel has decided to conduct the main hearing without some of the persons summoned or to consider these issues at a later date, the presiding judge shall call on the defendant and ask him to give his personal data (Article 227) in order to be satisfied as to his identity.

Article 319

(1) Having established the identity of the defendant the presiding judge shall direct the witnesses and experts to a designated place where they shall wait until called back for questioning. The presiding judge may, if necessary, call on the experts to remain and follow the course of the main hearing.

(2) If the injured party is present and he has not yet filed his indemnification claim the presiding judge shall inform him that he may make a motion for the satisfaction of his claim within criminal proceedings, as well as of his rights under Article 59 of this Act.

(3) If the injured party as prosecutor or the private prosecutor has to be examined as a witness he shall not be removed from the session.

(4) The presiding judge may take the necessary measures to prevent collusion between witnesses, experts and parties.

Article 320

The presiding judge shall invite the defendant to follow closely the course of the main hearing and shall instruct him that he may state his case, address questions to co-defendants, witnesses and experts, and make comments on and give explanations of their statements.

Article 321

(1) The main hearing shall open with the reading of the charge sheet or the private charge.

(2) The charge sheet and the private charge shall be read by the prosecution.

(3) If the injured party is present he may expound his indemnification claim, and if he is not present his motion shall be read by the presiding judge.

(4) The presiding judge shall ask the defendant if he has understood the accusation. If the defendant has not understood the accusation the presiding judge shall call on the prosecution to explain the accusation in a way the defendant may understand without difficulty.

(5) The presiding judge shall provide the defendant with information under Article 5 of this Act.

Article 322

(1) The defendant and defence counsel shall have the right to answer the charge and state their position regarding the accusation and the indemnification claim of the injured party.

(2) In answering the accusation the defendant may only declare if he admits the act and the indemnification claim and if he has any objection of a legal nature. Counsel for the defence may answer the accusation in place of the defendant, except for the part relating to the admission or denial of the act.

Article 323

(1) After the defence has taken a position on the accusation the presiding judge shall ask the defendant if he intends to plead his case.

(2) If the defendant states that he intends to plead his case, he shall be interrogated.

(3) As regards the interrogation of the defendant at the main hearing, the provisions applying to interrogation of the accused in the process of investigation shall apply accordingly.

(4) Co-defendants who have not yet been questioned may not be present during the interrogation of the defendant.

Article 324

(1) The interrogation of the defendant shall start with his being called upon by the presiding judge to set forth his defence.

(2) After the defendant has finished his statement he may be asked questions. The presiding judge shall first call the prosecutor and then defence counsel to put questions to the defendant. The injured party, legal representative, attorney, co-defendant and expert may ask the defendant direct questions only with the permission of the presiding judge.

(3) The presiding judge shall disallow a question or answer to a question if it is not permitted (Article 288) or bears no relation to the case. If the presiding judge disallows a question or an answer the parties may request that the panel decide thereon.

(4) After the presiding judge has assured himself that the prosecutor, counsel and other persons from the second paragraph of this Article have no more questions he may proceed to put questions to the defendant if he finds that his testimony or his answers contain gaps, ambiguities or contradictions, whereupon the panel may put direct questions to the defendant.

(5) After the interrogation has been completed the presiding judge shall ask the defendant if he has anything to add in his defence. If the defendant elaborates upon his defence he may again be asked questions.

Article 325

(1) If the defendant declares at the main hearing that he does not intend to plead his case or refuses to answer particular questions the presiding judge shall read his previous testimony or a part thereof.

(2) If the defendant in the interrogation at the main hearing changes his previous testimony, the prosecutor, counsel or the presiding judge may call his attention to this inconsistency and ask him to explain why he has changed testimony. The presiding judge may, if necessary, read his previous testimony or a part thereof.

Article 326

(1) After the interrogation of the first defendant has finished, co-defendants, if any, may be questioned in turn. After each interrogation the presiding judge shall acquaint the co-defendant with the statements of co-defendants interrogated before him and ask him if he has any comments thereon, and shall ask the co-defendant interrogated before him if he has any comments on the statement of the subsequently interrogated co-defendant. Each defendant shall be entitled to put questions to other interrogated co-defendants.

(2) If statements of individual co-defendants on the same circumstance differ the presiding judge may confront the co-defendants.

Article 327

Exceptionally, the panel may rule that the defendant be temporarily removed from the courtroom if a co-defendant or a witness refuses to testify in his presence or if circumstances indicate that he will not tell the truth in the presence of the defendant. Upon the return of the defendant to the session the statements of the co-defendant or witness shall be read to him.

The defendant shall be entitled to put questions to a co-defendant or a witness, and the presiding judge shall ask him if he has any comment to make on their testimonies. If necessary, confrontation may be arranged.

Article 328

The defendant may in the course of the main hearing have consultations with his counsel, except on how to answer a question put to him on which he may not consult either his counsel or anyone else.

7. Hearing of evidence

Article 329

(1) After the interrogation of the defendant has been completed the process shall proceed with the hearing of evidence.

(2) Evidence taking shall encompass all facts which the court considers material to a correct adjudication.

(3) Evidence shall be taken in the sequence determined by the presiding judge. As a rule, evidence proposed by the prosecution shall be heard first, followed by evidence proposed by the defence and finally the evidence whose taking shall be ordered by the panel *ex officio*. If the injured party present has to be heard as a witness he shall be questioned immediately after the defendant.

(4) The parties and the injured person may until the conclusion of the main hearing move that new facts be looked into and new evidence produced, and shall be entitled to repeat the motions which the presiding judge or the panel had earlier dismissed.

(5) The panel may decide to take evidence for which no motion has been made or for which the motion was withdrawn.

Article 330

Although it may be full, a confession of the defendant at the main hearing shall not release the court from the obligation to take other evidence.

Article 331

(1) As regards the questioning of witnesses and experts at the main hearing, the sense of provisions applying to the examination of these persons in the process of investigation shall apply, unless otherwise provided in this chapter.

(2) As a rule, a witness who has not yet been examined may not attend the procedure for taking proof, and an expert who has not yet submitted his findings or opinion may not attend the main hearing while another expert is giving testimony on the same issue.

(3) If a person under the age of fourteen is examined as a witness the panel may order that the public be excluded from the examination.

(4) If a minor participates in the main hearing as a witness or the injured party he shall be taken out of the courtroom as soon as his presence is no longer required.

(5) Direct questioning of persons under 15 years of age who are victims of criminal offences from the third paragraph of Article 65 of this Act shall not be permitted in the main hearing. In such instances, the court shall be obliged to decide that the records of previous questioning of such persons be read.

(6) In instances from the previous paragraph, parties may pose indirect questions. If the panel recognises that the questions are justified and necessary for clarification of the actual state of affairs, it shall proceed according to the provisions of Article 338 of this Act.

Article 332

Before examining a witness the presiding judge shall warn him of his duty to tell the court whatever he knows about the case and shall inform him that false testimony is considered as a criminal offence.

Article 333

(1) Before examining an expert the presiding judge shall warn him of his duty to state his findings and opinion to the best of his knowledge and shall inform him that a false finding or opinion is a criminal offence.

(2) The panel may decide to swear the expert in before examining him.

(3) The expert shall take an oath orally.

(4) The oath shall read: "I swear on my honour that I shall perform my expert examination conscientiously and to the best of my knowledge and shall state my findings and opinion accurately and completely."

(5) Permanent court experts shall not be sworn in but only reminded of the oath they have already taken.

(6) The expert shall communicate his findings and opinion to the court orally. If he had prepared a report on his finding and opinion before the main hearing he may be allowed to read it, in which case his paper shall be enclosed with the record.

(7) If the expert investigation was carried out by a scientific institution or a state agency the court may decide not to call in the experts to whom the institution or the agency had entrusted the task if the nature of the expertise indicates that extensive explanations of the written findings and opinion will not be necessary. In such instance the panel may decide that the findings and opinion of the scientific institution or the state agency should only be read at the main hearing. However, if the panel subsequently establishes that the presence of experts who have carried out the expert investigation is necessary in view of other evidence taken and the observations of the parties (Article 342), it may decide to question experts directly.

Article 334

(1) After a witness has given his statement or an expert has stated his findings and opinion, they may be asked questions. Questions shall be put first by the party which made a motion for the taking of evidence, then by the opposing party, the persons referred to in the second paragraph of Article 324 of this Act and finally by the presiding judge and panel members. If evidence taking was ordered *ex officio*, questions shall first be put by the presiding judge and panel members, then by the prosecution, the defence, and finally by the persons referred to in the second paragraph of Article 324 of this Act. The injured party, legal representative, attorney and expert may put direct questions to witnesses and experts subject to approval from the presiding judge.

(2) The presiding judge shall disallow a question or an answer if it is not permitted (Article 228) or if it has no relation to the case. If the presiding judge disallows a specific question or answer the parties may request that the panel decide thereon.

Article 335

If a witness or an expert cannot recall the facts he had adduced in the previous examination or if he changes his statement the presiding judge or the parties shall call his attention to the previous statement and ask him why he has changed it. Where necessary, the presiding judge shall read his previous statement or a part thereof.

Article 336

(1) Witnesses and experts who have been examined shall remain in the courtroom unless the presiding judge, upon hearing the parties, permits them to leave or removes them temporarily from the courtroom.

(2) The presiding judge may on the motion of the parties or on his own order that the examined witnesses and experts be removed from the courtroom and then called in and examined again in the presence or in the absence of other witnesses and experts.

Article 337

(1) If it transpires in the course of the main hearing that a witness or an expert is unable to appear in court or his appearance involves great difficulties, and the panel maintains that his testimony is important, the panel may order that he be examined outside the main hearing by the presiding judge, or a judge on the panel, or the investigating judge of the court in whose territory the witness or the expert resides.

(2) If an inspection or reconstruction of the event has to be carried out outside the main hearing it shall be conducted by the presiding judge or a judge sitting in the panel.

(3) The parties and the injured person shall always be advised when and where a witness shall be examined or when and where an inspection or reconstruction of the event shall take place, and shall be instructed that they may attend these acts. If the defendant has been remanded in custody the panel shall determine if his presence during these actions is necessary. If the parties and the injured person are present at these acts they shall have the rights referred to in paragraph seven of Article 178 of this Act.

Article 338

In the course of the main hearing the panel may, upon hearing the opinion of the parties, decide to request that the investigating judge perform particular actions necessary for elucidation of certain facts if the performance of such actions at the main hearing would entail a considerable delay of proceedings or other serious difficulties. When the investigating judge acts under such a request of the panel, the provisions relating to investigative acts shall apply.

Article 339

(1) Records of inspection outside the main hearing, records of a house search or personal search, records of the identification of persons, objects and the scene of the crime, records of seizure and of documents, books, files and other evidentiary writings shall be read at the main hearing to establish their contents. It shall be in the discretion of the panel to allow these records to be summarised orally, as well as the sound or camera recordings of the course of this investigative act to be reproduced. Writings of value as evidence shall whenever possible be submitted in the original.

(2) Objects which might help to clarify the case may be shown during the main hearing to the defendant, as well as to witnesses and experts.

Article 340

(1) In addition to instances specified in this Act, the records of the testimonies of witnesses, co-defendants or parties to the criminal offence who have already been convicted, as well as the records of expertise and the opinion of experts, may under a decision of the panel be read only in the following instances:
1) if the persons interrogated have died, or have fallen prey to a mental disease, or are not to be found, or are unable to appear in court due to old age, illness or some other weighty reason, or their appearance involves great difficulties if they live abroad and fail to appear at the main hearing, despite being properly summoned to appear;
2) if witnesses or experts refuse to testify at the main hearing without the statutory justification for this.

(2) Subject to consent of the parties the panel may decide that the record of the previous questioning of a witness or an expert, or the written finding and opinion of the expert, be read in court in the absence of the witness or the expert, whether or not the witness or the expert were summoned to appear at the main hearing.

(3) The reasons for the reading of the record shall be indicated in the record of the main hearing, and during the reading it shall be announced whether the expert was sworn in or not.

(4) Before the hearing of evidence is completed the panel shall issue *ex officio*, or upon a motion of the parties, a ruling by which it shall exclude from the files the records and other evidence on which under the provisions of this Act the court decision may not rest. If the panel rejects the motion of a party for the exclusion, it shall issue a separate ruling thereon. The ruling by which the records and other evidence are excluded may only be challenged by an appeal from the judgement. The excluded records and other evidence shall be sealed in an envelope and delivered to the investigating judge for safekeeping apart from other files (paragraph 3, Article 83).

(5) When considering the appeal from the judgement by which the ruling from the preceding paragraph is contested as well, the court of second instance may, in view of the contents of the excluded record or other evidence, rule that a new main hearing be held before a completely new panel.

Article 341

In instances referred to under Articles 325, 335 and 340 of this Act, as well as in other instances if necessary, the panel may decide that, in addition to reading the record, a sound or camera recording be also reproduced at the main hearing (Article 84).

Article 342

After the examination of each witness or expert, as well as after the reading of each record or other writing, the presiding judge shall invite the parties and the injured person to make their comments if they so wish.

Article 343

(1) Upon completion of the hearing of evidence the presiding judge shall ask the parties and the injured person if they have any proposals for supplementing the taking of evidence.

(2) If no motions for supplementing the taking of evidence are made or if such motion was made and denied, and the court finds that the case has been clarified, the presiding judge shall announce that the hearing of evidence is concluded.

8. Modification and extension of the charge

Article 344

(1) If the prosecutor finds in the course of the main hearing that the evidence taken indicates that the factual situation as described in the charge sheet has changed, he may modify the charge sheet orally during the trial and may also make a motion for adjournment of the main hearing in order to prepare a new charge sheet.

(2) In such case the court may adjourn the trial to allow for the preparation of defence.

(3) If the panel grants the adjournment of the main hearing in order for a new charge sheet to be prepared it shall determine the time in which the prosecutor shall be bound to prefer a new charge sheet. A copy of the new charge sheet shall be delivered to the defendant. Objection to this charge sheet shall not be allowed. If the prosecutor fails to prefer a new charge sheet within the set time the court shall resume the main hearing on the basis of the previous charge sheet.

Article 345

(1) If the defendant commits a criminal offence while the court is in session for the main hearing, or if a previous criminal offence committed by the defendant is discovered in the course of the main hearing, the panel shall, in acting upon accusation by the authorised

prosecutor which accusation may also be submitted orally, extend the trial to include this new offence as well. No appeal against this accusation shall be permitted.

(2) In such instance the court may suspend the main hearing to give the defence time to prepare, and after hearing the opinion of the parties it may decide that the defendant be tried separately for the offence referred to in the preceding paragraph.

9. Closing statements

Article 346

Upon completion of the hearing of evidence the presiding judge shall call on the parties, the injured person and the defence to sum up their arguments. The prosecutor shall speak first, then the injured party and counsel, and finally the defendant.

Article 347

In his closing statement the prosecutor shall present his evaluation of evidence taken at the main hearing, explain his conclusions concerning facts material to the adjudication, and put forward and expound his proposal regarding the criminal responsibility of the defendant, the provisions of the criminal law to be applied, and the extenuating and aggravating circumstances to be taken into consideration in meting out punishment. The prosecutor may propose the type and extent of a penalty, security measures and that judicial admonition or a suspended sentence be pronounced.

Article 348

In his address the injured party or his attorney may explain his indemnification claim and call attention to evidence pointing to the criminal responsibility of the defendant.

Article 349

(1) Defence counsel or the defendant himself shall present arguments for the defence. In so doing he may comment on the allegations of the prosecution and the injured party.

(2) After defence counsel has presented arguments for the defence the defendant shall have the right to state his arguments personally, to declare if he agrees with the pleading of his counsel and to supplement the pleading of his counsel.

(3) The prosecutor and the injured party shall have the right of reply, and defence counsel or the defendant shall have the right of rejoinder.

(4) The defendant shall always have the last word.

Article 350

(1) The presentation of arguments by the parties may not be limited to a specific time.

(2) The presiding judge may upon prior warning interrupt the speaker who in his argument offends public order and morality, insults another, repeats himself and speaks at great length

of matters obviously irrelevant to the case. The interruption and the reason for this shall be noted down in the record of the main hearing.

(3) When several persons act for the prosecution and several counsel represent the defence they shall not repeat the same arguments. The representatives of the prosecution and the representatives of the defence shall each select in agreement with others the issues on which each of them will speak.

(4) After all closing statements have been presented the presiding judge shall ask if anyone has any further statement to make.

(5) The provision of point 3 of Article 42 or of the third paragraph of Article 297 of the Penal Code on the mitigation of punishment may only be applied in cases where the defendant has, by the end of the main hearing, prevented the further commission of criminal offences within a criminal association or a criminal offence by a criminal association, or if he has disclosed by the end of the main hearing information of importance to the investigation of and production of evidence for criminal offences already committed.

Article 351

(1) If after the final statements of the parties the panel is not aware of the need for any further evidence, the president of the panel indicates that the main trial has been concluded.

(2) The panel shall then withdraw for consultations and voting on the ruling.

Article 352

(1) The panel shall reject the charge sheet by a ruling:
1) if the proceedings were conducted without the request of the authorised prosecutor
2) if the required motion of the injured party or the permission of a state agency is missing, or if the competent state agency has withdrawn permission
3) if other circumstances exist which temporarily bar prosecution.

(2) The panel may render a ruling by which the charge sheet is rejected even after the main hearing has been postponed.

Chapter XXII
JUDGEMENT

1. Pronouncing of judgement

Article 353

(1) If in its deliberations the court finds that there is no need to re-open the main hearing to supplement or elucidate particular issues, the court shall pronounce a judgement.

(2) Judgement shall be passed and announced in the name of the people.

Article 354

(1) Judgement may relate only to the person accused and only to the act arraigned in the charge sheet as initially preferred or as modified or extended in the main hearing.

(2) The court shall not be bound by the proposals of the prosecutor regarding the juridical classification of the act.

Article 355

(1) The court shall base its judgement solely on the facts and evidence considered at the main hearing.

(2) The court shall be bound conscientiously to assess each item of proof separately and in relation to other items of proof and on the basis of such evaluation to reach a conclusion whether or not a particular fact has been proved.

2. Types of judgements

Article 356

(1) Judgement shall determine rejection of the charge, acquittal of the accused or pronouncement of guilt.

(2) Where the charge includes several criminal offences the judgement shall specify if the charge is rejected and, if so, for which offence it is rejected; if the defendant is acquitted and, if so, of which offence he is acquitted; if the defendant is found guilty and, if so, of which offence he is found guilty.

Article 357

A judgement by which the charge is rejected shall be pronounced:
1) when the prosecutor withdraws the charge within the period from the opening until the conclusion of the main hearing;
2) when the injured party withdraws the motion;
3) if the defendant was previously convicted or acquitted of the same offence under a final judgement or proceedings against him were discontinued under a final judgement;
4) when prosecution against the defendant was discontinued under an amnesty or a pardon, or the criminal prosecution was statute-barred, or where other circumstances exist which bar criminal prosecution.

Article 358

A judgement by which the defendant is acquitted of the charge shall be pronounced:
1) when the act with which the defendant is charged does not constitute a criminal offence;
2) when circumstances exist which exclude criminal liability;
3) when it has not been proven that the defendant has committed the act with which he has been charged.

Article 359

(1) In a judgement by which the defendant is found guilty the court shall state:
1) the act of which he has been found guilty, together with facts and circumstances indicative of the criminal nature of the act committed, and facts and circumstances on which the application of a pertinent provision of criminal law depends;
2) statutory designation of the offence and the provisions of the criminal law applied in passing the judgement;
3) type and amount of punishment, or that the punishment has been remitted;
4) the decision on a suspended sentence;
5) the decision on security measures and withdrawal of property benefits;
6) the decision on inclusion in the extent of punishment of time spent in remand or in imprisonment under an earlier sentence;
7) the decision on costs of criminal proceedings and indemnification claims and determining whether the final judgement should be announced in the press or radio or television.

(2) If the defendant is sentenced to pay a fine the judgement shall state the time within which he must pay the fine and the manner of executing the sentence if forced collection fails.

(3) If the defendant is sentenced to imprisonment of up to three or five years the court may specify in the judgement in which prison he will serve the sentence (third paragraph of article 107 of the Penal Code of the Republic of Slovenia).

(4) In the case of judgement published as set out in point 7 of the first paragraph of this Article the following personal data from the judgement pronounced shall be published: name and surname, date of birth, permanent, temporary or other address and nationality of the defendant.

3. Announcement of judgement

Article 360

(1) Judgement shall be announced by the presiding judge immediately after the court has passed it. If the court is unable to pass judgement on the day the main hearing has been completed it shall postpone the announcement by a maximum of three days and shall determine when and where it will be formally proclaimed.

(2) The presiding judge shall read the enacting terms of the judgement in open court and in the presence of the parties, their legal representatives, attorneys and counsel, whereupon he shall give a brief account of the grounds of the judgement.

(3) Judgement shall be announced even in the absence of a party, a legal representative, attorney or counsel. If the defendant is not present the panel may decide that the presiding judge announce the judgement to him orally, or that the judgement be served on him in writing.

(4) If the public was excluded from the trial the enacting terms of the judgement shall always be read out in open court. The panel shall decide whether and to what extent the public should be excluded while the announcing of the grounds of the judgement is taking place.

(5) All those present shall stand while the enacting terms of the judgement are being read.

Article 361

(1) In passing a judgement by which the accused is sentence to imprisonment, the panel shall order remand in custody if any of the reasons from clauses 1 to 3 of the first paragraph of Article 201 of this Act exist.

(2) The panel shall always cancel remand in custody and order release of the defendant if the defendant was acquitted or he was found guilty but his sentence was remitted, if he was only sentenced to a fine or received a judicial admonition or his sentence was suspended, if due to the inclusion of remand in custody in the extent of punishment he has already served the sentence, if the charge or the charge sheet was rejected, save where the latter was rejected on grounds of non-jurisdiction of the court.

(3) As regards the ordering or cancelling of remand in custody after the announcement of the judgement until its finality or the commencement of the sentence the provisions of the second paragraph of this Article shall apply. A decision thereon shall be passed by the panel of the court of first instance (sixth paragraph of article 25).

(4) Before ordering or cancelling remand in custody referred to in paragraphs two and five of this Article the panel shall hear the opinion of the public prosecutor if the proceedings were instituted upon his request.

(5) If the defendant is in remand and the panel finds that grounds on which detention was ordered still exist or that reasons adduced in the first paragraph of this Article exist, the panel shall extend remand in custody under a separate ruling; remand shall be cancelled if it recognises that the reasons for which it was ordered no longer exist. The panel shall also render a separate ruling when remand in custody is to be ordered or cancelled. An appeal against this ruling shall not stay execution.

(6) Remand in custody ordered or extended under the provisions of the preceding paragraphs may last until the finality of the judgement or the commencement of the sentence, but no longer than the expiry of the term of punishment pronounced in the judgement of the court of first instance.

(7) A defendant in remand who has been sentenced to imprisonment may upon his request be transferred to a penal institution under a ruling of the presiding judge even before the judgement has become finally binding.

Article 362

(1) After announcing the judgement the presiding judge shall instruct the parties entitled to appeal (Article 367) of their right to appeal and the obligation to announce the appeal and shall warn them that they will be considered to have waived the right to appeal if they fail to announce it within eight days of the day of announcement of the judgement. The instruction on legal remedy shall be entered in the record of the main hearing.

(2) Where a suspended sentence has been pronounced on the defendant the presiding judge shall warn him of the meaning of the sentence and the conditions by which he is bound to abide.

(3) A party who is entitled to appeal and was not present at the announcement of the judgement shall be sent a copy of the operative part of the judgement and the instruction on legal remedy referred to in the first paragraph of this Article, with an indication that the term for announcing his appeal shall start running as of the day the copy of the operative part of the judgement has been served on him.

(4) The presiding judge shall remind the parties of their obligation to report to the court any change of address until the final conclusion of proceedings.

4. Drawing up and serving of judgements

Article 363

(1) Judgements shall be drawn up in writing within fifteen days of their announcement if the accused is on remand and within thirty days in other instances. If a judgement is not drawn up within that time the presiding judge shall inform the president of the court of the reasons for this.

(2) Judgements shall be signed by the presiding judge and the recording clerk.

(3) A certified copy of the judgement shall be served on the prosecutor. Service of judgement on the defendant and counsel shall be as provided by Article 120 of this Act. If the defendant is in remand certified copies of the judgement shall be sent within the period referred to in the first paragraph of this Article.

(4) Judgement served on the defendant, the private prosecutor and the injured party as prosecutor shall contain the instruction as to the right to appeal.

(5) A certified copy of the judgement with the instruction on the right to appeal shall be served on the injured party if he is entitled to appeal, on the person who under the judgement is dispossessed of an object (second paragraph of article 69 of the Penal Code of the Republic of Slovenia) and on a legal person upon which the confiscation of property benefits has been pronounced. The injured party not entitled to appeal shall be served with a certified copy of the judgement in instances referred to in the second paragraph of Article 61 of this Act with the instruction that he has the right to request reinstatement to the previous state of affairs. The final judgement shall be served on the injured person if he so requests.

(6) Where under the provisions on a single sentence for concurrent criminal offences the court has passed a judgement taking into account judgements rendered by other courts, certified copies of the final judgement shall be sent to the courts concerned.

Article 364

(1) The judgement drawn up in writing shall be in complete accord with the judgement as it was announced. It shall have an introductory part, the enacting terms and a statement of grounds.

(2) The introductory part shall include: an indication that the judgement is rendered in the name of the people; the name of the court; the first name and surname of the presiding judge, panel members and the recording clerk; the first name and surname of the defendant; the

criminal offence of which the defendant was convicted and an indication as to whether he was present at the main hearing; the day of the main hearing; indication as to whether the proceedings were conducted in open court; the first name and surname of the prosecutor, counsel, legal representative and attorney present at the main hearing; the day of announcement of the judgement.

(3) The enacting terms of the judgement shall include personal data of the defendant (the first paragraph, Article 227) and the decision whereby the accused is pronounced guilty as charged or acquitted of the charge, or the charge is rejected.

(4) If the defendant has been convicted the enacting terms of the judgement shall contain all data specified in Article 359 of this Act, and if he was acquitted or the charge was rejected the enacting terms shall contain a description of the act with which he was charged and the decision concerning the costs of criminal proceedings and the indemnification claim if such claim was filed.

(5) In the event of concurrence of criminal offences the court shall indicate in the enacting terms the punishment imposed for each separate offence, whereupon it shall indicate the aggregate punishment.

(6) In the statement of grounds the court shall adduce reasons for each individual point of the judgement.

(7) The court shall indicate clearly and exhaustively which facts it considers proved or not proved, as well as the reasons for this. The court shall indicate in particular how it evaluates the credibility of conflicting evidence, its reasons for denying certain motions of the parties, and the key considerations by which the court was guided in settling points of law and, in particular, in establishing whether a criminal offence and criminal responsibility of the defendant exist, as well as in applying specific provisions of criminal law to the defendant and his act.

(8) If the defendant has received a sentence of criminal sanction the statement of grounds should show which circumstances the court took into consideration in meting out the punishment. The court shall especially indicate which reasons were decisive in its decision to impose a sentence severer than that prescribed (Article 46 of the Penal Code of the Republic of Slovenia), or to reduce or remit the sentence, or to impose a suspended sentence or pronounce a security measure or confiscation of property benefits.

(9) If the defendant is acquitted of a charge the court shall indicate in the statement of grounds on which of the reasons specified in Article 358 of this Act it bases its judgement of acquittal.

(10) In the statement of grounds for the rejection of the charge the court shall not enter into the evaluation of the principal matter but shall confine itself to presenting the reasons for the rejection of the charge.

Article 365

(1) Mistakes in rendering names and numbers, other obvious writing and computing errors, deficiencies regarding the form of the written judgement and discrepancies between the

original of the judgement and its copy shall be removed under a separate ruling of the presiding judge, on the motion of the parties or on his own.

(2) If the judgement as drawn up in writing and its original differ regarding the data provided for in clause 1 to 5 and clause 7 of the first paragraph of Article 359 of this Act, the ruling on corrections shall be served on persons listed in Article 306 of this Act. In this case the period of time for appeal against the judgement shall start to run from the day of service of the ruling, against which no separate appeal may be lodged.

C. JUDICIAL REVIEW PROCEDURE

Chapter XXIII
ORDINARY LEGAL REMEDIES

1. Appeal against judgement of the court of first instance

a) Right of appeal

Article 366

(1) An appeal may be lodged against judgements passed in first instance by persons entitled to judicial review within fifteen days of the serving of the copy of the judgement.

(2) An appeal filed in the proper time by a person entitled to judicial review shall stay the execution of the judgement.

Article 367

(1) The right of appeal shall be accorded to the parties, defence counsel, the legal representative of the defendant and the injured party.

(2) An appeal in favour of the defendant may also be brought by his spouse or the person with whom he lives in domestic partnership, his relative by blood in direct line, his adopter, adoptee, brother, sister and foster parent. The period of time for appeal in this instance shall also start to run from the day the copy of the judgement was served on the defendant or on his counsel (fourth paragraph of article 120).

(3) The public prosecutor may bring an appeal both to the detriment and to the benefit of the defendant.

(4) The injured party may challenge a judgement only with respect to the court decision on the costs of criminal proceedings. However, if the public prosecutor has taken the prosecution over from the injured party acting as prosecutor (second paragraph of article 63) the injured party may appeal on all grounds on which a judgement may be challenged (Article 370).

(5) An appeal may also be brought by a person who has been dispossessed of an object (second paragraph of article 69 of the Penal Code of the Republic of Slovenia) or of property benefits gained through the commission of a criminal offence (second paragraph of article 96 of the Penal Code of the Republic of Slovenia), and by a legal person on which the

punishment of confiscation of property has been pronounced (Article 98 of the Penal Code of the Republic of Slovenia).

(6) Counsel and persons from the second paragraph of this Article may bring an appeal even without the special authorisation of the defendant, but not against his will.

Article 368

(1) Persons entitled to appeal (Article 367) shall be obliged to announce an appeal. They may announce an appeal immediately after the judgement is passed or after the instruction on the right to appeal (first paragraph of Article 362), but no later than within eight days of the date the judgement is passed, or from the day of service of the copy of the operative part of the judgement if they were not present at the announcement of the judgement (third paragraph of article 362).

(2) If a person entitled to appeal fails within the legally stipulated interval to announce an appeal, they shall, except in instances from the fourth paragraph of this Article, be deemed to have waived the right to appeal.

(3) If none of the persons entitled to appeal (Article 367) announces an appeal, the final written judgement need not contain an explanation. In such instances, transcription of the audio record of the main hearing is also not necessary.

(4) If the accused has been sentenced to a prison sentence, announcement of the appeal is not required. In such instances, the final written judgement must always be explained.

(5) Until the court of second instance issues its judgement, the appellants may withdraw lodged appeals. The withdrawal of an appeal may not be revoked.

b) Contents of appeal

Article 369

(1) The appeal shall contain:
1) indication of the judgement against which the appeal is lodged;
2) reason for challenge; (Article 370)
3) exposition of the appeal;
4) motion to reverse the challenged judgement in whole or in part, or to modify it;
5) signature of the appellant.

(2) If an appeal against the judgement is lodged by the defendant or any person referred to in the second paragraph of Article 367 of this Act, or by the injured party, the injured party as prosecutor or the private prosecutor who has no attorney, and the appeal is not drawn up in accordance with the provisions of the first paragraph of this Article, the court of first instance shall request the appellant to amend it within a specified time by a written submission or orally to be entered in the record at that court. If the appellant does not comply with the request and the appeal does not contain data from clauses 2, 3 or 5 of the preceding paragraph, the court shall dismiss it. If the appeal does not contain the datum from clause 1 of the preceding paragraph, the court shall dismiss it only if it cannot establish to which judgement the appeal relates. If the appeal has been filed in favour of the defendant and it is

possible to establish to which judgement it relates, the court shall nevertheless forward it to the court of second instance. If the judgement to which the appeal relates cannot be established the court shall dismiss the appeal.

(3) If an appeal against the judgement is filed by the injured party, the injured party as prosecutor, the private prosecutor
who has an attorney, or the public prosecutor, and the appeal does not contain data from clauses 2, 3 or 5 of the first paragraph of this Article and it is impossible to establish to which judgement the appeal relates, the court shall dismiss such appeal.

(4) The appellant may adduce new facts and new evidence in the appeal, but shall be bound to give reasons for failing to present them before. In referring to new facts the appellant shall indicate the evidence by which these facts may be proved, and in referring to new evidence he shall indicate the facts which he intends to prove by that evidence.

c) Grounds on which judgement may be challenged

Article 370

A judgement may be challenged:
1) on the ground of substantial violation of provisions of the criminal procedure;
2) on the ground of violation of criminal law;
3) on the ground of erroneous or incomplete determination of the factual situation;
4) on account of the decision on criminal sanctions, confiscation of property benefits, costs of criminal proceedings, indemnification claims and the announcement of the judgement in the press and on radio or television.

Article 371

(1) Substantial violation of provisions of the criminal procedure shall be understood to exist:
1) where the court was not properly constituted or the participants in the passing of the judgement included a judge or a lay judge who did not attend the main hearing or was excluded from adjudication under a finally binding decision;
2) where a judge or a lay judge who should be excluded from participation in the main hearing participated therein (clause 1 through 5, Article 39);
3) where the main hearing was conducted in the absence of persons whose presence at the main hearing is obligatory under law, or where the defendant, counsel, the injured party as prosecutor or the private prosecutor was, notwithstanding his request, denied the right to use his own language in the main hearing and to follow the course of the main hearing in his language (Article 8);
4) where in violation of law the public was excluded from the main hearing;
5) where the court violated the regulations of the criminal procedure relating to the issue of whether there exists a charge by an authorised prosecutor, a motion of the injured person or the approval of the competent state agency;
6) where the judgement was rendered by a court which lacked real jurisdiction to hear the case, or where the court erroneously rejected the charge on the ground of non-jurisidiction;
7) where the court in its judgement did not fully adjudicate the allegations of the indictment;
8) where the judgement rests on evidence obtained in violation of constitutionally granted human rights and basic freedoms, or on evidence on which under the provisions of this Act a judgement may not rest, or on evidence obtained on the basis of such inadmissible evidence;

9) where the limits of the charge were transgressed (first paragraph of article 354);
10) where the judgement was passed in violation of Article 385 of this Act;
11) where the enacting terms of the judgement are incomprehensible or contradictory in themselves or in contradiction with the reasons of the judgement; where the judgement lacks reasons altogether or reasons relating to crucial facts are not adduced or are completely vague or considerably inconsistent in themselves; or where there is considerable discrepancy between the statement of reasons relating to the content of documents or the records of statements given in the course of proceedings on the one hand and these documents or records themselves on the other.

(2) Substantial violation of provisions of the criminal procedure shall also be seen to exist if in preparations for the main hearing or in the course of the main hearing or in rendering the judgement the court omitted to apply a provision of this Act or applied it incorrectly, or if the court in the course of the main hearing violated the rights of the defence, which act influenced or might have influenced the legality and regularity of the judgement.

Article 372

Violation of the criminal law shall exist if the criminal law was violated in respect of the issue of:
1) whether the act for which the defendant is prosecuted is a criminal offence;
2) whether circumstances exist which exclude criminal responsibility;
3) whether circumstances exist which exclude criminal prosecution and, in particular, whether criminal prosecution is statute-barred or excluded due to an amnesty or pardon, or the case has already been adjudicated by a final judgement;
4) whether in connection with the criminal offence tried an inapplicable law was applied;
5) whether in passing a decision on the sentence, suspended sentence or a judicial admonition, or in ordering a security measure or the confiscation of property benefits, the court transgressed its statutory right;
6) whether provisions were violated in respect of the inclusion in the extent of punishment of the period of remand in custody and the period of an earlier served sentence.

Article 373

(1) A judgement may be challenged on grounds of an erroneous or incomplete determination of the factual situation where the court erroneously determined a material fact or omitted to determine it altogether.

(2) The factual situation shall be considered as determined incompletely even where so indicated by new facts or new evidence.

Article 374

(1) A judgement or a ruling ordering judicial admonition may be challenged in respect of a decision on punishment, suspended sentence and judicial admonition whereby the court, while not exceeding its statutory right (clause 5, Article 372) had nevertheless failed to mete out punishment correctly relative to the circumstances influencing the determination of the amount of penalty; the aforesaid judgement or ruling may also be challenged in respect of the application by the court of provisions providing for the mitigation or remission of the

sentence and for a suspended sentence or judicial admonition, and in respect of the failure of the court to apply these provisions even though statutory grounds existed for this.

(2) The decision on a security measure or on confiscation of property benefits may be challenged on the grounds that the court, while not violating provision 5 of Article 372 of this Act had nevertheless passed that decision incorrectly, or failed to impose the security measure or the measure of confiscation of property benefits even though statutory grounds existed for this.

(3) The decision on the costs of criminal proceedings may be challenged if the court had determined these costs incorrectly or in violation of the provisions of this Act.

(4) The decision on indemnification claims and the decision on the announcement of judgement in the press and on radio and television may be challenged if the court had decided these issues in violation of the provisions of this Act.

d) Procedure in appeal

Article 375

(1) The appeal shall be filed with the court which rendered the judgement in first instance in a sufficient number of copies for the court and for the opposing side and defence counsel to reply to it.

(2) A belated (Article 389) and inadmissible (Article 390) appeal shall be dismissed by a ruling of the presiding judge of the court of first instance.

Article 376

The court of first instance shall serve a copy of the appeal on the opposing side (Articles 120, 121) who may file a reply to the appeal with the court within eight days of the serving of the copy. The court of first instance shall send the appeal, the reply and the related files to the court of second instance.

Article 377

(1) The court of second instance shall upon receiving the files with the appeal give the files to the reporting judge assigned in accordance with the court calendar. If a criminal offence subject to public prosecution is involved the reporting judge shall send the files to the competent public prosecutor who shall examine and return them to the court without delay.

(2) The public prosecutor may tender his motion in returning the files, or may declare that he will submit it during the conference of the panel.

(3) After the public prosecutor has returned the files the presiding judge shall schedule the session of the panel.

(4) The reporting judge may when necessary secure a report on violations of provisions of criminal procedure from the court of first instance, and he may also verify through that court, or through the investigating judge in whose territory the action is to be carried out, or in some

other way, the allegations in the appeal relating to new evidence and new facts, or he may secure the necessary reports or documents from other agencies or legal persons.

(5) If the reporting judge establishes that the files contain records and reports from Article 83 of this Act he shall, prior to the conference of the panel in second instance, send the files to the court below for the presiding judge to render a ruling on the exclusion of records and reports from the files and to deliver them, after the ruling has become final, in a sealed envelope to the investigating judge to keep them separate from other files.

Article 378

(1) Notice about the conference of the panel shall be sent to the competent public prosecutor where a criminal offence prosecuted *ex officio* is involved, and to the defendant, counsel, the injured party as prosecutor or the private prosecutor but only if any one of them so request in the appeal or response to the appeal.

(2) If a defendant held in detention or serving his sentence wishes to attend the conference he shall be enabled to do so.

(3) The conference of the panel shall open with the report of the reporting judge on the factual situation. The panel may ask the parties present at the conference to give the necessary explanations concerning the allegations in the appeal. The parties may move that certain files be read as a complement to the report and may give the necessary explanations of their positions as contained in the appeal or in the reply to the appeal, without repeating the contents of the report.

(4) If parties who were duly notified of the conference fail to appear the panel shall nevertheless hold the conference. If the defendant failed to report the change of address or residence the panel shall hold the conference even though the defendant was not advised thereof.

(5) The public may be excluded from the conference of the panel held in the presence of the parties only under conditions provided for by this Act (Articles 295 to 297).

(6) The record of the conference shall be enclosed with the files of the courts of first and second instance.

(7) The rulings referred to in Articles 389 and 390 of this Act may be rendered without informing the parties about the conference of the panel.

Article 379

(1) The court of second instance shall adjudicate in a conference of the panel or in a hearing.

(2) The decision on whether to conduct the hearing shall be made by the conference of the court of second instance.

Article 380

(1) A hearing before the court of second instance shall be conducted only when due to an erroneous or incomplete determination of the factual situation new evidence has to be taken or evidence already taken has to be repeated, and when valid grounds exist for the case not to be returned to the court of first instance for retrial.

(2) A summons to appear at the hearing before the court of second instance shall be served on the defendant and his counsel, the prosecutor, the injured party, legal representatives and attorneys of the injured party, of the injured party as prosecutor and of the private prosecutor, and those witnesses and experts whom the court decides to hear pursuant to the motion of the parties or *ex officio*.

(3) If the defendant is in remand or is serving his sentence the presiding judge of the court of second instance shall take the necessary steps for the defendant to be produced at the hearing.

(4) The second paragraph of Article 306 of this Act shall not apply to cases where the injured party as prosecutor or the private prosecutor fails to appear at the trial before the court of second instance.

Article 381

(1) A hearing before the court of second instance shall start with the report of the reporting judge who shall present the factual situation without giving his opinion on whether the appeal is well-founded.

(2) The judgement or the part of judgement to which the appeal relates, and if necessary also the record of the main hearing, shall be read upon a motion or *ex officio*.

(3) After that the appellant shall be called to set out his appeal and next the appellee to give his reply. The defendant and his counsel shall always have the last word.

(4) The parties may adduce new evidence and new facts during the hearing.

(5) As regards the finding of the trial the prosecutor may withdraw the charge sheet completely or a part thereof, or he may change it in favour of the defendant. If the public prosecutor withdraws all charges the defendant shall have the rights provided for by Article 61 of this Act.

Article 382

Unless provided otherwise in the preceding Articles the provisions on the main hearing before the court of first instance shall apply *mutatis mutandis* to proceedings before the court of second instance.

e) Scope of appellate review

Article 383

(1) The court of second instance shall examine that part of the judgement which is challenged by the appeal. *Ex officio*, however, it shall always examine:

1) whether there exists a violation of provisions of the criminal procedure referred to in clause 1, 2, 6 and 8 through 11 of the first paragraph of Article 371 of this Act, whether the main hearing was, contrary to the provisions of this Act, conducted in the absence of the defendant and whether in the case when defence is mandatory the main hearing was conducted in the absence of defence counsel
2) whether criminal law was violated to the prejudice of the defendant (Article 372)

(2) If the appeal filed in favour of the defendant does not contain data from clause 2 or 3 of the first paragraph of Article 369 of this Act the court of second instance shall confine itself to inquiring into violations referred to in clause 1 and 2 of the preceding paragraph and examining the decision determining the sentence, the security measures and the confiscation of property benefits (Article 374).

Article 384

In his appeal the appellant may refer to the breach of law under clause 2 of first paragraph of Article 371 of this Act only if he was unable to warn of that violation during the main hearing, or if his warning was disregarded by the court of first instance.

Article 385

Where only an appeal in favour of the defendant has been brought the judgement may not, in terms of the juridical classification of the offence and the criminal sanction imposed, be modified to the prejudice of the defendant.

Article 386

An appeal in favour of the defendant brought on the ground of erroneous and incomplete determination of the factual situation or on the ground of violation of criminal law shall include the appeal against the decision on punishment and confiscation of property benefits (Article 374).

Article 387

If upon an appeal the court of second instance finds that the reasons which governed its deciding in favour of the defendant are also to the advantage of a co-defendant who has not brought an appeal or has not brought it in that particular direction, the court shall proceed *ex officio* as if such appeal was also filed by the co-defendant.

f) Decisions of the court of second instance on appeal

Article 388

(1) The panel of the court of second instance may in its conference or on the basis of the trial dismiss an appeal as belated or inadmissible, or reject an appeal as unfounded and affirm the judgement of the court of first instance, or annul the judgement and return the case to the court of first instance for retrial and decision, or modify the judgement of the court of first instance.

(2) The court of second instance shall determine all appeals from the same judgement by a single decision.

Article 389

An appeal shall be dismissed by a ruling as belated on establishing that it was filed after the expiry of the statutory period.

Article 390

An appeal shall be dismissed by a ruling as inadmissible on establishing that it was filed by a person not entitled to appeal or a person who has waived appeal, or on establishing that an appeal was withdrawn and filed again, or if the appeal is inadmissible under statute.

Article 391

The court of second instance shall by a judgement reject an appeal as unfounded and affirm the judgement of the court of first instance if it establishes that there are no grounds to challenge the judgement and no violations of the law from the first paragraph of Article 383 of this Act.

Article 392

(1) The court of second instance shall in accepting an appeal or in acting *ex officio* annul by a ruling the judgement of the court of first instance and return the case for retrial if it finds that there exists a substantial violation of provisions of the criminal procedure, except for cases referred to in the second paragraph of this Article and first paragraph of Article 392 of this Act, or if it considers that a new main hearing before the court of first instance is necessary because of the erroneous or incomplete determination of the factual situation.

(2) Where there exists a substantial violation of provisions of the criminal procedure from clause 8 of first paragraph of Article 371 of this Act the judgement of the court of first instance shall not be annulled if the annulment for that sole reason would be to the detriment of the defendant.

(3) The court of second instance shall by a ruling annul the judgement of the court of first instance on the ground of erroneous or incomplete determination of facts even though the judgement is not challenged on that particular ground if in considering the appeal serious doubts arise about the veracity of material facts wherefrom the court infers that the factual situation was erroneously or incompletely determined to the prejudice of the defendant.

(4) The court of second instance may determine that a new main hearing be held in the court of first instance before a completely new panel of judges.

(5) In instances where the only reason for annulling the judgement of the court of first instance was erroneous determination of the actual state of affairs and where all that is required for correct determination is a different assessment of already determined facts, and not the production of new evidence or repeat of previously produced evidence, the court of second instance shall not annul the judgement of the court of first instance, but shall act according to the first paragraph of Article 394 of this Act.

(6) The court of second instance may annul the judgement of the court of first instance partially if particular parts of the judgement can be singled out without prejudice to correct adjudication.

(7) If the defendant is under detention the court of second instance shall examine if grounds for detention still exist and shall extend or cancel detention by a ruling. No appeal shall be permitted against the ruling.

Article 393

If the court of second instance establishes in considering an appeal that circumstances referred to in the first paragraph of Article 352 of this Act exist the court shall by a ruling cancel the judgement of the court of first instance and reject the charge sheet. The court of second instance shall proceed in the same way if it finds that the district court lacked real jurisdiction to adjudicate the case, except where the appeal was brought only in favour of the defendant.

Article 394

(1) The court of second instance shall in accepting an appeal or in acting *ex officio* modify the judgement of the court of first instance if it finds that, although the material facts were properly determined in the judgement of the court of first instance, in view of the factual determination and from the standpoint of correct application of the law a different judgement should have been passed, and shall also modify the judgement in case of violations referred to in clause 5, 9 and 10 of the first paragraph of Article 371 of this Act.

(2) If the court of second instance finds that statutory grounds exist for judicial admonition it shall modify the judgement of the court of first instance by a ruling and pronounce judicial admonition.

(3) Where due to confirmation or modification of the judgement of the court of first instance grounds exist for ordering or cancelling remand in custody under first and second paragraphs of Article 361 of this Act the court of second instance shall render a separate ruling thereon against. No appeal against this ruling shall be permitted.

Article 395

(1) In the statement of reasons for its judgement or ruling the court of second instance shall assess the allegations of the appeal and indicate the violations of law which it has recognised *ex officio*.

(2) If the judgement of the court of first instance is annulled on grounds of a substantial violation of provisions of the criminal procedure the statement of reasons shall contain and indication as to which provisions were violated and in what the violation consists (Article 371).

(3) If the judgement of the court of first instance is annulled on grounds of the erroneous or incomplete determination of the factual situation the statement of reasons shall indicate wherein the deficiencies of the factual determination consist, or why are new evidence and new facts important for reaching a correct decision and why they influence that decision.

Article 396

(1) The court of second instance shall return all files to the court of first instance together with the sufficient number of certified copies of its decision to be served on the parties and other persons concerned.

(2) If the defendant is in remand the court of second instance shall send its decision and the files to the court of first instance within three months at the latest from the day it had received the files from the court below.

Article 397

(1) The court of first instance to which a matter has been referred for adjudication shall proceed on the basis of the prior charge sheet. If the judgement of the court of first instance has been partly annulled the court shall take as basis for consideration only that part of the indictment which refers to the annulled part of the judgement.

(2) The parties shall be entitled to introduce new facts and present new evidence at the new main hearing.

(3) The court of first instance shall perform all procedural acts and examine all moot points indicated in the decision of the court of second instance.

(4) In passing a new judgement the court of first instance shall be bound by the prohibition provided for by Article 385 of this Act.

(5) If the defendant is in remand the panel of the court of first instance shall proceed as provided in the second paragraph of Article 207 of this Act.

(6) If the defendant had been transferred to a penal institution before the judgement became final (seventh paragraph of Article 361) the presiding judge may rule that he be returned to remand in custody.

2. Appeal against judgement of the court of second instance

Article 398

(1) Appeals against judgements of courts of second instance may be lodged with the supreme court in the following instances:
1) if a court of second instance has passed a sentence of twenty years imprisonment or has affirmed the judgement of a court of first instance by which such sentence was pronounced
2) if the court of second instance after conducting a hearing determined the factual situation other than the court of the first instance and based its judgement on such factual determination
3) if the court of second instance has modified a judgement of acquittal passed by the court of first instance and rendered instead a judgement of conviction.

(2) The supreme court shall consider appeals against judgements of courts of second instance in a conference of the panel of judges, according to provisions applying to the appellate procedure in second instance. A trial may not be conducted before this court.

(3) The provisions of Article 387 of this Act shall also apply to a co-defendant who had no right to appeal against a judgement of the court of second instance.

3. Appeal against rulings

Article 399

(1) Appeals against rulings of the investigating judge and against other rulings rendered in first instance may be lodged by the parties and persons whose rights have been violated, unless appeal is explicitly barred by the provisions of this Act.

(2) No appeal shall be permitted against a ruling rendered by the court panel before or in the course of investigation, unless provided otherwise by this Act.

(3) Rulings issued in connection with preparation of the main hearing and judgement may only be challenged in an appeal against the judgement.

(4) No appeal shall be permitted against a ruling rendered by the supreme court.

Article 400

(1) Appeals shall be lodged with the court which has rendered the ruling.

(2) Unless provided otherwise by this Act, appeals against the ruling shall be filed within three days of the ruling being served.

Article 401

Unless provided otherwise by this Act, the filing of an appeal shall stay the execution of the ruling being challenged.

Article 402

(1) Appeals against a ruling of the court of first instance shall be dealt with by the court of second instance in a conference of its panel, unless provided otherwise by this Act.

(2) Appeals against a ruling of the investigating judge shall be dealt with by the panel of the same court (sixth paragraph of article 25), unless provided otherwise by this Act.

(3) In deciding on an appeal the court may in a ruling dismiss the appeal as belated or inadmissible, or reject it as unfounded, or accept it and modify the ruling, or annul it and return it for reconsideration where necessary.

(4) In deciding on an appeal against the ruling by which the charge sheet is dismissed the court may reject the charge by a judgement if it finds that grounds for such judgement exist.

(5) In examining an appeal the court shall *ex officio* inquire into whether the court of first instance was vested with the real jurisdiction to render the ruling and whether the ruling was rendered by the agency empowered to issue it.

Article 403

(1) As regards the procedure for appeals against rulings, the provisions of Articles 367 to 375, paragraphs one, four and five of Article 377, Articles 385 and 387, and the second paragraph of Article 388 of this Act shall apply *mutatis mutandis*.

(2) Where an appeal is filed against the ruling from Article 492 of this Act, the provisions of Article 378 of this Act shall apply in respect of notification of the panel conference.

Article 404

Unless provided otherwise by this Act, the sense of provisions of Articles 399 to 403 of this Act shall apply to all other rulings rendered under this Act.

Chapter XXIV
EXTRAORDINARY LEGAL REMEDIES

1. Reopening of criminal proceedings

Article 406

Criminal proceedings terminated by a final ruling or a final judgement may be reopened upon request of authorised persons only in instances and under conditions determined by this Act.

Article 407

(1) A final judgement may be modified even without reopening criminal proceedings:
1) when in two or more judgements against the same convicted person several punishments were imposed without applying the provisions on the passing of an aggregate sentence for concurrent offences
2) when in pronouncing an aggregate sentence under provisions on concurrent offences (Article 48 of the Penal Code of the Republic of Slovenia) a punishment already included in the aggregate sentence under an earlier judgement of concurrent offences was also taken into consideration
3) when a final judgement under which an aggregate sentence was imposed for several criminal offences is partly unenforceable due to an amnesty, or pardon or other reasons.

(2) In the instance cited in clause 1 of the preceding paragraph the court shall by a new judgement modify the earlier judgements in respect of the sentences comprised therein and shall pass an aggregate sentence. The rendering of a new judgement shall fall within the jurisdiction of the court of first instance which adjudicated the matter in which the most severe type of punishment was imposed. Where punishments of the same type were pronounced the new judgement shall be passed by the court which imposed the highest amount of punishment, and where the punishments are equal it shall be passed by the court which imposed the punishment last.

(3) In the instance cited in clause 2 of the first paragraph of this Article the court which in pronouncing an aggregate sentence erroneously included a punishment already comprised in an earlier judgement shall modify its judgement.

(4) In the case cited in clause 3 of the first paragraph of this Article the court which adjudicated in first instance shall modify the earlier judgement in respect of the sentence and pronounce a new punishment, or it shall determine what part of the punishment imposed under the earlier judgement should be enforced.

(5) The new judgement shall be passed at the conference of the panel upon motion of the public prosecutor if the proceedings were instituted at his request or upon that of the defendant, after hearing the arguments of the other side.

(6) If in the instances referred to in clause 1 and 2 of the first paragraph of this Article judgements of other courts were taken into consideration in imposing the punishment, a certified copy of the new final judgement shall be sent to those courts.

Article 408

(1) If the request for investigation has been rejected by a finally binding ruling due to the lack of the request by the authorised prosecutor, or of the motion of the injured party, or of the permission of a state agency, or because of other circumstances which temporarily barred prosecution, or if the charge sheet was rejected on these same grounds, proceedings shall be resumed on the request of the authorised prosecutor as soon as the reasons for the rendering of such ruling cease to exit.

(2) If the charge sheet was rejected by a final ruling for lack of real jurisdiction, proceedings shall continue before the court with jurisdiction in the matter on the request of the authorised prosecutor.

Article 409

If the request for investigation was dismissed by a final ruling for want of a well-grounded suspicion that the suspect or the accused has committed a criminal offence, criminal proceedings may be reopened upon request of the authorised prosecutor provided new evidence is produced on the basis of which the panel (sixth paragraph of article 25) can satisfy itself that conditions for starting criminal proceedings exist.

Article 410

(1) Criminal proceedings terminated by a finally binding judgement may only be reopened in favour of the convicted person. Proceedings shall be reopened:
1) if it is proven that the judgement rests on a forged document or a false statement of a witness, expert or interpreter
2) if the judgement is proven to have ensued from a criminal offence committed by a judge, a lay judge or the person who carried out acts of investigation
3) if new facts are discovered or new evidence is produced which facts and evidence, in themselves or in connection with previous evidence, appear likely to occasion the acquittal of the convicted person or his convicting under a less severe criminal law

4) if a person was tried more than once for the same act or if several persons were convicted of the same act which could have been committed only by a single person or only by some of them
5) if in case of conviction of a continuing criminal offence, or some other offence which under the law includes several acts of the same kind, new facts are discovered or new evidence is produced which indicate that the convicted person did not commit the act included in the adjudicated criminal offence, whereas that act would have critically influenced the fixing of punishment.

(2) In cases referred to in clause 1 and 2 of the preceding paragraph it must be proved by a final judgement that the mentioned persons have been found guilty of criminal offences in question. If proceedings against these persons cannot be conducted because they are dead or because other circumstances exist which exclude criminal prosecution, the facts from clause 1 and 2 of the preceding paragraph may be proved by using other evidence.

Article 411

(1) The reopening of criminal proceedings may be requested by the parties and counsel. After the death of the convicted person the reopening may be requested by the public prosecutor if proceedings were instituted upon his request and by persons listed in the second paragraph of Article 367 of this Act.

(2) The reopening of criminal proceedings may be requested even after the convicted person has served his sentence and irrespective of the statute of limitations, an amnesty or a pardon.

(3) The court with jurisdiction to decide on the reopening of criminal proceedings (Article 412) shall upon learning of the existence of grounds for the reopening of criminal proceedings notify thereof the convicted person or another person authorised to file the request.

Article 412

(1) Requests for reopening criminal proceedings shall be dealt with by the panel (sixth paragraph of article 25) of the court which adjudicated in first instance in previous proceedings.

(2) The request shall specify the statutory ground on which the reopening is requested and the evidence supporting the facts on which the request rests. If the request does not contain these data the court shall ask the requesting party to supplement the request within a specified time.

(3) The judge who participated in rendering the judgement in previous proceedings may not take part in panel deliberations on the request for reopening.

Article 413

(1) The court shall dismiss the request by a ruling on the basis of the request itself and the files of previous proceedings if it finds that the request has been submitted by an unauthorised person; or that statutory grounds for reopening do not exist; or that the facts and evidence on which the request rests were presented in an earlier request for reopening which was rejected by a final ruling; or that the facts and evidence obviously do not provide adequate grounds to

grant the reopening of proceedings; or that the person who requests the reopening did not abide by the provisions from the second paragraph of the preceding Article.

(2) If the request is not dismissed the court shall serve a copy of the request on the adverse party who shall be entitled to reply within eight days. After the court has received the reply to the request, or after time limit for the reply has expired, the presiding judge shall order that the facts and evidence indicated in the request and the reply thereto be looked into viz. produced. The judge engaged in the inquiries shall act as provided by the fifth paragraph of Article 178 of this Act.

(3) After the inquiries have been completed the presiding judge shall order that the files be sent to the public prosecutor if criminal offences subject to public prosecution are involved. The prosecutor shall be bound to return the files at the earliest possible, together with his opinion.

Article 414

(1) After the public prosecutor has returned the files the court may order that inquiries be supplemented. On the basis of the results of inquiries the court shall either grant the request and allow the reopening of criminal proceedings, or it shall reject the request.

(2) If the court finds that grounds on which it has allowed the reopening of proceedings also benefit a co-defendant who has not requested the reopening of proceedings it shall act *ex officio* as if such request has also been submitted by that person.

(3) In the ruling by which the reopening of criminal proceedings is allowed the court shall order that a new main hearing be scheduled immediately or that the case be returned to the stage of investigation or that an investigation be opened if none was conducted before.

(4) If the court considers that in view of the evidence produced the convicted person will in the retrial be sentenced to such a sentence that, allowing for the time served under an earlier sentence, he will have to be released or that he will be acquitted of the charge or that the charge against him will be rejected, it shall order that the enforcement of punishment be postponed or stayed.

(5) When the ruling granting the reopening of criminal proceedings becomes final, the enforcement of punishment shall be stayed. However, if grounds provided for in Article 201 of this Act exist the court shall order remand in custody.

Article 415

(1) New proceedings, held on the basis of the ruling which grants the reopening of criminal proceedings, shall be conducted in accordance with the provisions applying to original proceedings. In new proceedings the court shall not be bound by the rulings rendered in original proceedings.

(2) If new proceedings are discontinued prior to the opening of the main hearing the earlier judgement shall be annulled by the ruling on discontinuation.

(3) In rendering a new judgement the court shall either annul the earlier judgement or a part thereof, or it shall affirm the earlier judgement. In the punishment imposed by the new judgement the court shall allow for a sentence already served, and if reopening was granted only for some of the offences of which the defendant was convicted it shall pronounce a new aggregate punishment in accordance with the provisions of criminal law.

(4) In new proceedings, the prohibition prescribed under Article 385 of this Act shall be binding on the court.

Article 416

The provisions of this chapter on the reopening of criminal proceedings (Articles 406 through 415) shall apply *mutatis mutandis* to the request for modification of a final judicial decision pursuant to the decision of the constitutional court by which the latter reversed or abolished the regulation on the basis of which the final judgement of conviction was passed, or pursuant to a decision of the European Court of Human Rights relating to grounds for reopening criminal proceedings.

2. Extraordinary mitigation of punishment

Article 417

Mitigation of a sentence shall be permissible where, after the judgement has become final, circumstances occur which either did not exist when the judgement was passed or were unknown to the court at that time, and such circumstances obviously would have led to a less severe punishment.

Article 418

(1) Extraordinary mitigation of punishment may be requested by the public prosecutor if proceedings were instituted at his request, the convicted person and his defence counsel, as well as persons entitled to appeal against a judgement in favour of the convicted person (Article 367).

(2) The request for extraordinary mitigation of punishment shall not stay the execution of punishment.

Article 419

(1) Requests for extraordinary mitigation of punishment shall be decided by the supreme court.

(2) Requests for extraordinary mitigation of punishment shall be submitted to the court which passed the judgement in first instance.

(3) The presiding judge of the court of first instance shall dismiss requests submitted by persons not entitled thereto.

(4) The court of first instance shall examine if grounds for mitigation exist whereupon it shall refer the files together with a reasoned-out proposal to the supreme court, after hearing the opinion of public prosecutor if proceedings were conducted at his request.

(5) If the criminal offence involved was prosecuted on request of the public prosecutor the supreme court shall, before deciding the request for extraordinary mitigation of punishment, send the files to the State Prosecutor of the Republic of Slovenia who may submit a written proposal to the court.

(6) The supreme court shall reject the request if it finds that statutory grounds for extraordinary mitigation of punishment do not exist. When satisfying the request the court shall by a ruling modify the final judgement in respect of the
punishment comprised therein.

3. Request for protection of legality

Article 420

(1) A request for the protection of legality against a final judicial decision and judicial proceedings which preceded that decision may, after the final conclusion of the criminal procedure, be submitted in the following instances:
1) on grounds of violation of criminal law;
2) on grounds of substantial violation of provisions of criminal proceedings referred to in the first paragraph of Article 371 of this Act;
3) on grounds of other violations of provisions on criminal proceedings if such violations affected the lawfulness of a judicial decision.

(2) A request for the protection of legality may not be filed on grounds of an erroneous or incomplete determination of factual situation, nor against the decision of the supreme court by which a request for the protection of legality has been adjudicated.

(3) The provision of the first paragraph of this Article notwithstanding, the Public Prosecutor of the Republic of Slovenia may submit request for the protection of legality in any instance of violation of law.

(4) Notwithstanding the provisions of the first paragraph of this Article, a request for the protection of legality may be submitted during a criminal procedure which is not yet finally concluded only against final ruling on remand in custody, while it may be submitted against final ruling on the extension of remand only in case of ruling by the Supreme Court panel (second paragraph of article 205) and in case of extension after filing the charge sheet (second paragraph of article 272).

Article 421

(1) Requests for the protection of legality may be filed by the Public Prosecutor of the Republic of Slovenia, the defendant and counsel. Upon the death of the defendant such request may be filed for his account by persons referred to in the second paragraph of Article 367 of this Act.

(2) The Public Prosecutor of the Republic of Slovenia may submit a request for the protection of legality both to the prejudice and in favour of the defendant.

(3) The defendant, counsel and persons referred to in the second paragraph of Article 367 of this Act may file requests for the protection of legality within three months, or eight days in case of the decision from the fourth paragraph of Article 420 of this Act, of the defendant being served with the final judgement. If no appeal has been lodged against the decision of the court of first instance, the time shall be counted from the day when that decision became final.

(4) If under a decision of the European Court of Human Rights it is established that the final judicial decision prejudicial to the defendant is in violation of a human right and basic freedom the period of time for filing the request for the protection of legality shall be counted from the day the decision of the European Court was served on the defendant.
(5) The provision of the second paragraph of the preceding Article notwithstanding, the request for the protection of legality referred to the preceding paragraph shall also be possible against a decision of the supreme court.

Article 422

(1) Requests for the protection of legality shall be filed with the court which passed the decision in first instance.

(2) The presiding judge of the court of first instance shall dismiss a request for the protection of legality by a ruling if the request was filed against a decision of the supreme court (second paragraph of article 420), if it was filed by a person not entitled thereto (first paragraph of article 421), or if it is belated (third paragraph of article 421). This ruling may be appealed against in a court of second instance.

(3) The court of first instance may, contingent on the contents of a request for the protection of legality, order that the enforcement of the final judicial decision be postponed or discontinued.

Article 423

(1) Requests for the protection of legality shall be considered by the supreme court at its session.

(2) The supreme court shall dismiss a request for the protection of legality by a ruling if the request is non-permissible or belated (second paragraph of the preceding Article), otherwise it shall send a copy of the request to the adverse party who may reply thereto within fifteen days of receipt of the request or within eight days in case of the request against the decision referred to in the fourth paragraph of Article 420 of this Act. The Public Prosecutor of the Republic of Slovenia shall be sent the request for the protection of legality together with the files.

(3) Before the matter is brought up for consideration the reporting judge may, if necessary, secure a report on the alleged violations of law.

(4) Dependent on the contents of the request the supreme court may order that the enforcement of the final judicial decision be deferred or discontinued.

Article 424

(1) When deciding on a request for the protection of legality the court shall confine itself to verifying those violations of law which the requesting party alleges in his request.

(2) If the court finds that reasons for its deciding in favour of the defendant also exist in respect of another co-defendant for whom the request for the protection of legality has not been filed, it shall proceed *ex officio* as if such request has also been filed by that person.

(3) In deciding on a request for the protection of legality submitted in favour of the defendant the court shall be bound by the prohibition prescribed under Article 385 of this Act.

Article 425

The supreme court shall by a judgement reject a request for the protection of legality as unfounded if it establishes that the violation of law alleged by the requesting party does not exist or that a request for the protection of legality is filed against an erroneous or incomplete determination of the factual situation.

Article 426

(1) If the supreme court finds that a request for the protection of legality is well-founded it shall pass a judgement by which, depending on the nature of the violation, it shall: modify a finally binding decision; or annul in whole or in part the decision of both the court of first instance and higher court or the decision of the higher court only, and return the case for a new decision or retrial by the court of first instance or the higher court; or it shall confine itself to establishing the existence of a violation of law.

(2) If the supreme court finds that a request for the protection of legality filed to the disadvantage of the convicted person is well-founded, it shall only determine that the law was violated but shall not interfere in the finally binding decision.

(3) If the court of second instance was not entitled under this Act to annul a violation of law committed in the judgement of the court of first instance or in judicial proceedings which preceded it, and the supreme court finds that the request is well-founded and that the annulment of the committed violation requires that the decision of the court of first instance be annulled or modified, the supreme court shall annul or alter the decision of the court of second instance as well, even though the law has not thereby been violated.

Article 427

If in proceeding on a request for the protection of legality a considerable doubt arises as to the accuracy of factual determination in a decision challenged by the request, the supreme court shall in its judgement on the request for the protection of legality annul that decision and order a new main hearing to be held before the same or another court of first instance vested with real jurisdiction over the case.

Article 428

(1) If a final judgement is annulled and the case returned for retrial proceedings shall be based on the earlier charge-sheet or the part thereof which relates to the annulled part of the judgement.

(2) The court shall be bound to perform all procedural acts and determine all issues to which it has been alerted by the supreme court.

(3) The parties shall be entitled to present new facts and evidence before the court of first or second instance.

(4) In rendering a new decision the court shall be bound by the prohibition stipulated under Article 385 of this Act.

(5) Where the decision of lower court and higher court are both annulled, the case shall be returned to the lower court through the higher court.

D. SPECIAL PROVISIONS ON SUMMARY PROCEEDINGS, THE PRONOUNCING OF JUDICIAL ADMONITION AND PROCEEDINGS IN CASE OF MINORS

Chapter XXV
SUMMARY PROCEEDINGS BEFORE DISTRICT COURT

Article 429

In proceedings before the district court the provisions of Articles 430 through 444 of this Act shall apply. In respect of issues not dealt with in these provisions, other provisions of this Act shall apply *mutatis mutandis*.

Article 430

(1) Criminal proceedings shall be instituted on the basis of a summary charge sheet of the public prosecutor or the injured party acting as prosecutor, or on the basis of a private charge.

(2) The public prosecutor may file a summary charge sheet on the basis of a crime report alone.

(3) The summary charge sheet and the private charge shall be submitted in as many copies as needed by the court and the defendant.

Article 431

(1) Before filing the summary charge sheet the public prosecutor may move for a single judge (hereinafter: the judge) to perform specific acts of investigation. If the judge consents to the proposal he shall perform the required investigative acts and thereafter send all files to the public prosecutor. The acts of investigation shall be carried out as quickly and efficiently as possible.

(2) If the judge disagrees with the motion for investigative acts he shall notify the public prosecutor thereof.

(3) Upon receiving the files or information referred to in the first and second paragraphs of this Article the public prosecutor may decide either to file the summary charge sheet or to dismiss the crime report by a ruling.

Article 432

(1) Remand in custody may exceptionally be ordered against a person suspected with good reason of committing a criminal offence for which the perpetrator is prosecuted *ex officio*:
1) if he is in hiding, if his identity cannot be ascertained or if other circumstances point to an obvious danger of flight
2) if the act involved is an offence against public order and sexual inviolability, or an offence with elements of violence subject to two years imprisonment or other criminal offences for which a criminal offence of three years may be imposed, whenever the grounds exist for remand in custody from clauses 2 or 3 of the first paragraph of Article 201 of this Act.

(2) The remand in custody before the filing of summary charge sheet may last as long as required, but not beyond the period of fifteen days. Appeals against the ruling on detention shall be determined by the panel of the circuit court (sixth paragraph of article 25).

(3) As regards the remand in custody from the service of summary charge sheet until the end of the main hearing, the provisions of Article 207 of this Act shall apply *mutatis mutandis*. The judge shall be bound to verify each month if grounds for remand in custody still exist.

(4) If the defendant has been remanded in custody the court shall proceed with special speed.

Article 433

If the crime report is filed by the injured person and within a period of one month from the receipt of the request by the public prosecutor the latter fails to prefer the summary charge sheet and to notify the defendant that he has dismissed the charge or adjourned criminal proceedings (Article 162), the injured party shall be entitled to assume prosecution subject to filing the summary charge sheet with the court.

Article 434

(1) The summary charge sheet or the private charge shall contain: the name and surname of the defendant with his personal data if known, the description of the criminal offence, the court before which the main hearing is to be held, the motion as to which evidence should be taken in the main hearing and the motion that the defendant be found guilty and sentenced in accordance with law.

(2) The summary charge sheet may contain a motion to put the defendant in remand. If the defendant is in remand or was in remand during the conducting of investigative acts the summary charge sheet shall contain an indication of how long he was in remand.

Article 435

(1) Upon receiving the summary charge sheet or the private charge the judge shall first examine if the court has competition in the matter and if grounds exist to dismiss the summary charge sheet or the private charge.

(2) If the judge issues a decision referred to in the third paragraph of Article 286 of this Act, the panel (the sixth paragraph of Article 25) shall decide on the appeal against such a decision that may order that the main trial should be held before another judge regarding the contents of the excluded evidence.

(3) If none of the rulings from the preceding paragraphs are rendered the judge shall order that the charge sheet or private charge be served on the defendant and shall schedule the main hearing immediately. If he fails to schedule the main hearing within a month, the judge shall notify the president of the court of the reasons for this. The president of the court shall take the necessity steps for scheduling the main hearing at the earliest possible.

Article 436

(1) If the judge finds that the case falls within the territorial jurisdiction of another court, he shall refer the case to the court of jurisdiction after the ruling on territorial jurisdiction has become final. If he finds that the case falls within the real jurisdiction of the circuit court, he shall refer the case to the competent public prosecutor for further proceedings. If the public prosecutor considers that the court of real jurisdiction over the case is the court which had sent him the request, he shall request that the matter be decided by the panel of the circuit court (sixth paragraph of article 25).

(2) After the main hearing has been scheduled, the court may not on its own declare itself as having no territorial jurisdiction over the case.

Article 437

(1) The judge shall dismiss the summary charge sheet or the private charge is he finds that there exist grounds to discontinue proceedings specified in clause 1 and 3 of the first paragraph and in the second paragraph of Article 277 of this Act, or if he finds that, after the investigation has been completed, there are also grounds to dismiss the summary charge sheet or the private charge under clause 4 of the first paragraph of the aforesaid Article.

(2) The ruling, with a brief annotation thereon, shall be served on the prosecutor and the defendant.

Article 438
(deleted)

Article 439

(1) The judge shall summon to the main hearing the defendant and his counsel, the prosecutor, the injured party and their legal representatives and attorneys, witnesses, experts and the interpreter. He may, if necessary, secure objects to be used as evidence in the main hearing.

(2) The defendant shall be instructed in the summons that he may bring to the main hearing evidence for his defence or inform the court of such evidence in due course so that it can be secured for the main hearing. Together with the summons the defendant shall be served with the copy of the summary charge sheet or the private charge if these were not served on him immediately after they were examined (second paragraph of article 435). He shall also be instructed in the summons that he is entitled to retain counsel and that, unless defence is mandatory, the main hearing shall not be adjourned if defence counsel fails to appear or if the defendant decides to retain counsel only at the hearing itself.

(3) The summons shall be served on the defendant so as to leave him time to prepare his defence, which may not be less than three days. This period of time may be shortened subject to consent of the defendant.

Article 440

The main hearing shall be held in the place in which the court has its seat. In urgent cases, particularly where inspection is required or the hearing of evidence is thereby facilitated, the main hearing may be conducted, subject to permission of the president of the court, at the place of commission of the criminal offence or the place where inspection is to be made, provided such place is in the jurisdictional territory of the court.

Article 441

The objection of territorial non-jurisdiction may only be submitted prior to the opening of the main hearing.

Article 442

(1) If the defendant fails to appear at the main hearing although he was duly summoned the judge may decide that the main hearing be conducted in his absence, provided that his presence is not necessary and that he has already been interrogated.

(2) If duly summoned defence counsel fails to appear at the main hearing and does not notify the court of the reasons for this, or if he leaves the main hearing, or if by reason of his disturbing order the judge denies him the further conduct of defence in case where defence is not mandatory, the main hearing shall take place without defence counsel, unless the defendant retains one immediately.

Article 443

(1) The main hearing shall commence with the reading of the summary charge sheet or the reading of private charge on the part of the prosecutor. Once opened, the main hearing shall proceed without interruption whenever possible.

(2) After the end of the main hearing the judge shall render and announce the judgement forthwith, setting forth the reasons for this. Judgement must be rendered in writing within fifteen days from the date of its announcement.

(3) An appeal against the judgement may be lodged within eight days of receipt of a copy thereof.

(4) The provisions of Article 361 of this Act shall apply *mutatis mutandis* to the cancellation of remand in custody after the judgement has been pronounced.

(5) If the punishment of imprisonment has been imposed the judge may order that the defendant be detained or that he remain in detention provided grounds referred to in the first paragraph of Article 432 of this Act exist. In such instance the remand in custody may last until the judgement becomes final or until the commencement of the sentence, but not beyond the expiry of the sentence imposed by the court of first instance.

(6) If in the course of or after the main hearing the judge finds that the case tried falls within the real jurisdiction of the circuit court, or that grounds referred to in the first paragraph of Article 352 of this Act exist, he shall dismiss the summary charge sheet or the private charge by a ruling.

Article 443a

(1) The judge may adjourn the main hearing for a maximum of six months if the public prosecutor announces that the matter shall be transferred to a settlement procedure (Article 161a).

(2) When the public prosecutor receives notification of the fulfilment of an agreement, he shall withdraw the charge. If the public prosecutor has not withdrawn the charge within the specified time period, the judge shall continue the main hearing on the basis of the previous hearing.

Article 444

(1) Before scheduling the main hearing for a criminal offence falling within the jurisdiction of a single judge and prosecuted pursuant to private charge the judge may summon the private prosecutor and the injured party to appear in court on a specific day to clarify the issue if he finds such move conducive to an early termination of proceedings. Together with the summons, the defendant shall be served with the copy of the private charge.

(2) If the parties fail to reach settlement and the private charge is not withdrawn, the judge shall take down the statements of the parties, and ask them to make motions for evidence to be secured.

(3) If the judge does not dismiss the charge for want of grounds for this, he shall determine which evidence should be taken at the main hearing and, as a rule, shall schedule the main hearing forthwith and notify the parties thereof.

(4) If the judge holds that evidence need not be gathered and that no other reasons exist for scheduling the main hearing separately, he may open the main hearing immediately and, after taking evidence present before the court, adjudicate the private charge. This possibility should be particularly indicated in the summons for the private prosecutor and the defendant.

(5) Where the private prosecutor fails to appear after being summoned as per first paragraph of this Article, the provisions of Article 58 of this Act shall apply.

Article 445

(1) When the court of second instance hears an appeal against a judgement passed in summary proceedings by the court of first instance it shall notify the parties of the conference of its panel only if the presiding judge or the panel finds that the presence of parties is useful for the clarification of the case.

(2) Where a criminal offence prosecuted on the request of the public prosecutor is involved, the presiding judge shall prior to the panel conference deliver the files to the public prosecutor who shall be entitled to propose a written motion.

Chapter XXVa

PROCEDURE FOR THE ISSUE OF PUNITIVE ORDER

Article 445a

(1) Where punishable offences falling within the province of circuit court are involved, the public prosecutor may in filing the summary charge sheet propose to the court to issue without holding the main hearing a punitive order by which the proposed punitive sanction or measure is imposed on the defendant.

(2) The public prosecutor may propose the pronouncing of the following punitive sanctions and measures:
1) a fine, prohibition from driving a motor vehicle, suspended sentence with a specific fine, or up to six months imprisonment, or judicial admonition;
2) the seizure of objects and property benefits acquired through commission of criminal offence.

Article 445b

If the judge considers that the evidence contained in the summary charge sheet does not provide sufficient grounds for issuing a punitive order, or disagrees with the imposition of the sanction proposed by the public prosecutor, he shall schedule the main hearing to which he shall summon the persons referred to in the first paragraph of Article 439 of this Act. In such an instance the defendant shall only be served with the copy of the summary charge sheet without the proposal for the issue of a punitive order.

Article 445c

(1) If the judge agrees with the proposal, he shall issue a punitive order by means of a ruling.

(2) In the punitive order the judge shall rule that the proposal of the public prosecutor is granted and the defendant, whose personal data must be cited therein, is awarded the proposed punitive sanction or measure. The operative part of the ruling on the issue of a punitive order shall contain the necessary data from the first and second paragraphs of Article 359 of this Act. The statement of grounds shall contain only such evidence from the summary charge sheet as warrants the issue of the punitive order.

(3) The punitive order shall also contain instructions to the defendant as to his or her right to file objection referred to in the second paragraph of Article 445.è of this Act, and a warning that unless the objection is filed within a specified period of time the punitive order shall upon expiry of that time period become final and the awarded punitive sanction or measure shall be executed.

Article 445è

(1) A certified copy of the ruling on the issue of the punitive order shall be served on the defendant, his lawyer, if any, and the public prosecutor.

(2) The defendant or his lawyer may within eight days of the ruling on the punitive order being served file an objection to the ruling. The objection may be filed in writing or orally to be entered in the record at the court. The objection shall contain an indication of the ruling under which the punitive order was issued and may also propose evidence to be taken at the main hearing. The defendant may waive the right to object and, so long as the main hearing is not scheduled, may withdraw an already filed objection. The waiver and the withdrawal of the objection may not be revoked. Paying fine before the expiry of the term for submitting the objection shall not be considered as the waiver of the right to objection.

(3) A defendant who for legitimate reasons fails to file an objection within the set time limit shall be granted by the court the reinstatement of the previous state of affairs. In so doing the court shall apply pertinently the provisions of Articles 89 and 90 of this Act.

(4) If in applying pertinently the provisions of the second paragraph of Article 375 of this Act the Court does not dismiss the objection, the court shall by a decision invalidate the ruling on the punitive order and shall proceed according to the provisions of Articles 439 through 443.a of this Act.

Article 445d

In rendering the judgement on the submitted objection, the court shall not be bound by the proposal of the public prosecutor referred to in the second paragraph of Article 445.a nor by the prohibition referred to in Article 385 of this Act.

Article 445e

In the proceedings for issue of a punitive order, the provisions of Article 445.a through 445.d shall apply and questions not regulated by those provisions shall be subject to pertinent application of other provisions of this Act."

Chapter XXVI
SPECIAL PROVISIONS ON THE PRONOUNCING OF JUDICIAL ADMONITION

Article 446

(1) Judicial admonition shall be pronounced by a ruling.

(2) Unless provided otherwise in this chapter, the provisions of this Act relating to the judgement of conviction shall apply *mutatis mutandis* to the ruling on judicial admonition.

Article 447

(1) The ruling on judicial admonition shall be announced immediately upon the conclusion of the main hearing, together with the essential reasons for this. The provisions of Article 368 of this Act shall, with regard to the obligation to announce the appeal, apply *mutatis mutandis*.

(2) The enacting terms of the ruling on judicial admonition shall contain the personal data of the defendant, an indication that the judicial admonition has been pronounced on him for the act alleged in the charge, and the statutory name of the criminal offence. The enacting terms of the ruling on judicial admonition shall also contain the necessary data referred to in clauses 5 and 7 of the first paragraph of Article 359 of this Act.

(3) In the statement of grounds the court shall state the reasons which guided it in pronouncing the judicial admonition.

Article 448

(1) The ruling on judicial admonition may be challenged on grounds specified in clauses 1, 2 and 3 of Article 370 of this Act and on the ground that circumstances warranting the pronouncing of judicial admonition did not exist.

(2) Where the ruling on judicial admonition contains the provision on security measures, confiscation of material benefits, costs of criminal proceedings or indemnification claims such ruling may be challenged on the ground that the court has not applied the security measure or the confiscation of material benefits correctly, or that its decision on the costs of criminal proceedings or on the indemnification claim was passed contrary to statutory provisions.

Article 449

In pronouncing judicial admonition, a violation of criminal law shall exist, in addition to violations referred to in clause 1 through 4 of Article 372 of this Act, also
where the court by its decision on judicial admonition, a security measure or the confiscation of material benefits exceeded the powers vested in it by law.

Article 450

(1) Where a ruling on judicial admonition is challenged by the prosecutor to the disadvantage of the defendant the court of second instance may pass a judgement by which the defendant is found guilty and sentenced, or by which a suspended sentence is imposed on him, if it finds that the court of first instance has determined material facts correctly, but that correct application of the law requires that punishment be imposed.

(2) The court of second instance may respond to any appeal against the ruling on judicial admonition by rendering a ruling by which the summary charge sheet or the formal charge is dismissed, or by passing a judgement by which the charge is rejected or the defendant acquitted of the charge, if it finds that the court of first instance has determined material facts

correctly, but that correct application of the law warrants the rendering of one of the aforesaid decisions.

(3) When grounds specified in Article 391 of this Act exist, the court of second instance shall render a ruling by which it rejects the appeal as unfounded and affirms the ruling on judicial admonition rendered by the court of first instance.

Chapter XXVII
PROCEEDINGS IN CASE OF MINORS

1. General provisions

Article 451

(1) The provisions of this chapter shall apply to proceedings involving persons who have committed a criminal offence as minors and have not attained the age of twenty-one at the time of institution or conducting of proceedings. Other provisions of this Act shall apply insofar as they do not conflict with the provisions of this chapter.

(2) Articles 453 to 455, 458 to 461, 469, 471, the first and second paragraphs of Article 473, and Article 481 of this Act shall apply in proceedings against a young adult if it is established prior to the commencement of the main hearing that the educational measure under Article 94 of the Penal Code of the Republic of Slovenia is relevant in his case and that he had not attained the age of twenty one at that particular time.

Article 452

If while proceedings are pending it is established that at the time of commission of a criminal offence a minor had not yet attained the age of fourteen, criminal proceedings shall be discontinued and the social welfare agency informed thereof.

Article 453

(1) A minor may not be tried in absentia.

(2) In carrying out procedural acts at which the minor is present and, in particular, during the questioning, agencies participating in proceedings shall act considerately and with due regard to his mental development, sensitivity and personal characteristics, to avoid the criminal proceedings exert an adverse effect on his development.

(3) The aforesaid agencies shall at the same time take appropriate steps to contain undisciplined conduct of minors.

Article 454

(1) A minor may have defence counsel from the outset of preliminary proceedings.

(2) A minor shall have defence counsel from the beginning of preliminary proceedings if the criminal offence with which he is charged is punishable by more than three years

imprisonment. In case of offences subject to less severe punishment he shall have defence counsel if so determined by the judge dealing with juvenile offences.

(3) If in instances from the preceding paragraphs a minor does not retain defence counsel, or the latter has not been retained by his legal representative or relatives, the judge who handles cases of minors shall appoint one *ex officio*.

Article 455

No one shall be exempt from the duty to testify about the circumstances necessary for assessing mental development of a minor or for obtaining an insight into his personality and conditions in which he lives (Article 469).

Article 456

(1) If a minor has participated in a criminal offence jointly with adult persons his case shall be separated and tried according to the provisions of this chapter.

(2) A case involving a minor may be joined with a case against adults and processed according to the general provisions of this Act only where joinder is necessary for the comprehensive clarification of the case. A ruling to this effect shall be rendered by the panel for cases of minors of the court of jurisdiction upon a reasoned motion by the public prosecutor. No appeal shall be permitted against such ruling.

(3) If joint proceedings for minors and adult offenders are conducted the provisions of Articles 453 through 455, 458 through 461, 469, 471, the first and second paragraphs of Article 473 and Article 480 shall be applied whenever the main hearing deals with issues relating to a minor, as well as the provisions of Articles 481, 487 and 488. Other provisions of this chapter shall be applied if their application is not in contradiction with joinder.

Article 457

If a person has committed a criminal offence as a minor and another criminal offence as an adult, they shall be tried in single proceedings pursuant to Article 32 of this Act, before a court which tries adult offenders.

Article 458

(1) In cases involving minors the social welfare agency shall have, in addition to the rights explicitly stated in this chapter, the right to be acquainted with the course of proceedings, to make motions during the proceedings and to call attention to facts and evidence of consequence to correct adjudication.

(2) In requesting institution of proceedings for cases involving minors the public prosecutor shall always be bound to notify the competent social welfare agency thereof.

Article 459

(1) Minors shall be summoned to the court through their parents or legal representatives, save where that is not possible due to urgency of the case or to other circumstances.

(2) As regards the serving of decisions and other documents, the provisions of Article 120 of this Act shall apply. Minors may not be served with documents by posting them on the bulletin board of the court, nor shall the second paragraph of Article 116 of this Act apply in this connection.

Article 460

(1) The course of criminal proceedings involving minors and the judgement rendered therein may not be published without the permission of the court.

(2) Only that part of proceedings or of the judgement may be published as is provided for by the permission of the court, and even in that case the name of the minor and other information from which his identity could be inferred may not be published.

Article 461

Agencies participating in proceedings involving minors and other agencies and institutions whose advice, reports or opinion have been requested shall be bound to proceed efficiently in order that proceedings are brought to completion as soon as possible.

2. Composition of the court

Article 462

(1) Panels for juveniles exist at circuit and higher courts and the supreme court. Circuit courts have one or more juvenile judges.

(2) The panel for juveniles in the courts of first instance shall be composed of a juvenile judge and two lay judges. The juvenile judge shall preside over the panel.

(3) In the courts of second instance and in the supreme court panels for juveniles, composed of three judges, shall be determined according to the work schedule of the court.

(4) Lay assessors shall be elected from among professors, teachers, educators and other persons who have experience in the education of minors.

(5) Juvenile panels referred to in the third paragraph of this Article shall also determine appeals in other instances provided for by this Act.

(6) The juvenile judge of the court of first instance shall carry out preliminary proceedings and discharge other duties in cases involving minors.

Article 463

The court with jurisdiction to adjudicate in second instance shall consider appeals against judgements passed by the juvenile panel of the court of first instance, as well as appeals against rulings of the public prosecutor and the juvenile judge, in cases provided for by this Act and also when this Act provides that determination of these appeals lies with the juvenile panel of the higher court.

Article 464

Territorial jurisdiction in cases involving minors shall as a rule be vested in the court of permanent residence of a minor. If a minor has no permanent residence or such residence is not known, territorial jurisdiction shall be vested in the court of temporary residence of a minor. Proceedings may be conducted before the court in whose jurisdictional territory a minor who has permanent residence temporarily resides, or before the court in whose jurisdictional territory the criminal offence was committed if it is obviously more expedient to conduct proceedings before that court.

3. Institution of proceedings

Article 465

(1) Criminal proceedings involving minors shall in respect of all criminal offences be instituted only upon the request of the public prosecutor.

(2) Proceedings for criminal offences prosecuted upon motion or by a private charge may only be instituted if the injured party files with the competent public prosecutor, within the time limit specified in Article 52 of this Act, the motion to institute proceedings.

(3) If the public prosecutor in a case involving a minor does not request the institution of proceedings he shall notify the injured party thereof. The injured party may not assume the prosecution or file a private charge with the court, but it may within eight days of receipt of the notice of the public prosecutor request the juvenile panel of the court that has jurisdiction to initiate proceedings.

Article 466

(1) In case of a criminal offence punishable by up to three years imprisonment or by a fine the public prosecutor may decide not to request the institution of criminal proceedings even where evidence exists that a minor has committed a criminal offence if in view of the nature of the offence and circumstances in which it was committed, as well as in view of the past conduct of the minor and his personal traits, he finds that proceedings against him would not be appropriate. In order to verify these circumstances the public prosecutor may request information from the parents or a guardian of a minor, or from other persons and institutions. He also may, if necessary, summon these persons and the minor to the office of the public prosecutor to acquaint himself with these circumstances in direct communication. He may likewise require the opinion of the social welfare agency about the appropriateness of proceedings against the minor.

(2) Under conditions from the preceding paragraph and from Articles 161a and 162 of this Act, the state prosecutor may decide to refer the charge to a settlement procedure or suspend criminal prosecution.

(3) When the enforcement of punishment or of an educational measure is in progress the public prosecutor may decide not to request the institution of criminal proceedings for another criminal offence committed by the minor if in view of the relative gravity of that offence and

of the punishment or educational measure being enforced proceedings and the imposition of punishment would be pointless.

(4) If the public prosecutor in the instances from the first and third paragraphs of this Article finds that the institution of proceedings in the case of a minor would not serve its purpose he shall notify thereof the social welfare agency and the injured person and give them reasons for his stand. The injured person may within eight days request the juvenile panel to institute proceedings.

Article 467

(1) Cases referred to in the third paragraph of Article 465 and fourth paragraph of the preceding Article shall be considered by a conference of the juvenile panel after it has received the files from the public prosecutor.

(2) The juvenile panel may decide that proceedings for a minor be not instituted or be opened before the juvenile judge. No appeal shall be permitted against a ruling of the juvenile panel.

(3) If the panel decides that proceedings for a minor be opened before the juvenile judge the public prosecutor may take part in the proceedings and shall have all rights he is entitled to in proceedings under this Act.

4. Preliminary proceedings

Article 468

(1) The public prosecutor shall file the request to institute preliminary proceedings with the juvenile judge of the court of jurisdiction. If the juvenile judge disagrees with the request he shall refer the matter to the juvenile panel of a higher court.

(2) The juvenile judge may entrust the enforcement of a decree on house search or the seizure of objects to an internal affairs agency to perform it as laid down by this Act.

Article 469

(1) Elements which should be attended to in preliminary proceedings for a minor shall include, besides facts relating to the criminal offence, the determination of his age and other circumstances necessary for the assessment of his mental development and an inquiry into the environment and conditions in which a minor lives, as well as other circumstances that affect his personality.

(2) In order to determine these circumstances the parents of the minor, his guardians and other persons who may provide useful information should be questioned. A report on these circumstances should be sought from the social welfare agency, and where an educational measure against the minor was applied a report thereon should also be secured.

(3) Information about the personality of a minor shall be gathered by the juvenile judge. He may also entrust this task to a specific expert (social worker, special-education teacher and others) available at the court, or to the social welfare agency.

(4) Where an expert examination is necessary to determine the physical condition of a minor, his mental development, distinctive psychological features or disposition, experts like physicians, psychologists and educationalists shall be engaged. Such examination of the minor may be carried out in a medical or some other institution.

Article 470

(1) The juvenile judge shall determine himself how to proceed in regard of particular acts, and in carrying out these acts he shall be bound to observe the provisions of this Act to the extent that the rights of the defendant to defence, the rights of the injured person and the gathering of evidence necessary to reach a decision should be secured.

(2) The public prosecutor and defence counsel may attend acts of preliminary proceedings. Where necessary, the questioning of a minor shall be conducted with the assistance of an educationalist or another specialist. The juvenile judge may grant permission to a welfare agency representative or the parents of the minor to attend acts of preliminary proceedings. When present, these persons shall be entitled to make motions and to put questions to the person being questioned.

Article 471

(1) The juvenile judge may order that a minor be committed during preliminary proceedings to a transient home, diagnostic centre, or put under supervision of a social welfare agency, or sent to a foster home if such measures are necessary to remove him from his old surroundings or provide him with help, protection or a lodging.

(2) The expenses for the lodging of a minor shall be advanced from the budget and included in the costs of criminal proceedings.

Article 472

(1) In exceptional cases the juvenile judge may decree remand in custody for a minor if grounds exists for this as specified in the first paragraph of Article 201 of this Act.

(2) Remand in custody under a ruling rendered by the juvenile judge may last up to one month. The juvenile panel of the same court may for valid reasons extend detention by another two months at most.

Article 473

(1) Minors must be held in remand separately from adults.

(2) Notwithstanding the previous paragraph, the juvenile judge may exceptionally order that a minor be remanded in custody together with adults, whenever with regards to the minor's personality and other circumstances in the specific case this is in his interest and to his benefit.

(3) Minors who have been deprived of their freedom must be ensured care, protection and all necessary individual help which they might need with regards to their age, sex and personality.

(4) In relation to minors in remand the juvenile judge shall have the same rights as are provided by this Act for the investigating judge in relation to detainees.

Article 474

(1) After examining all circumstances relating to the criminal offence and the personality of the minor, the juvenile judge shall forward the files to the competent public prosecutor. The latter may within eight days move that preliminary proceedings be supplemented, or may submit to the juvenile panel a reasoned motion for punishment or educational measure to be pronounced on the minor.

(2) The motion of the public prosecutor shall contain: the first name and surname of the minor, his age, description of the act, evidence wherefrom it ensues that the minor has committed a criminal offence, statement of reasons with an assessment of the mental development of the minor and the motion that the minor be punished or an educational measure ordered against him.

Article 475

(1) If the public prosecutor finds during preliminary proceedings that there are no grounds for action against the minor or that some of the reasons under paragraphs one and three of Article 466 of this Act exist, he shall propose the juvenile judge discontinue proceedings and shall inform the social welfare agency thereof.

(2) If the juvenile judge disagrees with the motion he shall refer the issue to the juvenile panel of the higher court for determination.

(3) The third paragraph of Article 467 of the present court shall also apply in instances where the juvenile panel does not comply with the motion of the public prosecutor for discontinuation of proceedings.

Article 476

When in instances specified under Articles 467 and 475 of this Act the public prosecutor has not participated in proceedings involving a minor, the juvenile judge shall upon completion of preliminary proceedings refer the case to the juvenile panel for adjudication.

Article 477

The juvenile judge shall be bound each month to report to the president of the court which juvenile cases are still pending and reasons for this. The president of the court shall take the necessary steps to speed up proceedings.

5. Proceedings before the juvenile panel

Article 478

(1) After receiving the motion of the public prosecutor, or at a certain point during proceedings if the latter are conducted without the motion of the public prosecutor, the juvenile judge shall schedule a panel session or the main hearing.

(2) If proceedings are conducted without the motion of the public prosecutor the juvenile judge shall at the beginning of the session or of the main trial state the criminal offence with which the minor is charged.

(3) Punishments and institutional measures may be imposed on a minor only upon the main hearing. Other educational measures may be pronounced in panel session.

(4) The decision to hold a main hearing may be taken in panel session.

(5) The public prosecutor, defence counsel and the representative of the social welfare agency shall be notified of the panel session which they shall be entitled to attend. The minor and his parents or guardian may, if necessary, also be informed of the session.

(6) The juvenile judge shall inform the minor of the educational measure ordered against him at the panel session.

Article 479

(1) In adjudicating on the basis of the main hearing the juvenile panel shall proceed according to the provisions of this Act relating to the preparations, directing, adjournment, recess, record and course of the main hearing. However, the court shall not be bound by these rules if it finds that their application in a particular instance might not be expedient.

(2) In addition to persons listed in Article 288 of this Act, the parents of the minor or his guardian and the social welfare agency shall be summoned to the main hearing. If the parents, the guardian or the welfare agency representative fail to appear the main hearing shall proceed in their absence.

(3) In addition to the minor, the public prosecutor who has submitted the motion under Article 474 of this Act shall be bound to attend the main hearing, and in the event of mandatory defence the presence of defence counsel shall be obligatory as well.

(4) The provisions of this Act on amendments to and extension of the indictment shall also apply to proceedings in case of minors but the juvenile panel shall, even in the absence of the motion of the public prosecutor, be empowered to pass its decision on the basis of a changed factual situation if such situation occurred during the main hearing.

Article 480

(1) The public shall always be excluded from trials of minors.

(2) Persons engaging in the protection and guidance of minors and suppression of delinquency, as well as professional experts, shall be allowed to attend the main hearing, subject to the permission of the panel.

(3) During the main hearing the panel may order all or particular persons present to leave the courtroom, except the public prosecutor, defence counsel and welfare agency representative.

(4) The panel may order that the minor be removed from the session while specific evidence is taken or during the statements of the parties.

Article 481

During court proceedings the juvenile judge or the juvenile panel may order a temporary committal of the minor (Article 471) or annul an earlier decision to that effect.

Article 482

(1) The juvenile judge shall be bound to schedule the main hearing or panel session within eight days of receipt of the motion of the public prosecutor, or preliminary proceedings were terminated (Article 476) or the panel session decided that the main hearing be held. Any extension of that period of time shall be subject to approval from the president of the court.

(2) The main hearing shall be adjourned or recessed only in exceptional instances. The juvenile judge shall be bound to inform the president of the court of each adjournment or recess and the reasons for this.

(3) The juvenile judge shall be bound to make out a written judgement or ruling within three days of announcement.

Article 483

(1) In deciding whether to impose punishment on a minor or apply an educational measure the juvenile panel shall not be bound by the motion of the public prosecutor. However, if proceedings for a minor are conducted without the motion of the public prosecutor, or if the public prosecutor has withdrawn the motion, the panel may not impose punishment but may only apply an educational measure.

(2) The panel shall discontinue proceedings by a ruling in instances in which the court, pursuant to clause 2, 3 or 4 of Article 357 of this Act, delivers a judgement by which it rejects the charge or acquits the defendant (Article 358), and also when it finds that it would not be expedient to pronounce either punishment or an educational measure on a minor.

(3) The panel shall also render a ruling when it pronounces an educational measure on a minor. In the enacting terms of the ruling the panel shall only indicate the type of the measure applied without finding the minor guilty of the criminal offence with which he has been charged. In the statement of reasons the panel shall describe the offence and circumstances which justify the application of such measure as was pronounced.

(4) The judgement imposing punishment on a minor shall be rendered in the form prescribed in Article 359 of this Act.

Article 484

(1) If punishment has been imposed on a minor the court may pronounce him obligated to pay the costs of criminal proceedings and settle indemnification claims. If an educational measure has been ordered against a minor, the costs of proceedings shall be charged to the budget and the injured party shall be directed to seek satisfaction of his indemnification claim in a civil action.

(2) If a minor has an income or assets of his own he may be ordered to pay the costs of criminal proceedings and to satisfy an indemnification claim even where only an educational measure has been pronounced on him.

6. Legal remedies

Article 485

(1) The judgement by which punishment has been imposed on a minor, the ruling by which an educational measure has been decreed and the ruling by which proceedings have been discontinued (second paragraph of article 483) may be appealed against by all those entitled to appeal against judgement (Article 367), within eight days of the judgement or ruling being served.

(2) Defence counsel, the public prosecutor, the spouse, a relative by blood in direct line, the adopter, the guardian, brother, sister and foster parent may appeal in favour of a minor even against his will.

(3) An appeal against the ruling on an educational measure involving the committal of a minor to an institution shall stay the enforcement of the ruling unless the court, in agreement with the parents and upon hearing the minor, determines otherwise.

(4) The court shall summon a minor to the session of the panel of the court of second instance (Article 378) providing only that the presiding judge or the panel finds that his presence there would be useful.

Article 486

(1) The panel of the court of second instance may modify the decision of the court of first instance and pronounce a harsher measure only if so moved in the appeal.

(2) If the decision of the court of first instance has not imposed on a minor the punishment of confinement in juvenile prison, a fine, or an institutional measure the panel of the court of second instance may pronounce such type of punishment or educational measure only after conducting a trial. The panel of the court of second instance may extend a juvenile prison term and impose a higher fine or a more severe institutional measure also in session.

Article 487

A request for the protection of legality may be filed against a judicial decision by which law has been violated, as well as against an incorrect pronouncement of punishment or an educational measure on a minor.

Article 488

Provisions on the reopening of criminal proceedings terminated by a finally binding judgement shall apply *mutatis mutandis* to the reopening of proceedings terminated by a finally binding ruling on the application of an educational measure.

7. Judicial supervision over the implementation of measures

Article 489

(1) The administration of an institution which implements educational measures against minors shall be bound to report every six months on the conduct of a minor to the court which pronounced the educational measure. The juvenile judge may pay personal visits to minors committed to the institution.

(2) The juvenile judge may inform himself about the enforcement of other educational measures through the intermediary of a social welfare agency, and may entrust this task to a particular specialist (social worker, special-education teacher and others) if there is one on the court staff. The social welfare agency shall be bound every six months at least to inform the court which pronounced an educational measure of the implementation thereof.

8. Discontinuance and modification of decisions on educational measures

Article 490

(1) The decision to modify the ruling on an educational measure shall be passed by the court which rendered such ruling in first instance after statutory conditions for this have been fulfilled and after the court has found that modification is necessary or a motion to that effect has been made by the public prosecutor, the warden or the social welfare agency to which the supervision of the minor has been entrusted.

(2) Before rendering the decision the court shall hear the opinion of the public prosecutor, the minor, his parents or his guardian or other persons, and it shall request the necessary reports from the institution to which the minor has been committed, from the welfare agency or from other agencies and institutions.

(3) The court shall proceed as provided by the first and second paragraphs of this Article also when it considers discontinuance of the implementation of an educational measure.

(4) Discontinuance or modification of an educational measure shall be determined by the juvenile panel. In deciding, consideration must be given to the success or failure of the implementation of educational measures and the minor's participation therein.

SECTION THREE
SPECIAL PROCEEDINGS

Chapter XXVIII
PROCEEDINGS FOR THE APPLICATION OF SECURITY MEASURES, CONFISCATION OF PROPERTY BENEFITS, BRIBES AND MONEY OR PROPERTY OF UNLAWFUL ORIGIN AND REVOKING OF SUSPENDED SENTENCE

Article 491

(1) If a defendant has committed a criminal offence in a state of mental incapacity the public prosecutor shall make a motion to the court to order compulsory psychiatric treatment and custody of such perpetrator in a medical institution, or compulsory psychiatric treatment of the perpetrator at liberty, if grounds for such measure exist as provided by Articles 64 and 65 of the Penal Code of the Republic of Slovenia.

(2) If the defendant is in remand he shall be committed to the appropriate medical institution until proceedings have been completed.

(3) Where the motion from the first paragraph of this Article has been made the defendant shall be bound to have defence counsel.

Article 492

(1) The decision on the measure of compulsory psychiatric treatment and custody in a medical institution or on compulsory psychiatric treatment at liberty shall be made, following a trial, by the court of jurisdiction in first instance.

(2) Besides persons who must be summoned to the main hearing, psychiatrists from the institution to which the examination of mental capacity of the defendant was entrusted shall also be summoned as experts. The defendant shall be summoned if his condition permits his attendance at the trial. The spouse, the parents or the guardian of the defendant shall be notified of the main hearing and possibly other close relatives as well.

(3) If the court finds on the basis of evidence taken that the defendant has committed a specific criminal offence and that at the time of commission of the criminal offence he was mentally incapable, it shall decide, after examinations of the persons summoned, on the basis of findings and opinion of experts, whether or not to pronounce the security measure of compulsory psychiatric cure and custody in a medical institution viz. compulsory psychiatric treatment at liberty.

(4) The court shall discontinue proceedings for application of a security measure if it finds that grounds do not exist for this, or if the public prosecutor has withdrawn the motion for such measure at the main hearing.

(5) The ruling may be challenged within eight days of the serving by all those entitled to appeal against the judgement (Article 367), save the injured party.

(6) If the public prosecutor in the instance referred to in the fourth paragraph of this Article, with the defendant present at the main hearing, waives the right to appeal, he shall be entitled to file the charge sheet or a summary charge sheet immediately, or within eight days at the latest from the day he waived the right to appeal.

Article 493

Security measures from the first paragraph of Article 491 of this Act may also be pronounced when at the main hearing the public prosecutor so modifies the preferred charge sheet or summary charge sheet as to move for the aforesaid measures to be pronounced.

Article 494

When imposing punishment on a person who committed criminal offence in a state of substantially diminished mental capacity the court shall by the same judgement pronounce the security measure of compulsory psychiatric treatment and custody in a medical institution if it finds that statutory conditions exist for this (Article 64 of the Penal Code of the Republic of Slovenia).

Article 495

The final decision imposing the security measure of compulsory psychiatric treatment in a medical institution or compulsory psychiatric treatment at liberty (Articles 492 and 494) shall be sent to the court vested with jurisdiction to decide on the deprivation of the capacity to perform legal acts. The decision shall also be reported to the social welfare agency.

Article 496

(1) The court of original jurisdiction which pronounced the security measure of compulsory psychiatric treatment and custody of the perpetrator in a medical institution or compulsory psychiatric treatment of the perpetrator at liberty shall, *ex officio* or on the motion of the medical institution and on the basis of the opinion of specialists, adopt all further decisions in respect of the duration and modification of the measure referred to in Articles 64 and 65 of the Penal Code of the Republic of Slovenia.

(2) The decisions from the preceding paragraph shall be adopted at a panel session (sixth paragraph of article 25). Notification of the session shall be sent to the public prosecutor and defence counsel. Before taking the decision the court shall hear the view of the perpetrator if necessary and if his condition permits of it.

(3) In proceedings to reconsider the duration or modification of security measure from the first paragraph of this Article the perpetrator must have defence counsel.

(4) If the court orders the release of a person with diminished mental capacity because of the expiry of the term specified in the third paragraph of Article 64 of the Penal Code of the Republic of Slovenia, it shall notify thereof the court having jurisdiction to decide on the retaining of persons in psychiatric institutions.

Article 497

(1) The court shall decide whether or not to apply the security measure of compulsory treatment of alcoholics and drug addicts after securing the findings and opinions of experts. Experts shall be bound to give their opinion on the possibility and prognosis of treatment of the defendant.

(2) Where the court in imposing a suspended sentence ordered medical treatment for the defendant at liberty and the latter did not commence to receive the treatment or abandoned it

the court may, on its own authority or upon the motion of the institution in which the defendant was treated or ought to have been treated, and after hearing the views of the defendant and the public prosecutor if proceedings were instituted on his request, revoke the suspended sentence.

(3) The court shall discontinue the implementation of the security measure from the first paragraph of this Article if cure is no more necessary or the period of time has expired specified in the fourth paragraph of Article 66 of the Penal Code of the Republic of Slovenia.

Article 498

(1) Objects which pursuant to Penal Code may or have to be seized shall be seized even when criminal proceedings do not end in a verdict of guilty if there is a danger that they might be used for a criminal act or where so required by the interests of public safety or by moral considerations.

(2) A special ruling thereon shall be issued by the agency before which proceedings were conducted at the time when proceedings ended or were discontinued.

(3) The court shall render the ruling on the seizure of objects from the first paragraph of this Article even where a provision to that effect is not contained in the judgement of conviction.

(4) A certified copy of the decision on the seizure of objects shall be served on the owner if his identity is known.

(5) The owner of the objects shall be entitled to appeal against the decision referred to in the second and third paragraphs of this Article if he considers that statutory grounds for seizure do not exist. If the ruling from the second paragraph of this Article was not rendered by the court, the appeal shall be heard by the panel of the court (sixth paragraph of Article 25) which would have had the jurisdiction to adjudicate in first instance.

Article 498a

(1) Except in the cases when the criminal procedure ends in a verdict of guilty, the money or property of illegal origin referred to in Article 252 of the Penal Code as well as unlawfully given and accepted bribe referred to in Articles 162, 168, 247, 248, 267, 268 and 269 of the Penal Code shall be seized also if:
1) those elements of a criminal offence referred to in Article 252 of the Penal Code have been proved which show that the money or property referred to in that Article originate from crimes or
2) those elements of a criminal offence referred to in Articles 162, 168, 247, 248, 267, 268 and 269 of the Penal Code have been proved which indicate that an award, gift, bribe or any other proceeds were given or accepted.

(2) The panel (sixth paragraph of Article 25) shall issue a special decision on the seizure upon a reasoned proposal of the state prosecutor; prior to this the investigating judge shall, upon the request of the panel, gather the data and investigate all the circumstances which are relevant for the decision on the illegal origin of money or property or on the unlawfully given and accepted bribe.

(3) A certified true copy of the decision referred to in the previous paragraph shall be served on the owner of the seized money, property or bribe if his identity is known. If the identity of the owner is not known the decision shall be posted on the court bulletin board and, after eight days, it shall be regarded that the unknown owner has been served the decision.

(4) The owner of the seized money, property or bribe shall be entitled to appeal against the decision referred to in the second paragraph of this Article if he considers that statutory grounds for seizure do not exist.

Article 499

(1) Proceeds acquired through the commission of a criminal offence or by reason of the commission thereof shall be determined in criminal proceedings *ex officio*.

(2) The court and other agencies conducting the proceedings shall be bound to gather evidence and inquire into circumstances material to the determination of proceeds.

(3) If the injured party has filed an indemnification claim to recover the objects acquired by the commission of a criminal offence or to receive the monetary equivalent thereof, the property benefit shall be determined only for that part which exceeds the indemnification claim.

Article 500

(1) Where the seizure of proceeds from another recipient of benefits is indicated (Articles 96 and 98 of the Penal Code of the Republic of Slovenia) that person shall be summoned for questioning in preliminary proceedings and at the main hearing. If a legal entity is involved, summons shall be served on its representative. The latter shall be informed that proceedings may be conducted in his absence.

(2) The representative of a legal person shall be heard at the main hearing, after the defendant. The same shall apply in respect of another recipient of proceeds if he was not summoned as a witness.

(3) The recipient of proceeds and the representative of a legal person shall in connection with determination of proceeds be entitled to move for evidence to be taken and, with the permission of the presiding judge, to put questions to the defendant, witnesses and experts.

(4) The exclusion of the public from the main hearing shall not apply in respect of the recipient of material benefits and the representative of a legal person.

(5) If the court finds only at the main hearing that the issue of the seizure of proceeds demands to be considered it shall interrupt the main hearing and summon the recipient of the proceeds or the representative of the legal person.

Article 501

The court shall fix the amount of proceeds using its discretion if an accurate determination would entail undue difficulties or the proceedings would thereby be unduly protracted.

Article 502

(1) Where the seizure of proceeds is applicable and if there is danger that the defendant could, on his own or through other persons, use these proceeds for further criminal activities or could conceal, alienate, destroy or otherwise make use of these proceeds and thus precluded or rendered the seizure of proceeds difficult, the court shall on its own authority order temporary securing of the claim upon motion of the state prosecutor.

(2) Such securing may be ordered by the court also during the pre-trial procedure if there are well-grounded reasons for the suspicion that a criminal offence has been committed through which or because of which proceeds were gained or that such proceeds were obtained for another person or transferred to that person.

(3) The securing referred to in the previous paragraphs may be ordered against a defendant or suspect, against the recipient of the proceeds or other persons to whom proceeds were transferred provided that these proceeds may be seized in accordance with the Penal Code.

Article 502a

(1) Temporary securing of the claim for the seizure of the proceeds shall be ordered by the decision issued by the investigating judge in the pre-trial and investigation procedure. After the charge sheet has been filed, the decision shall be issued by the presiding judge outside the main hearing or by the panel of judges at the main hearing.

(2) The decision referred to in the previous paragraph shall be served on the state prosecutor, the suspect/defendant and the person against whom the temporary securing was ordered (participants). The decision shall be sent to the competent body or person for the execution. The decision shall be served on the suspect/defendant and the person against whom the temporary securing was ordered upon or after the execution, however, without unnecessary delay.

(3) The person issuing the decision must enable the suspect/defendant and the person against whom the temporary securing was ordered access to all files related to the case.

(4) If temporary securing is not ordered the decision shall be served only on the state prosecutor who may file a complaint against the decision.

(5) The suspect/defendant and the person against whom the temporary securing was ordered may file a complaint against the decision referred to in the first paragraph of this Article within eight days and propose the hearing to be carried out by the court. The court shall serve the complaint on other participants and lay down the time limit for replying. The complaint shall not stay the execution of the decision.

(6) The court shall decide on the hearing in view of the circumstances of the case and taking into account the statements in the complaint. If the court does not announce a hearing, it shall decide on the complaint on the basis of the submitted documents and other material and it shall explain its decision in the ruling on the complaint (eighth paragraph of this Article).

(7) The person filing the complaint and other participants should be able to express their position on the proposed and ordered measures in the complaint and at the hearing and to give their opinion, statements and proposals regarding all the issues related to the temporary securing.

(8) After the participants at the hearing express their position on all the issues and the evidence is presented, if it is required for making the ruling on the complaint, the court shall decide on the complaint. In the ruling on the complaint the court shall dismiss the complaint by applying Article 375 of this Act *mutatis mutandis*, grant the complaint and reverse or change the decision on the temporary securing, or reject the complaint.

(9) The participants shall be entitled to appeal against the ruling referred to in the previous paragraph. The appeal shall not stay the execution of the ruling.

Article 502b

(1) In the decision ordering temporary securing the court must state the property which is the subject of securing, the manner of securing (first paragraph of Article 272 and first paragraph of Article 273 of the Execution of Judgements in Civil Matters and Insurance of Claims Act) and the duration of the measure. The decision must contain an explanation.

(2) When determining the duration of the measure the court must take into account the phase of the criminal proceedings, the type, nature and seriousness of the criminal offence, the complexity of the issue as well as the volume and importance of the property which is the subject of temporary securing.

(3) During the pre-trial procedure as well as after issuing the decision to institute the investigation the temporary securing may last three months. After the charge sheet has been filed the temporary securing may not last longer than six months.

(4) The time limit specified in the previous paragraph may be extended for the same periods of time. Before the investigation is instituted or, of it has not been instituted, before the charge sheet is filed the total duration of the temporary securing may not be longer than one year. During the investigation the total duration of the temporary securing may not be longer than two years. After the charge sheet has been filed and until the judgement of the court of first instance is passed the total duration of the temporary securing may not be longer than three years.

(5) Until the execution of the final court decision on the seizure of the proceeds the total duration of the temporary securing may not be longer than ten years.

Article 502c

(1) The court may, upon a reasoned proposal of the state prosecutor and taking into account the criteria laid down in first paragraph of Article 502 of this Act and time limits laid down in fourth and fifth paragraphs of Article 502b of this Act, extend the temporary securing ordered with the decision referred to in first paragraph of Article 502a of this Act by means of a ruling. Before taking the decision on the proposal, the court shall forward the proposal to other participants to state their opinion, laying down an appropriate time limit for replying.

(2) The court may, upon a reasoned proposal of the state prosecutor, the suspect/defendant or the person against whom the temporary securing was ordered and taking into account the criteria laid down in first paragraph of Article 502 of this Act, order a new manner of securing and annul the previous decision on temporary securing. Before taking the decision on the proposal the court shall forward the proposal to other participants to state their opinion, laying down an appropriate time limit for replying. The decision on the annulment of the measure shall be executed after the execution of the decision on the new manner of temporary securing.

(3) The court shall withdraw temporary securing on the proposal of the participants. The court may also withdraw temporary securing *ex officio* if the period of time has expired or if the state prosecutor has dismissed the criminal report or stated that he would not initiate the prosecution or that he withdraws from the prosecution. The state prosecutor must inform the court of its decision.

(4) If the court is of the opinion that the temporary securing is no longer needed, it shall notify the state prosecutor to present his opinion within the specified period of time. If the state prosecutor does not present his opinion within the specified period of time or if he does not object to the withdrawal of the temporary securing the court shall withdraw the temporary securing.

Article 502è

The court must be especially quick in taking the decision on the proposal for ordering, extending, changing or withdrawing temporary securing. If temporary securing has been ordered, the bodies in the pre-trial procedure must take very quick action and the criminal proceedings shall be regarded with priority.

Article 502d

In the procedure related to the temporary securing of the seizure of the proceedings, the provisions of the Execution of Judgements in Civil Matters and Insurance of Claims Act on the type of insurance (first paragraph of Article 272 and first paragraph of 273), on the exemptions and limitations of insurance, on evidence of danger (second, third and fourth paragraphs of Article 270 and second and third paragraphs of Article 272), on the effects of the decision (Article 268) and on compensation for damage (Article 279) shall apply *mutatis mutandis*.

Article 503

(1) Confiscation of property benefits may be imposed in the judgement of conviction, in the ruling on judicial admonition or the ruling on educational measure, as well as in the ruling on security measure from Articles 64 and 65 of the Penal Code of the Republic of Slovenia.

(2) In the enacting terms of the judgement or ruling the court shall specify the object and the sum confiscated. Where good grounds exist the court shall permit the payment of property benefits in instalments fixing the time limit and the amounts thereof.

(3) Where the court has imposed the confiscation of property benefits on the recipient and a legal person a certified copy of the judgement or ruling shall be served on the recipient of property benefit and the representative of a legal person.

Article 504

The legal person and the recipient of property benefits referred to in Article 500 of this Act may request the reopening of criminal proceedings in regard of the provision on confiscation of property benefits.

Article 505

The second and third paragraphs of Article 368, 376 and 380 of this Act shall apply *mutatis mutandis* to the appeal against the decision on confiscation of property benefits.

Article 506

(1) Where a suspended sentence provides that punishment shall be imposed in case of failure to return property benefits, to recover damage or to meet some other obligation and the defendant fails to comply with that provision within a specified period of time, the court which adjudicated in first instance shall on the motion of the authorised prosecutor or the injured party, or on its own motion, institute proceedings to revoke parole.
(2) The judge assigned to the case shall question the parolee if he can be reached and shall conduct the necessary inquiries to determine facts and collect evidence material to adjudication, whereupon he shall send the files to the panel (sixth paragraph of article 25).
(3) Thereupon the presiding judge shall schedule the session of the panel, of which he shall notify the prosecutor, the parolee and the injured party. The panel shall hold a session whether the duly summoned parties and the injured person appear or fail to comply with the summons.
(4) If the court establishes that the parolee has failed to comply with the obligation imposed on him by the judgement it shall render a judgement whereby parole shall be revoked and punishment imposed, or it shall fix a new time limit for the fulfilment of the obligation, or annul that stipulation altogether. If the court finds that there are no grounds for any of these decisions, it shall discontinue by a ruling the proceedings for the revocation of the suspended sentence.

Article 506a

(1) The court which ordered the storage of seized items or temporary securing of the claim for the seizure of the proceeds or property in the value of the proceeds must take very quick action in such cases. It must manage the items and property used for temporary securing of the claim as well as the items or property lodged as security (Articles 196 to 199) with due diligence.

(2) If the storage of the seized items or temporary securing of the claim referred to in the previous paragraph entails unproportional costs or if the value of the property or items is decreasing, the court may order that such property or items be sold, destroyed or donated for public use. Prior to the decision the court must obtain the opinion from the owner of the property or items. If the identity of the owner is not known or if the summons to present the opinion can not be served on him, the court shall post the summons on the court bulletin

board and after eight days it shall be regarded that the summons has been served on him. If the owner does not present his opinion within eight days after the serving it shall be regarded that he agrees with the sale, destruction or donation.

(3) The storage of seized items and securities as well as temporary securing of the claims referred to in the first paragraph of this Article shall be provided by the competent state bodies, authorities, enforcement officers and financial organisations.

(4) The procedure for the management of items and property as well as securities referred to in the first paragraph of this Article shall be determined by the Government of the Republic of Slovenia.

Article 507

(1) Unless stipulated otherwise in this chapter, other provisions of the present Code shall apply *mutatis mutandis* to proceedings for the application of security measures, confiscation of property benefits, bribes and money or property of unlawful origin and revocation of suspended sentence.

(2) The provisions of Articles 498a to 506a of this Act which refer to the confiscation of money or property of unlawful origin, bribes and other property benefits shall apply *mutatis mutandis* to the confiscation of property of a value which matches the property benefits (Articles 96 and 98 of the Penal Code of the Republic of Slovenia).

(3) The provisions of Article 499 of this Act shall apply *mutatis mutandis* to the pre-criminal and investigative procedure; in addition to the bodies before which the criminal procedure is proceeding, other bodies stipulated by this Act shall also participate in the collecting of data and the investigation of the circumstances of importance for the determination of property benefits.

Chapter XXIX
PROCEEDINGS REGARDING THE DECISION ON CANCELLATION OF SENTENCE AND CESSATION OF SECURITY MEASURES AND LEGAL CONSEQUENCES OF THE SENTENCE

Article 508

(1) Where the law provides for a sentence to be cancelled after the expiry of a specific period of time provided that the offender does not commit a new criminal offence within that time (Article 103 of the Penal Code of the Republic of Slovenia) the Ministry of Justice shall by virtue of office pass a decision cancelling the sentence.

(2) Prior to passing of the decision the necessary inquiries shall be made and, in particular, information shall be gathered as to the possibility of criminal proceedings being in progress against the convicted person for a criminal offence committed before the expiry of the period of time prescribed for the cancellation of the sentence.

Article 509

(1) If the Ministry of Justice fails to pass the decision the convicted person may file a request for the cancellation of the sentence on grounds of expiry of the statutory term for this.

(2) If the Ministry of Justice fails to pass the decision on the cancellation of the sentence within thirty days of the request being filed, the convicted person may request that a ruling cancelling the sentence be rendered by the court which passed the judgement in first instance.

(3) Such request shall be decided by the court after hearing the opinion of the public prosecutor if proceedings were instituted upon his request.

Article 510

If the suspended sentence is not revoked a year after the expiry of the probationary period the court which adjudicated in first instance shall render a ruling by which it shall cancel the sentence. The ruling shall be served on the convicted person, the public prosecutor if proceedings were conducted on his request and on the Ministry of Justice.

Article 511

(1) Proceedings for the cancellation of sentence on the basis of a judicial decision (Article 104 of the Penal Code of the Republic of Slovenia) shall be instituted upon petition of the convicted person.

(2) The petition shall be filed with the court which handled the case in first instance.

(3) The judge assigned to the case shall first establish if the statutory period of time has expired, whereupon he shall make the necessary inquiries to determine the facts alleged by the petitioner and gather evidence on all circumstances relevant for the decision.

(4) The court may request a report on the conduct of the petitioner from the police in whose territory he has resided after serving his sentence and may request a similar report from the administration of the institution in which he served the sentence.

(5) After completing the inquiries and upon hearing the opinion of the public prosecutor if proceedings were conducted on his request, the judge shall send the files together with a reasoned proposal to the panel (sixth paragraph of article 25).

(6) The decision of the court regarding the cancellation of the sentence may be appealed against by the petitioner and the public prosecutor.

(7) If the court rejects the petition on the ground that the conduct of the petitioner does not warrant the cancellation of the sentence the petitioner may repeat the petition after a lapse of two years from the day the ruling rejecting the petition became final.

Article 512

A revoked sentence may not be mentioned in certificates issued on the basis of criminal records for the exercising of rights of individuals.

Article 513

(1) Proceedings on the cessation of security measures of prohibition from practising a profession and the withdrawal of driving licence (the fourth paragraph of Article 67 and the fifth paragraph of Article 68 of the Penal Code of the Republic of Slovenia) and proceedings on the cessation of legal consequences of the sentence (third paragraph of article 101 of the Penal Code of the Republic of Slovenia) shall be instituted upon petition of the convicted person, filed with the court which adjudicated in first instance.

(2) The judge assigned to the case shall first check if the statutory period of time has expired, whereupon he shall make the necessary inquiries to determine the facts alleged in the petition and gather evidence on all circumstances relevant to the decision.

(3) The judge may request a report on the conduct of the convicted person from the police in whose territory the convicted person has resided after he has served his sentence, or received remission, or the sentence has become statute-barred. The judge may request a similar report from the institution in which the convicted person served the sentence.

(4) On completing the inquiries and after hearing the opinion of the public prosecutor if proceedings were instituted on his request, the judge shall send the files together with a reasoned motion to the panel (sixth paragraph of article 25).

(5) An appeal may be lodged against the ruling of the panel by the public prosecutor and the convicted person.

(6) If the petition is rejected, a new petition may not be filed before the expiry of one year from the day the ruling rejecting the previous petition became final.

Chapter XXX
PROCEDURES FOR INTERNATIONAL LEGAL AID AND THE EXECUTION OF INTERNATIONAL AGREEMENTS ON MATTERS OF PENAL LAW

Article 514

International aid in criminal matters shall be administered pursuant to the provisions of this Act unless provided otherwise by international agreements.

Article 515

(1) Petitions of domestic courts for legal aid in criminal matters shall be transmitted to foreign agencies through diplomatic channels. Foreign petitions for legal aid from domestic courts shall be transmitted in the same manner.

(2) In emergency cases and on condition of reciprocity, requests for legal assistance may be sent through the Ministry of the Interior, or in instances of criminal offences of money laundering or criminal offences connected to the criminal offence of money laundering, also to the body responsible for the prevention of money laundering.

(3) If reciprocity applies or if so determined by an international treaty, international criminal-legal help may be exchanged directly between the Slovene and foreign bodies which

participate in the pre-criminal and criminal proceedings, wherein modern technical assets, in particular computer networks and aids for the transmission of pictures, speech and electronic impulses may be used.

Article 516

(1) The Ministry of Foreign Affairs shall send petitions for legal aid received from foreign agencies to the Ministry of Justice which shall forward them for consideration to the circuit court in whose territory resides the person who should be served with a document, or interrogated, or confronted, or in whose territory an investigative act should be conducted.

(2) In instances referred to in the second paragraph of Article 515 of this Act petitions shall be transmitted to the court by the Ministry of the Interior.

(3) The permissibility and the manner of performance of an act requested by a foreign agency shall be decided by the court pursuant to domestic regulations.

(4) If a petition relates to a criminal offence for which no extradition is provided by domestic regulations the court shall consult the Ministry of Justice as to whether to grant the request or not.

Article 517

(1) Domestic courts may grant the request of a foreign agency for execution of a judgement of conviction passed by a foreign court if so provided by the international agreement or if reciprocity exists.

(2) In the instance referred to in the preceding paragraph the domestic court shall execute punishment imposed by a final judgement of a foreign court by imposing sanction in accordance with the legislation of the Republic of Slovenia.

(3) The court of jurisdiction shall pass judgement in the panel of judges referred to in the sixth paragraph of Article 25 of this Act. The public prosecutor and defence counsel shall be informed about the session of the panel.

(4) Territorial jurisdiction of the court shall be determined according to the last permanent residence of a convicted person in the Republic of Slovenia. If a convicted person had no permanent residence in the Republic of Slovenia territorial jurisdiction shall be determined according to his place of birth. If a convicted person neither had permanent residence nor was born in the Republic of Slovenia the supreme court shall assign the conduct of proceedings to one of the courts of real jurisdiction.

(5) In the enacting terms of the judgement from the third paragraph of this Article the court shall enter in full the enacting terms of the judgement of the foreign court and the name of the foreign court and shall pronounce sanction. In the statement of reasons the court shall state the grounds for the sanction which it has passed.

(6) An appeal may be lodged against the judgement by the public prosecutor, the convicted person and his defence counsel.

(7) If an alien sentenced by a domestic court, or a person authorised under a contract, files with the court of first instance petition for the convicted person to serve the sentence in his country, the court shall be entitled to grant petition if so provided by the international agreement or if reciprocity exists.

Article 518

In the case of criminal offences of counterfeiting money and putting it into circulation, illicit production, processing and sale of narcotics and poisons, white slavery, production and dissemination of pornographic material or some other criminal offence for which centralisation of data has been provided under international agreements, the agency which conducts criminal proceedings shall be bound immediately to send to the Ministry of the Interior data about the criminal offence and its perpetrator, and the court of first instance shall in addition send the finally binding judgement. Whenever the criminal offence of money laundering, or criminal offences connected to money laundering is involved, the data shall be sent without delay to the body responsible for the prevention of money laundering.

Article 519

(1) If an alien who permanently resides in a foreign country commits a criminal offence in the territory of the Republic of Slovenia all files for criminal prosecution and adjudication may, beside conditions specified in Article 522 of this Act, be surrendered to the foreign country if it agrees to receive them.

(2) The decision on the surrender of files shall before the ruling on investigation has been rendered lie with the competent public prosecutor. During the investigation the surrender shall be decided by the investigating judge upon motion of the public prosecutor, and until the opening of the main hearing it shall be disposed of by the panel (sixth paragraph of article 25) who shall also handle matters from the jurisdiction of the district court.

(3) The agencies from the preceding paragraph shall in considering the surrendering of criminal files also take into account the hitherto and future costs of criminal proceedings from inception to end.

(4) The surrender of criminal files may be allowed where criminal offences punishable by up to ten years imprisonment are involved, as well as in case of criminal offence against safety of public transport.

(5) The surrender of criminal files shall not be allowed if the injured party is a citizen of the Republic of Slovenia who opposes it, except where his indemnification claim has been secured.

(6) The surrender of criminal files shall not be allowed in instances where the seizure, or a temporary securing of the petition for forfeiture, of illegally acquired funds or property referred to in Article 252 of the Penal Code was ordered, or where unlawfully offered or accepted bribe referred to in Articles 162, 168, 247, 248, 267, 268 and 269 of the Penal Code was ordered, save where the court issued the aforesaid orders on the initiative of a foreign country. In these instances, and in instances where a temporary securing of the petition for forfeiture of property benefits was ordered in conjunction with other criminal offences, the agencies from the second paragraph of this Article may only surrender criminal file to another

country provided that, prior to surrendering it, they satisfy themselves that the country in question has an appropriate legislation in connection with the forfeiture of property benefits and surrendering of criminal files to another country, and that they take into consideration the value of the temporarily secured property.

(7) If the defendant is in remand the foreign country shall be requested through the shortest possible channels to report within fifteen days if it assumes prosecution.

Article 520

(1) The request of a foreign country to the Republic of Slovenia to assume prosecution of a citizen of the Republic of Slovenia, or a person with permanent residence in the Republic of Slovenia, for a criminal offence committed abroad shall be transmitted, together with the files, to the competent public prosecutor in whose territory that person has permanent residence.

(2) Indemnification claims filed with the competent agency of a foreign country shall be treated as if they have been filed with the court of jurisdiction.

(3) Information about the refusal to assume criminal prosecution and the final decision thereon shall be sent to the foreign country which requested that the Republic of Slovenia assume prosecution.

Chapter XXXI
PROCEEDINGS FOR THE EXTRADITION OF ACCUSED AND CONVICTED PERSONS

Article 521

(1) Unless provided otherwise in the international agreement, the extradition of accused and convicted persons shall be requested and carried out pursuant to the provisions of this Act.

(2) An alien may only be extradited in instances provided for by the international treaties binding on the Republic of Slovenia.

Article 522

The preconditions for extradition are:
1) that person whose extradition is requested is not a citizen of the Republic of Slovenia, except in instances defined by an international treaty binding on the Republic of Slovenia.
2) that the act which prompted the request for extradition was not committed in the territory of the Republic of Slovenia against the Republic or a Slovenian citizen;
3) that the act which prompted the request for extradition is a criminal offence within the meaning of domestic and foreign law alike;
4) that under the domestic law criminal prosecution or the execution of punishment was not statute-barred before the alien was detained or interrogated as the accused;
5) that the alien whose extradition is requested has not been convicted of the same offence by the domestic court or has not been acquitted under a final decision of the domestic court, or criminal proceedings against him have been suspended by a final decision, or the charge against him has been rejected by a final decision, or that in the Republic of Slovenia criminal proceedings have not been instituted against the alien for the same offence committed against

the Republic of Slovenia, and - in the event that criminal proceedings have been instituted for an offence committed against a citizen of the Republic of Slovenia - that the indemnification claim of the injured party has been secured;
6) that the identity of the person whose extradition is requested has been established;
7) that there is sufficient evidence to suspect that the alien whose extradition is requested has committed a criminal offence, or that a finally binding judgement exists thereon.

Article 523

(1) Proceedings for extradition of an accused or convicted alien shall be instituted upon the request of a foreign country.

(2) Petition shall be submitted by diplomatic channels.

(3) Petition for extradition shall enclose:
1) means of identification of the accused or convicted person (accurate description, photographs, fingerprints and similar);
2) certificate or other data about citizenship;
3) the charge sheet, or judgement, or ruling on detention or another equivalent document, in the original or a certified copy. These papers shall contain: the name and surname of the person whose extradition is requested and other data necessary to establish his identity, the description of the act, statutory qualification of the act and evidence on which suspicion rests
4) an extract from the penal law of the foreign country to be applied, or which was applied, against the accused for the offence which prompted the request for extradition; if the offence was committed in a third country, an extract from the penal code of that country.

(4) If the petition and annexes were drawn up in a foreign language a certified copy of translation into Slovenian shall be enclosed.

Article 524

(1) The Ministry of the Interior shall transmit the petition for extradition of an alien through the Ministry of Justice to the investigating judge in whose territory the alien resides or in whose territory he is to be found.

(2) If the permanent or temporary residence of the alien whose extradition is requested is not known, his whereabouts shall first be established through an internal affairs agency.

(3) If the petition complies with the conditions specified in the preceding Article and if grounds for remand in custody as specified in Article 201 of this Act exist, the investigating judge shall order that the alien be detained, or shall take other steps to secure his presence, unless it is clear from the petition itself that extradition is impermissible.

(4) The investigating judge shall immediately upon establishing the identity of the alien inform him why and on what grounds his extradition is requested, whereupon he shall invite the alien to say what he has to say in his defence.

(5) The examination and the statement of the alien shall be entered in the record. The investigating judge shall instruct the alien that he may retain a lawyer, or shall appoint one for

him *ex officio* if a criminal offence for which defence is mandatory is involved or if remand in custody against the alien has been ordered.

Article 525

(1) In urgent cases where there is a danger that the alien might flee or go into hiding the police shall be allowed to arrest the alien upon petition by a foreign competent agency, irrespective of the manner in which the petition was sent. The petition should contain necessary data for the establishment of identity of the alien, the type and designation of the criminal offence, the number of the decision together with the date, place and address of the foreign agency which ordered detention and the statement that extradition shall be requested by a regular route.

(2) The police shall without any delay bring the arrested alien before the investigating judge of the court with jurisdiction for interrogation. If the investigating judge orders remand in custody against the alien the investigating judge shall inform the Ministry of the Interior thereof.

(3) The investigating judge shall release the alien if grounds for detention cease to exist or if the request for extradition is not filed within the time determined by him in allowing for the distance of the requesting country from Slovenia. This period of time may not be in excess of three months from the day the alien was detained. The foreign country shall be informed of the aforesaid time limit. Upon petition by the foreign country the panel of the court of jurisdiction may extend this period by two months at most.

(4) If the petition is filed within the fixed time the investigating judge shall proceed as provided by the third and fourth paragraphs of the preceding Article.

Article 526

(1) After hearing the views of the public prosecutor and defence counsel the investigating judge shall perform, if necessary, other investigative acts to determine if grounds exist for the extradition of the alien or the delivery of objects upon which or by means of which the criminal offence was committed, provided such objects were seized from the alien.

(2) On completing inquiries the investigative judge shall send the files to the panel, together with his opinion on the matter (sixth paragraph of article 25).

(3) If criminal proceedings for the same or another criminal offence are in progress before a domestic court against the alien whose extradition is requested, the investigating judge shall put a note thereon in the files.

Article 527

(1) If the panel of the circuit court finds that statutory prerequisites for extradition have not been fulfilled it shall render a ruling rejecting the request for extradition. The court shall by virtue of office forward the ruling to the court of second instance which, after hearing the opinion of the public prosecutor, may affirm, annul or modify the ruling.

(2) If the alien is in remand the panel of the court of first instance may decide that he remain in custody until the ruling by which extradition has been rejected becomes finally binding.

(3) The final ruling by which extradition is rejected shall be transmitted via the Ministry of Justice to the Ministry of Foreign Affairs which shall notify the foreign country thereof.

Article 528

If the panel of the circuit court finds that statutory prerequisites for extradition (Article 522) have been fulfilled, it shall confirm such finding by a ruling.

Article 529

If the court of second instance finds upon appeal that statutory prerequisites for extradition of the alien have been fulfilled, or no appeal against the ruling to that effect of the court of first instance has been filed, it shall refer the matter to the Minister of Justice who shall decide on extradition.

Article 529a

(1) If an international treaty so determines, the extradition of a foreign person may be permitted at the request of the foreign extradition or remand body, with the purpose of effecting extradition without implementation of the procedure from Articles 526 to 529 of this Act if the foreign person, after being cautioned by the investigating judge, states that he agrees with his extradition.

(2) In the case from the preceding paragraph the foreign person may, after being cautioned by the investigating judge, terminate application of the provisions from Article 531 of this Act.

(3) Consent to extradition may be withdrawn until the decision from the fifth paragraph of this article is taken by the minister responsible for justice.

(4) When taking testimony the investigating judge shall inform the foreign person of the possibility of consenting to extradition, caution him that consent to extradition is voluntary and that it is possible to withdraw consent only until the decision is taken by the minister responsible for justice, and warn him that, should he consent to extradition, the decision will be taken in a summary procedure. The investigating judge shall also caution this person of the significance and content of the rule of speciality, the consequences of terminating the rule of speciality and of the fact that termination is voluntary and irrevocable. The advocate and the competent state prosecutor may be present at the hearing. The caution from the first and second paragraphs, the consent from the first paragraph and the termination from the second paragraph of this article, as well as the statement of the foreign person that his consent and termination were given voluntarily and in the presence of counsel shall be entered in the records.

(5) After testing the conditions from points 1 to 6 of the first paragraph of Article 522 of this Act, the investigating judge shall send the case records to the minister responsible for justice without delay, who shall decide on extradition and inform the foreign country of his decision. If any of the conditions from points 1 to 6 of the first paragraph of Article 522 of this Act

have not been fulfilled or if the foreign person has withdrawn his consent, the regular extradition procedure shall take place.

Article 530

(1) The Minister of Justice shall render a ruling whereby extradition is either granted or rejected. He may decide that extradition be postponed because proceedings for another criminal offence are pending before a domestic court against the alien whose extradition is requested, or because the alien is serving his sentence in the Republic of Slovenia.

(2) The Minister of Justice shall not permit the extradition of a foreigner if the latter enjoys the right of asylum in the Republic of Slovenia, if a political or military offence is involved or an international treaty with the country demanding the extradition does not exist. He may decline extradition if a criminal offence punishable by up to three years imprisonment is involved, or if a foreign court had imposed a sentence for a prison term of up to one year.

Article 531

(1) In the ruling by which he grants extradition of an alien the Minister of Justice shall state:
1) that the alien may not be prosecuted for another criminal offence committed prior to the extradition;
2) that he may not be punished for another criminal offence committed before his extradition;
3) that a severer punishment than the one to which he was sentenced may not be imposed on him;
4) that he may not be surrendered to a third country for prosecution of a criminal offence which he had committed before his extradition was granted.

(2) In addition to the aforesaid conditions the Minister of Justice may decree yet other preconditions for extradition.

Article 532

(1) The ruling regarding extradition shall be communicated to a foreign country through diplomatic channels.

(2) The ruling by which extradition is granted shall be forwarded to the Ministry of the Interior which shall order that the alien be transported to the state border where, at a place agreed upon earlier, he shall be surrendered to the agencies of the foreign country which had requested extradition.

Article 533

(1) Where several countries request extradition of the same person for the same criminal offence, priority shall be given to the country whose citizen that person happens to be. If his country of origin does not request extradition, priority shall be given to the country in whose territory the criminal offence was committed. If the offence was committed in the territories of several countries or the site of commission is not known, priority shall be given to the country which requested extradition first.

(2) Where several countries request extradition of the same person for several criminal offences, priority shall be given to the country whose citizen that person happens to be. If that country does not request extradition, priority shall be given to the country in whose territory the gravest criminal offence was committed. If the criminal offences are of equal gravity priority shall be given to the country which requested extradition first.

Article 534

(1) If criminal proceedings are pending in the Republic of Slovenia against a person who resides in a foreign country, or if that person has been punished by a domestic court, the Minister of Justice may file a request for his extradition.

(2) The request shall be sent to a foreign country through diplomatic channels, together with the documents and data referred to in Article 523 of this Act.

Article 535

(1) If there is a danger that the person whose extradition is requested might flee or go into hiding, the Minister of Justice may request, before taking action referred to in the preceding Article, that the necessary measures be taken for his apprehension.

(2) In the request for provisional arrest the requesting party shall provide data on the identity of the person sought, the name and nature of the criminal offence, the number and date of the warrant of arrest, the place and name of the agency which ordered remand in custody or information about the finality of the judgement, and a statement that extradition shall be requested through regular channels.

Article 536

(1) If the person sought is extradited he may be prosecuted or punished only for the criminal offence for which extradition was granted.

(2) If such person was convicted by a domestic court also of other criminal offences committed before extradition for which extradition was not granted, the provisions of Article 407 of this Act shall apply.

(3) If extradition was granted and accepted subject to specific conditions regarding the type and amount of punishment the court shall be bound by these conditions in imposing punishment. If the enforcement of an already imposed sentence is involved, the court which adjudicated in last instance shall modify the judgement and bring the sentence imposed into line with the conditions of extradition.

(4) If the extradited person was in detention in a foreign country for the criminal offence for which he has been extradited, the time spent in detention shall be counted in the punishment.

Article 537

(1) If a foreign country requests extradition from another foreign country and the person to be extradited is to be transported through the territory of the Republic of Slovenia, the Minister of Justice may upon petition of the country concerned grant transportation, provided that the

person is not a citizen of the Republic of Slovenia and that the extradition does not take place for a political or military offence.

(2) The application for transit through the territory of the Republic of Slovenia shall contain all data specified in Article 523 of this Act.

(3) If reciprocity exists, the costs of transportation of the aforesaid person through the territory of the Republic of Slovenia shall be charged to the budget.

Chapter XXXII
PROCEEDINGS FOR COMPENSATION, REHABILITATION AND THE EXERCISE OF OTHER RIGHTS OF UNJUSTIFIABLY CONVICTED OR ARRESTED PERSONS

Article 538

(1) The right to seek the recovery of damages inflicted by an unjustified judgement of conviction shall be enjoyed by a person who was finally convicted or found guilty and then acquitted and the subsequent proceedings of extraordinary judicial review were finally discontinued or he was finally acquitted of charge or the charge against him was rejected or the charge sheet was finally dismissed, except in instances:
1) where proceedings were discontinued or a judgement rejecting the charge was passed because in new proceedings the injured party as prosecutor or the private prosecutor refrained from prosecution or the injured party withdrew the motion and the refrainment and withdrawal were effected in agreement with the defendant;
2) where in reopened proceedings the charge sheet was rejected by a ruling for lack of jurisdiction of the court whereupon the authorised prosecutor started prosecution before the court of jurisdiction.

(2) The convicted person shall not be entitled to seek recovery of damages if by a false confession or in some other way he deliberately brought about his conviction, except where he was forced into it.

(3) Where the conviction of concurrent offences is involved the right to seek recovery of damages may also refer to individual criminal offences in respect of which conditions for recognition of indemnification have been fulfilled.

Article 539

(1) The right to seek recovery of damages shall be barred by the statute of limitation after a lapse of three years from the finality of the judgement whereby the defendant was acquitted of the charge in first instance or the charge was rejected, or after a lapse of three years from the finality of the ruling whereby the charge sheet was dismissed or proceedings in first instance were discontinued. If the appeal was decided by a higher court, the statute of limitation shall apply after a lapse of three years from the receipt of the decision of that court.

(2) Before filing the claim for damages with the court the injured person shall address his claim to the public legal defender to try and reach agreement about the existence of the loss and the type and extent of compensation.

(3) In the instance referred to in clause 2, the first paragraph of the preceding Article the request may only be processed if the authorised prosecutor fails to institute prosecution at the court of jurisdiction within three months of receipt of the final ruling. If the authorised prosecutor starts prosecution at the court of jurisdiction after expiry of that time limit proceedings for the recovery of damages shall be suspended until criminal proceedings have been concluded.

Article 540

(1) If the request for recovery of damages is not granted or the public legal defender and the injured person do not reach accord within three months of the filing of the request, the injured person may file a claim for damages with the court of jurisdiction. If accord was reached regarding only a part of the claim the injured person may sue for the outstanding part.

(2) The statute of limitation from the first paragraph of Article 539 of this Act shall not apply for as long as the procedure from the preceding paragraph is pending.

(3) The claim for the recovery of damages shall be filed against the Republic of Slovenia.

Article 541

(1) Heirs shall succeed only to the right of the injured person to recover damages. If the injured person has already filed the claim the heirs may continue proceeding only within the limits of his indemnification claim.

(2) After the death of the injured person his heirs may continue proceedings for the recovery of damages, or may initiate proceedings if the injured person had died before the action became statute-barred without waiving the right to claim for damages.

Article 542

(1) The right to compensation shall also be enjoyed by:
1) a person who was held in remand and criminal proceedings against him were not instituted or the charge sheet was dismissed by the final ruling or proceedings were discontinued or he was acquitted of charge by the finally binding judgement or the charge was rejected;
2) a person who served sentence in a correctional institution and on whom, by reason of the renewal of criminal proceedings or a request for the protection of legality, a shorter sentence was pronounced than the one he has already served or on whom a criminal sanction not involving arrest was pronounced, or who was found guilty and then acquitted;
3) a person who by reason of an error or unlawful act of an agency was unjustifiably arrested or held for some time in remand or in a penal institution;
4) a person who was held in remand longer than the prison term to which he was sentenced.

(2) A person who without statutory grounds was arrested under Article 157 of this Act shall be entitled to compensation if remand in custody was not ordered against him and the time he spent under arrest was not counted in the punishment imposed on him for a criminal offence or an infraction.

(3) The right to compensation shall not be enjoyed by the person whose arrest was caused by his own reprehensible conduct. In instances referred to in clauses 1 or 2 of the first paragraph

of this Article the right to compensation shall be excluded if circumstances exist as specified in clauses 2 or 3 of the first paragraph of Article 538.

(4) In proceedings for compensation under the first and second paragraphs of this Article provisions of this chapter shall apply *mutatis mutandis*.

Article 543

(1) If an example of unjustifiable conviction or unfounded arrest of a person was shown in the media and the reputation of that person was thereby harmed, the court shall upon request of that person announce in a newspaper or other media a report on the decision from which it is evident that the conviction was unjustifiable or the arrest unfounded. If the case was not announced in the media the court shall upon request of that person send such report to his employer. After the death of a convicted person such right shall be held by his spouse, or the person with whom he had lived in domestic partnership, and by his children, parents, brothers and sisters.

(2) The request from the preceding paragraph is permissible even if the recovery of damages was not sought thereby.

(3) Conditions provided by Article 538 of this Act aside, the request from the first paragraph of this Article shall also be permissible where in connection with extraordinary judicial review the legal qualification of the act was changed, if due to the legal qualification in the previous judgement the reputation of the convicted person was seriously impaired.

(4) The request referred to in the first, second and third paragraphs of this Article shall be submitted within six months (first paragraph of article 539) to the court which adjudicated in criminal proceedings in first instance. The request shall be determined by the panel (sixth paragraph of article 25). In the process of determination of the request paragraphs two and three of Article 538 and third paragraph of Article 542 of this Act shall apply *mutatis mutandis*.

Article 544

The court which adjudicated in criminal proceedings in first instance shall *ex officio* render a ruling annulling the entry of unjustifiable conviction in criminal records. The ruling shall be sent to the Ministry of Justice. Data from the annulled entry must not be communicated to anybody.

Article 545

Persons who were authorised to inspect and copy the files (Article 128) relating to the unjustifiable conviction or unfounded arrest of a person may not use data from these files in a manner which would prejudice the rehabilitation of the person against whom criminal proceedings were conducted. The president of the court shall be bound to warn such person thereof, and a note to that effect shall be written on the file against the signature of that person.

Article 546

(1) The person who by virtue of unjustifiable conviction or unfounded arrest has lost employment or the rights under the welfare and social security system or who was prevented from or delayed from obtaining employment which they would otherwise have obtained shall be entitled to have the time of employment or insurance lost in that way counted as if he was employed during the time lost through unjustifiable conviction or unfounded arrest. The time of unemployment resulting from an unjust conviction or unfounded arrest shall also be counted in the years of service, unless the person is himself responsible for that unemployment.

(2) In any disposition regarding the rights arising from the length of service or of social insurance the relevant agency shall take into account the length of time recognised pursuant to the preceding paragraph.

(3) Should the agency from the preceding paragraph disregard the length of time recognised under the first paragraph of this Article the injured person may request the court from the first paragraph of Article 540 to confirm that he has this time recognised by law. The claim shall be filed against the agency which refuses to recognise the recognised period, and against the Republic of Slovenia.

(4) On request of the agency at which the right from the second paragraph of this Article is exercised, the contribution prescribed for the period recognised under the first paragraph of this Article shall be paid out of the budget of the Republic of Slovenia.

(5) The length of social insurance recognised under the first paragraph of this Article shall in entirety be included in the length of service for retirement.

Chapter XXXIII
PROCEDURE FOR THE ISSUING OF WANTED NOTICES AND PUBLIC ANNOUNCEMENTS

Article 547

If permanent or temporary residence of a defendant is not known the court shall, whenever so required by the provisions of this Act, request the police to locate the defendant and inform the court of his address.

Article 548

(1) Issuing of a wanted notice may be ordered when the defendant against whom criminal proceedings have been instituted for an offence prosecuted *ex officio* and punishable by two or more years imprisonment is in flight and when a decree for his compulsory production or a ruling for his detention have been issued.

(2) Issuing of a wanted notice shall be decreed by the court conducting criminal proceedings.

(3) Issuing of a wanted notice shall also be decreed where a convict has escaped from the institution in which he is serving his sentence, irrespective of the amount of punishment, or when he escapes from the institution in which he is kept in custody under the order of an institutional measure. In this case the decree shall be issued by the warden.

(4) The decree on the wanted notice issued by the court or the warden shall be sent to the internal affairs agency for execution.

(5) The police keep shall records of issued wanted notices. Data about the persons against whom a wanted notice was issued are deleted from the records as soon as the competent agency has revoked the notice.

Article 549

(1) Where information is needed about particular objects connected with a criminal offence or where it is necessary to find such objects and, in particular, where that is necessary for establishing the identity of an unidentified body, the agency which conducts proceedings shall decree the issuing of a public announcement with a request that information and reports be addressed to the agency which conducts proceedings.

(2) The police may publish photographs of bodies and missing people if grounds exist to suspect that the death or disappearance have been caused by the commission of a criminal offence.

Article 550

The agency which has ordered the issuing of a wanted notice or announcement shall revoke them as soon as the person or the object sought are found, when criminal prosecution or the enforcement of punishment becomes statute-barred, or when other reasons indicate that the wanted notice or the announcement are no longer necessary.

Article 551

(1) The wanted notice and public announcement shall be issued by the Ministry of the Interior.

(2) Mass media may also be used to inform the public of the issuing of the wanted notice or announcement.

(3) Where probability exists that the wanted person is abroad, the Ministry of the Interior may issue an international wanted notice.

(4) Upon request of a foreign agency the Ministry of the Interior may issue a wanted notice for a person suspected of being in the Republic of Slovenia, provided the foreign agency states in the request that it will request his extradition if he is found.

(5) The provisions of this Article shall apply *mutatis mutandis* to cases when the police announce the search for persons or objects.

Chapter XXXIV
TRANSITORY AND FINAL PROVISIONS

Article 552

(1) The time limit referred to in the first paragraph of Article 52 of this Act and relating to criminal offences which pursuant to provisions of the Penal Code of the Republic of Slovenia are prosecuted upon motion shall start to run from the day this Act enters into force.

(2) Criminal proceedings for offences which prior to the entry into force of this Act were prosecuted *ex officio* or upon a private charge, and which will be prosecuted upon motion after this Act has entered into force, shall be conducted according to provisions applied before this Act took effect if charges were preferred before it took effect.

(3) If, after this Act has entered into force, a judgement is annulled in connection with an ordinary or extraordinary legal remedy or the reopening is allowed of criminal proceedings for a criminal offence which on the entry into force of this Act will be prosecuted upon a motion, a private charge shall be considered as the motion of the rightful claimant, whereas continuation of proceedings for a criminal offence which prior to the entry into force of this Act was prosecuted *ex officio* shall require that a motion be made. The period of time for making motions shall run from the day the rightful claimant was informed that the judgement was annulled or the reopening of criminal proceedings allowed.

Article 553

Regulations relating to the refunding of costs of criminal proceedings referred to in Article 99, and regulations relating to the keeping of criminal records and records of educational measures pronounced on minors pursuant to Article 135 of this Act, shall be issued by the Minister of Justice within three months of the entry into force of this Act.

Article 554

The Ministry of Justice shall within six months of the entry into force of this Act cancel from criminal records all sentences for which conditions for statutory rehabilitation have been fulfilled (Article 508).

Article 555

The Ministry of Justice shall take criminal records over from the Ministry of the Interior within two months of the entry into force of this Act.

Article 556

(1) Requests for the reopening of criminal proceedings against judgements which became final before 25 June 1991 and were passed by the former military court of jurisdiction for the territory of the Republic of Slovenia shall be decided by the court of first instance which in terms of the provisions of this Act would have jurisdiction to adjudicate in first instance.

(2) The provision of the preceding paragraph notwithstanding, requests for the reopening of criminal proceedings against judgements which became final before 25 June 1991 and were passed by the military court of jurisdiction for any of the republics of former Yugoslavia shall be decided by the circuit court in Ljubljana. Persons entitled to request the reopening of criminal proceedings against such judgements shall be the convicted persons who are, or who

were at any earlier period, Slovenian citizens under statutory provisions which were in force until 25 June 1991.

(3) The provision from the preceding paragraph shall apply *mutatis mutandis* to proceedings defined in the twenty-ninth and thirty-second chapter of this Act.

Article 557

Jurisdiction over the reopening of criminal proceedings for cases which prior to 1 January 1954 were adjudicated at first instance by the Supreme Court of the PR of Slovenia shall be vested in the court which within the meaning of this Act would be the court of jurisdiction in first instance.

Article 558

In respect of convicted persons who until the entry into force of this Act were finally sentenced in absentia in accordance with the provisions of paragraphs 3 and 4 of Article 300 of the Code of Criminal Procedure (Official Gazette of the SFRY No. 4/77, 14/85, 74/87, 57/89 and 3/90) criminal proceedings may be reopened pursuant to conditions specified in Article 410 of the aforesaid law.

Article 559

The period of time specified in the third paragraph of Article 421 of this Act notwithstanding, the convicted person and persons referred to in the second paragraph of Article 367 of this Act shall be entitled within two years of this Act entering into force to file requests for the protection of legality against judicial decisions which became final before the entry into force of this Act and against judicial proceedings conducted before such finally binding decisions.

Article 560

(1) In line with the provisions of this Act, requests for the protection of legality and requests for extraordinary mitigation of punishment against judgements which became final prior to 25 June 1991 and were passed by the military court of jurisdiction over the territory of the Republic of Slovenia shall be possible.

(2) The provision from the preceding paragraph notwithstanding, requests for the protection of legality and extraordinary mitigation of punishment against judgements which became final before 25 June 1991 and which were passed by the military court of jurisdiction over any republic of former Yugoslavia shall pursuant to provisions of this Act be possible provided the convicted person concerned is or was a Slovenian citizen under provisions effective until 25 June 1991.

Article 561

If the request of a convicted person for extraordinary review of a finally binding judgement is not determined until the entry into force of this Act, such request shall be considered according to the provisions for the protection of legality contained in this Act.

Article 562

The right to start a legal action of persons who were unjustifiably convicted before 1 January 1954 and who, due to the expiry of the term specified in the first paragraph of Article 539 of this Act, would not be entitled to exercise the right to compensation, shall under the statute of limitation expire within three years of this Act entering into force.

Article 563

The right to compensation under Article 538 of this Act shall also be granted to a person who has served his term in a corrective institution and in connection with the request for the extraordinary review of the final judgement received a shorter prison term than the one he has served, or received a penal sanction which did not involve imprisonment, or after being found guilty was acquitted.

Article 564

The rights and duties vested under this Act in the president of the district court, except those under Articles 191 and 213 of this Act, shall in respect of criminal offences falling within the province of the circuit court be vested in the president of the circuit court.

Article 565

On the day this Act enters into force the Code of Criminal Procedure (Official Gazette of the SFRY No. 4/77, 14/85, 74/87, 57/89 and 3/90) shall cease to be valid.

Article 566

This Act shall enter into force on 1 January 1995.